

BULLETIN

OF THE NEW YORK CITY BOARD OF STANDARDS AND APPEALS

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January 20, 2018

DIRECTORY

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DOCKETS

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2017-317-BZ

1693 Flatbush Avenue, Located on the corner of the intersection formed by Flatbush Avenue and East 34th Street, Block 07598, Lot(s) 0051, Borough of **Brooklyn, Community Board: 18**. Variance (§72-21) to permit the development of a 5 ½-story commercial office building contrary to ZR §36-121 (floor area); ZR §33-431 (street wall, setback & sky exposure plane and ZR §36-21 (parking). C2-2/R5 zoning district. R5/C2-2 district.

2017-318-A

155 Johnson Street, Located on the east side of Johnson Street, 1532.82 ft. north of Arthur Kill Road, Block 07207, Lot(s) 0283, Borough of **Staten Island, Community Board: 3**. Proposed development of a one-story warehouse building (UG 16B) to be divided into six separate units not fronting on a mapped street contrary to General City Law §36. M3-1 (Special Richmond District) M3-1(SRD) district.

2017-319-BZ

1601 Kings Highway, Located along Kings Highway between East 16th Street and East 17th Street, Block 06779, Lot(s) 0022, Borough of **Brooklyn, Community Board: 15**. Special Permit (§73-36) to permit the operation of a Physical Cultural Establishment (Planet Fitness) on portions of the ground, second and third floors of a new mixed-use building contrary to ZR §32-10. C4-4A zoning district. C4-4A district.

2017-320-BZY

428-432 East 58th Street, Located on the south side of East 58th Street, 221.46 feet west of the intersection of Sutton Place and East 58th Street, Block 01369, Lot(s) 0034, Borough of **Manhattan, Community Board: 6**. Proposed extension of time to complete construction for a minor development pursuant to ZR §11-331 to renew building permits lawfully issued before November 30, 2017, the date of the modified tower-on-a-base regulation, to complete the required foundation of a proposed 64-story residential apartment building. R10 zoning district. R10 district.

2017-321-BZ

560 W. 33rd Street, Located on the southeast corner of intersection of 11th Avenue and W. 33rd Street, Block 00702, Lot(s) 0150, Borough of **Manhattan, Community Board: 4**. Special Permit (§73-36) to permit the operation of a Physical Cultural Establishment (Equinox) located on the first, fourth, fifth and sixth floors of a proposed 72-story mixed-use building contrary to ZR §32-10. C6-4 Special Hudson Yards District. C6-4 (HY) district.

2017-322-BZ

2259 Richmond Avenue, Located 352.63 southwest of Richmond Avenue and Travis Avenue, Block 02380, Lot(s) 0080, Borough of **Staten Island, Community Board: 2**. Special Permit (§73-243) to permit an accessory drive-through to a proposed eating and drinking establishment (UG 6) (Taco Bell) contrary to ZR §32-15. C1-2 Lower Density Growth Management Area. R3-2/C1-2 district.

2017-323-A

108 Croak Avenue, Located on the south side of Croak Avenue 220.9 Ft from the intersection of Croak Avenue and La Guardia Avenue, Block 00692, Lot(s) 0217, Borough of **Staten Island, Community Board: 5**. Proposed development of a one-family dwelling not fronting on a mapped street contrary to General City Law §36. R1-2 zoning district. R1-2 district.

2017-324-BZ

80 Fifth Avenue, Located on Fifth Avenue and southwest corner of 14th Street, Block 00577, Lot(s) 0039, Borough of **Manhattan, Community Board: 2**. Special Permit (§73-36) to permit the operation of a Physical Cultural Establishment (Performix House) to be located on the second floor of an existing building contrary to ZR §32-10. C6-4M and C6-2 zoning district. C6-4M, C6-2 district.

2017-325-BZ

61 Elvin Street, Located on the corner of Elvin Street and N. Gannon Avenue, Block 711, Lot(s) 57, Borough of **Staten Island, Community Board: 1**. Variance (§72-21) to permit the construction of a two-family attached home contrary ZR §22-12 (contrary to use regulations) and ZR §25-622 (parking within the prolongation of a front building wall line. The proposal is part a series to permit the development of four two-family homes (BSA Calendar Numbers 2017-325-BZ thru 2017-328-BZ). R3-1 Lower Growth Density District. R3-1 district.

2017-326-BZ

67 Elvin Street, Located on the corner of Elvin Street and N. Gannon Avenue, Block 711, Lot(s) 55, Borough of **Staten Island, Community Board: 1**. Variance (§72-21) to permit the construction of a two-family attached home contrary ZR §22-12 (contrary to use regulations) and ZR §25-622 (parking within the prolongation of a front building wall line. The proposal is part a series to permit the development of four two-family homes (BSA Calendar Numbers 2017-325-BZ thru 2017-328-BZ). R3-1 Lower Growth Density

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District. R3-1 district.

2017-327-BZ

69 Elvin Street, Located on the corner of Elvin Street and N. Gannon Avenue, Block 711, Lot(s) 51, Borough of **Staten Island, Community Board: 1**. Variance (§72-21) to permit the construction of a two-family attached home contrary ZR §22-12 (contrary to use regulations) and ZR §25-622 (parking within the prolongation of a front building wall line. The proposal is part a series to permit the development of four two-family homes (BSA Calendar Numbers 2017-325-BZ thru 2017-328-BZ). R3-1 Lower Growth Density District. R3-1 district.

2017-328-BZ

73 Elvin Street, Located on the corner of Elvin Street and N. Gannon Avenue, Block 711, Lot(s) 49, Borough of **Staten Island, Community Board: 1**. Variance (§72-21) to permit the construction of a two-family attached home contrary ZR §22-12 (contrary to use regulations) and ZR §25-622 (parking within the prolongation of a front building wall line. The proposal is part a series to permit the development of four two-family homes (BSA Calendar Numbers 2017-325-BZ thru 2017-328-BZ). R3-1 Lower Growth Density District. R3-1 district.

2018-1-BZ

11-02 37th Avenue, Located at the corner lot on the southeast corner of the intersection of 37th Avenue and 11th Street, Block 00361, Lot(s) 0018, Borough of **Queens, Community Board: 1**. Special Permit (§73-44) to permit the reduction of required accessory off-street parking spaces for a UG 6B office use (PRC-B1 parking category) contrary to ZR §44-21. M1-3 zoning district. M1-3 district.

2018-2-BZ

288 4th Avenue, Located on the west side of 4th Avenue between 1st Street and Carroll Street, Block 456, Lot(s) 34 and 6, Borough of **Brooklyn, Community Board: 6**. Special Permit (§73-44) to permit the reduction of required accessory off-street parking spaces for a mixed-use building containing both UG 6B office use and UG 4 ambulatory diagnostic or treatment facility (PRC-B1 parking category) contrary to ZR §44-21. M1-2 zoning district. M1-2 district.

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

CALENDAR

**SPECIAL HEARING
FEBRUARY 6, 2018, 10:00 A.M.**

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, February 6, 2018, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

*** NO NEW CASE SCHEDULED***

Carlo Costanza, Executive Director

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**REGULAR MEETING
TUESDAY MORNING, JANUARY 9, 2018
10:00 A.M.**

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

SPECIAL ORDER CALENDAR

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 39th Street, Block 868,
Lot 49, 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 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 July 11, 2016; and

WHEREAS, a public hearing was held on this
application on January 9, 2018, 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 6, Manhattan,
recommends approval of this application on condition that
the applicant comply with the Board's condition that live
load not exceed 40 pounds per square foot with notices of
the restriction to be posted on each floor and that the term be
limited to five (5) years; and

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

WHEREAS, the site has approximately 20 feet of
frontage along East 39th Street, 99 feet of depth, 1,975
square feet of lot area and is occupied by a six-story, with
cellar, commercial building; and

WHEREAS, the Board has exercised jurisdiction over
the subject site since July 11, 1961, when, under the subject
calendar number, the Board granted a variance to permit for
a term of fifteen (15) years, expiring July 11, 1976, the
conversion of an existing building from residential use to
business offices on condition that a certificate of occupancy

be obtained; and

WHEREAS, on July 11, 1961, under BSA Calendar
Number 207-61-A, the Board granted an appeal regarding
compliance with the New York City Building Code on
condition that the floors be posted for a load of 40 pounds
per square foot, that the machinery be so distributed that the
40 pounds per square foot not be exceeded and that a
certificate of occupancy be obtained; and

WHEREAS, on July 6, 1976, under the subject
calendar number, the Board granted an extension of term for
ten (10) years, expiring July 11, 1986, on condition that a
new certificate of occupancy be obtained within one (1)
year, by July 6, 1977; and

WHEREAS, on February 2, 1988, under the subject
calendar number, the Board granted an extension of term for
ten (10) years, expiring July 11, 1996, on condition that a
new certificate of occupancy be obtained within one (1)
year, by February 2, 1989; and

WHEREAS, on February 2, 1988, under BSA
Calendar Number 207-61-A, the Board granted an
amendment to change the number of occupants per floor to
basement – four (4) persons, first floor – twelve (12)
persons, second floor – eight (8) persons, third floor – eight
(8) persons, fourth floor – ten (10) persons, fifth floor –
eight (8) persons and to change the interior layout on
condition that the forty (40) pounds per square foot live load
requirement by the Board be maintained where required (in
the computer room) by distributing the live load over a
larger area by using the proper materials; and

WHEREAS, on November 26, 1996, under the subject
calendar number, the Board granted an extension of term for
ten (10) years, expiring July 11, 2006, on condition that a
new certificate of occupancy be obtained within one (1)
year, by November 26, 1997; and

WHEREAS, on February 13, 1990, under the subject
calendar number, the Board granted an extension of time to
obtain a certificate of occupancy of twenty-four (24)
months, expiring February 2, 1991; and

WHEREAS, on June 3, 2008, under the subject
calendar number, the Board granted an extension of term for
ten (10) year years, expiring July 11, 2016, on condition that
the term be listed on the certificate of occupancy; and

WHEREAS, the term of the variance having expired,
the applicant seeks an extension; and

WHEREAS, Community Board 6, Manhattan, states
that the owner has complied with the Board's safeguards
through the years without issue but proposes a term of five
(5) years; and

WHEREAS, nothing in the record demonstrates that a
term of five (5) years would be more appropriate than a term
of ten (10) years; and

WHEREAS, based upon its review of the record, the
Board finds that the requested extension of term of ten (10)
years is appropriate with certain conditions as set forth
below and that the applicant had substantiated a basis to
warrant exercise of discretion.

Therefore it is Resolved, that the Board of Standards

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and Appeals does hereby *reopen* and *amend* the resolution, dated July 11, 1961, as amended through June 3, 2008, so that as amended this portion of the resolution shall read: “to *grant* under ZR § 11-411 an extension of term of the variance for ten (10) years, expiring July 11, 2026, on condition that all work and site conditions shall substantially conform to drawings filed with this application marked ‘Received August 28, 2017’-Three (3) sheets; and *on further condition*:

THAT the term of this grant shall be for ten (10) years, expiring July 11, 2026;

THAT the floors shall be posted for a load of 40 pounds per square foot;

THAT the machinery shall be so distributed that the 40 pounds per square foot requirement shall not be exceeded;

THAT the 40 pounds per square foot live load requirement by the Board shall be maintained where required (in the computer room) by distributing the load over a larger area using the proper materials;

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 9, 2022;

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, January 9, 2018.

164-94-BZ

APPLICANT – Jeffrey Chester, Esq., for Tuckahoe Realty LLC., owner; LRHC Park Chester NY Ink., lessee.

SUBJECT – Application March 28, 2014 – Extension of Term of a previously approved Variance (§72-21) which permitted the operation of physical culture establishment (*Lucille Roberts*), which expired on March 1, 2014. C1-2/R6 zoning district.

PREMISES AFFECTED – 84 Hugh Grant Circle, Cross Bronx Expressway Sr. South, Block 3794, Lot 109, Borough of Bronx.

COMMUNITY BOARD #9BX

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, January 9, 2018.

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

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 time to complete construction, which expires February 4, 2018; and

WHEREAS, a public hearing was held on this application on January 9, 2018, 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 southeast corner of Greenwich Street and Thames Street, in a C5-5 zoning district and the Special Lower Manhattan District, in Manhattan; and

WHEREAS, the site has approximately 261 feet of frontage along Greenwich Street, 119 feet frontage along Thames Street, 125 feet of frontage along Trinity Place, 35,814 square feet of lot area and is occupied by a mixed-use building currently under construction; and

WHEREAS, the Board has exercised jurisdiction over the subject site since 1957, when, under BSA Calendar Number 847-56-A, the Board granted a variance of Section 271 of the Labor Law to permit a fire escape located on the north side of the existing building on Lot 14 to serve as a required second means of egress; and

WHEREAS, on February 4, 2014, under the subject calendar number, the Board granted a variance to permit a 70-story mixed-use commercial and residential building with 439 dwelling units and commercial use on the first and second floors, contrary to setback regulations, on condition that the bulk parameters of the proposed building be as follows: a maximum floor area of 536,835.5 square feet (14.99 FAR), 70 stories, 956.78 feet building height and

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minimum setback of 10 feet on Greenwich Street and 13 feet on Thames Street; and

WHEREAS, by letter dated August 3, 2016, under the subject calendar, the Board allowed minor modifications to the Board-approved plans to permit a reduction in the total building height above curb level from 960.28 feet to 898.83 feet, a reduction in the highest residential floor above curb level from 815.28 feet to 814.72 feet, an adjustment in the floor area reflecting an increase in zoning floor area and a reduction in gross floor area reflecting a change in the building configuration and reduction in floor area deductions and a decrease in the number of dwelling units from 439 to 275; and

WHEREAS, the time to complete construction on the eve of expiration, the applicant seeks an extension; and

WHEREAS, the applicant represents that delays were caused by change in ownership, redesign of the building's program from rental to condominium and changed market conditions during the early stage of the development; and

WHEREAS, the applicant submitted evidence that construction at the subject site has been ongoing and that construction financing is secured to ensure continued work on the subject building; 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 and that the applicant had warranted a basis for exercise of discretion.

Therefore it is Resolved, that the Board of Standards and Appeals does hereby *reopen* and *amend* the resolution, dated February 4, 2014, 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 February 4, 2022; *on condition* that all work and site conditions shall substantially conform to the Board-approved plans; and *on further condition*:

THAT the bulk parameters of the proposed building shall be as follows: a maximum floor area of 536,835.5 square feet (14.99 FAR), 70 stories, 956.78 feet building height and minimum setback of 10 feet on Greenwich Street and 13 feet on Thames Street, all as illustrated 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 February 4, 2022;

THAT construction shall be completed within four (4) years, by February 4, 2022;

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, January 9, 2018.

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 April 10, 2018, at 10 A.M., for deferred decision.

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 149th Street, Block 2623, Lot 140, Borough of Bronx.

COMMUNITY BOARD #1BX

ACTION OF THE BOARD – Laid over to May 15, 2018, at 10 A.M., for continued hearing.

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 30, 2018, 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 3rd Avenue, Block 980, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #6BK

ACTION OF THE BOARD – Laid over to May 22, 2018, at 10 A.M., for adjourned hearing.

180-05-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for TCAM Core Property Fund Operating LP, owner; Equinox 85th 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 85th Street) Block 1531, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #8M

ACTION OF THE BOARD – Laid over to March 6, 2018, at 10 A.M., for continued hearing.

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 47th Avenue, Block 5559, Lot 75, Borough of Queens.

COMMUNITY BOARD #11Q

ACTION OF THE BOARD – Laid over to March 20, 2018, at 10 A.M., for continued hearing.

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 March 6, 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

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice Chair Chanda, Commissioner Ottley-Brown and Commissioner Sheta4
Negative:.....0

ACTION OF THE BOARD – Laid over to April 17, 2018, at 10 A.M., for decision, hearing closed.

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 March 20, 2018, at 10 A.M., for continued hearing.

2016-4348 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-

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73 57th Avenue, Block 2882, Lot 22, Borough of Queens.

COMMUNITY BOARD #4Q

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice Chair Chanda,
Commissioner Ottley-Brown and Commissioner Sheta4

Negative:.....0

ACTION OF THE BOARD – Laid over to January 23,
2018, at 10 A.M., for decision, hearing closed.

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 March
20, 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 March
20, 2018, at 10 A.M., for continued hearing.

2017-264-BZY

APPLICANT – Kenneth K. Lowenstein, for SLC2
Holdings, LLC, owner; Pestana New York East Side 39
LLC, lessee.

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 39th Street, north side of
East 39th Street, Block 869, Lot 25, Borough of Manhattan.

COMMUNITY BOARD #5M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice Chair Chanda,
Commissioner Ottley-Brown and Commissioner Sheta4

Negative:.....0

ACTION OF THE BOARD – Laid over to January 23,
2018, at 10 A.M., for decision, hearing closed.

ZONING CALENDAR

174-13-BZ

APPLICANT – Jeffrey A. Chester, Esq./GSHLLP, for 58-66
East Fordham Road, owner; LRHC Fordham Road LLC.,
lessee.

SUBJECT – Application June 13, 2014 – Special Permit
 (§73-36) to allow the reestablishment of an expired physical
culture establishment (*Lucille Roberts*) on the second floor,
contrary to (§32-31). C4-4 zoning district.

PREMISES AFFECTED – 2449 Morris Avenue a/k/a 58-66
East Fordham Road, Block 3184, Lot 45, Borough of Bronx.

COMMUNITY BOARD #7BX

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,
January 9, 2018.

233-14-BZ

APPLICANT – Law Office of Fredrick A. Becker, for TF
Cornerstone, Inc., owner; LOC Kickboxing LLC dba
ilovekickboxing LIC, lessee.

SUBJECT – Application September 29, 2014 – Special
Permit (§73-36) to allow for a physical culture establishment
 (“*iLovekickboxing*”) within a portion of an existing
commercial building. M3-1 zoning district.

PREMISES AFFECTED – 4545 Center Boulevard, east
side of Center Boulevard between north Basin Road and
46th Avenue, Block 00021, Lot 0020, Borough of Queens.

COMMUNITY BOARD #2Q

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,
January 9, 2018.

237-14-BZ

APPLICANT – Jeffrey A. Chester/GSHLLP, for 162nd
Street Realty, LLC, owner; SPE Jamaica Avenue, LLC,
lessee.

SUBJECT – Application October 1, 2014 – Special Permit
 (§73-36) to allow for the operation of a physical culture
establishment (*Lucille Roberts*). C6-3 zoning district.

PREMISES AFFECTED – 162-01 Jamaica Avenue, corner
of Jamaica Avenue and 162nd Street, Block 09761, Lot
0001, Borough of Queens.

COMMUNITY BOARD #12Q

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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, January 9, 2018.

270-15-BZ

CEQR #16-BSA-055K

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 – 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 December 2, 2015, acting on New Building Application No. 320624696, reads in pertinent part:

“ZR 42-00” “Proposed residential use . . . is not permitted”; and

WHEREAS, this is an application under ZR § 72-21 to permit, in an M1-1 zoning district, the development of a residential building that does not comply with applicable use regulations, contrary to ZR § 42-00; and

WHEREAS, a public hearing was held on this application on August 22, 2017, after due notice by publication in *The City Record*, with continued hearing on November 21, 2017, and then to decision on January 9, 2018; and

WHEREAS, Vice-Chair Chanda and Commissioner Ottley-Brown performed inspections 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 south side of Devoe Street, between Catherine Street and Morgan Avenue, in an M1-1 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 25 feet of frontage along Devoe Street, 131 feet of depth, 3,308 square feet of lot area and is vacant; and

WHEREAS, the applicant proposes to develop a three-story, with cellar, residential building that does not comply with applicable use regulations; and

WHEREAS, under ZR § 72-21(a), the applicant

represents that there are unique physical conditions inherent in the subject site that create practical difficulties or unnecessary hardship in complying with applicable use regulations; and

WHEREAS, specifically, the applicant states that the subject site is vacant and too narrow and undersized to accommodate modern manufacturing or commercial uses and that the site had historically been put to residential use; and

WHEREAS, the applicant further states that the subject site would be too narrow for transport vehicles to access an off-street loading berth within its bounds; and

WHEREAS, the applicant surveyed properties in the surrounding area, finding that nearby small, narrow lots of similar size to the subject site are occupied by residential uses while larger lots are occupied by conforming manufacturing and automotive uses; and

WHEREAS, the applicant represents that the subject site is also unique as to vacant lots in the vicinity since six of the seven vacant lots are held in common ownership with an adjacent lot, thereby providing those vacant lots the immediate potential for development on a larger tract of land as of right; and

WHEREAS, the applicant submitted historic maps, ranging from 1951 to 2007, indicating that the subject site had previously been put to residential use; and

WHEREAS, based upon its review of the record, the Board makes the finding required under ZR § 72-21(a); and

WHEREAS, as to ZR § 72-21(b), the applicant submits that, because of the foregoing physical conditions, there is no reasonable possibility that a conforming development would bring a reasonable return; and

WHEREAS, the applicant provided a financial feasibility study comparing an as-of-right one-story commercial development with the proposed building; and

WHEREAS, originally, the applicant analyzed an as-of-right one-story, with cellar, commercial development; and

WHEREAS, in response to comments from the Board at hearing regarding building inefficiencies created by construction of a cellar, the applicant amended its as-of-right commercial development to have one story without a cellar; and

WHEREAS, the Board also instructed that rental estimates in the financial feasibility study must be substantiated with appropriate comparables with narrative adjustments for time, location, age, zoning and physical characteristics, and the applicant revised the financial feasibility study accordingly; and

WHEREAS, the applicant states that, using the capitalization of income method, the estimated value of the as-of-right commercial development is approximately \$1,137,114 but that the estimated total development cost of the as-of-right commercial development, including site value, hard construction costs and soft construction costs, is \$1,471,523—a loss on investment of approximately \$334,409 (22.7 percent); and

WHEREAS, the applicant states that the estimated

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value of the proposed building is approximately \$2,145,455 and that the estimated total development cost of the proposed building is \$1,976,968—a return on investment of approximately \$168,486 (8.5 percent); and

WHEREAS, based upon its review of the record, the Board makes the required finding under ZR § 72-21(b); and

WHEREAS, under ZR § 72-21(c), the applicant states that the variance will not alter the essential character of the surrounding area; and

WHEREAS, the applicant surveyed the surrounding area, studying land uses, building height and floor area ratio along with the built streetscape, and concludes that the proposed building is consistent with the residential character of the subject block and the residential character of the neighborhood to the north and west of the subject site; and

WHEREAS, in response to questions from the Board at hearing about the height and bulk of the proposed building, the applicant further represents that the proposed building complies with the bulk regulations applicable in the R6B zoning district located to the west across Catherine Street and that the proposed building will be consistent with the existing built character of residential buildings in the surrounding area; and

WHEREAS, the applicant submitted historic maps indicating that the subject site and surrounding area have been used for residential uses; and

WHEREAS, based upon its review of the record, the Board makes the required finding under ZR § 72-21(c); and

WHEREAS, the applicant states that the hardship herein was not created by the owner or a predecessor in title and is instead a function of the site's unique physical conditions; and

WHEREAS, in support of this contention, the applicant also analyzed the chain of title of the subject site and submits that the subject site has not been held in common ownership with adjacent tracts of land; and

WHEREAS, based upon its review of the record, the Board makes the required finding under ZR § 72-21(d); and

WHEREAS, under ZR § 72-21(e), 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 R6B zoning district located directly across Catherine Street, continues the historic use of the subject site and realizes only a modest return on investment; and

WHEREAS, based upon its review of the record, the Board makes the required finding under ZR § 72-21(e); 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. 16BSA055K, dated January 3, 2018; 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 18, 2017, the New York City Department of Environmental Protection (“DEP”) states that the June 2016 Remedial Action Plan (“RAP”) and Construction Health and Safety Plan (“CHASP”) for the proposed project are acceptable as long as: the applicant, upon completion of the clean fill and top soil investigation activities (for imported soil or soil reused from the site to be used in the two feet clean soil cap), a detailed clean soil report shall be submitted to DEP for review and approval prior to importation or placement on-site; the report should include, at a minimum, an executive summary, narrative of the field activities, laboratory data and comparison of soil analytical results; the applicant shall include information fact sheets or Safety Data Sheets for potential contaminants of concern in Appendix C; the applicant shall include decontamination procedures both for individuals and equipment where there is potential for exposure; at the completion of the project, a Professional Engineer-certified Remedial Closure Report should indicate that all remedial requirements have been properly implemented (i.e., installation of vapor barrier and passive sub-slab depressurization, transportation–disposal manifests for removal and disposal of soil in accordance with applicable regulations and two feet of DEP-approved certified clean fill and top soil capping requirement in any landscaped or grass covered areas not capped with concrete or asphalt); and

WHEREAS, by letter dated January 2, 2018, DEP states that the proposed project would not result in any significant adverse air quality impact; and

WHEREAS, by correspondence dated July 8, 2015, the New York City Landmarks Preservation Commission (“LPC”) states that the subject 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; and

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

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and make each and every one of the required findings under ZR § 72-21 to *permit*, in an M1-1 zoning district, the development of a residential building that does not comply with applicable use regulations, contrary to ZR § 42-00; *on condition that* all work and site conditions shall comply with the drawings filed with this application marked “Received October 25, 2017”-Ten (10) sheets; and *on further condition*:

THAT a certificate of occupancy shall be obtained within four (4) years, by January 9, 2022;

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, January 9, 2018.

2016-4215-BZ

CEQR #16-BSA-124K

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 – Application granted on condition.

THE VOTE TO CLOSE –

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 December 7, 2016, acting on Alteration Application No. 320909781, reads in pertinent part:

1. ZR 23-142. Proposed floor area exceeds the maximum allowed. Floor area ratio is not complying.
2. ZR 23-142. Proposed lot coverage exceeds the maximum allowed. Lot coverage is not complying.
3. ZR 23-142. The proposed open space does not meet requirement. Open space is not complying.

4. ZR 23-47. The proposed rear yard extends an existing non-compliance. Rear yard is not complying.

5. ZR 23-461(a). The proposed side yard extends an existing non-compliance. Side yard is not complying; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03 to permit, in an R3-1 zoning district, the enlargement of a single-family detached residence that does not comply with zoning regulations for floor area, lot coverage, open space, rear yards and side yards, contrary to ZR §§ 23-142, 23-47 and 23-461; and

WHEREAS, a public hearing was held on this application on July 25, 2017, after due notice by publication in *The City Record*, with continued hearing on October 17, 2017, and then to decision on January 9, 2018; 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, stating that it believes that the proposed enlargement is well within the guidelines of ZR § 73-622 because the existing residence is a small, one-story bungalow that is being elevated for flood resiliency; and

WHEREAS, the subject site is located on the west side of Exeter Street, south of Oriental Boulevard, in an R3-1 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 40 feet of frontage along Exeter Street, 100 feet of depth, 4,000 square feet of lot area and is occupied by a one-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

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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 fill in the cellar, remove illegal construction and add two floors and attic, thereby increasing the floor area ratio ("FAR") from 0.39

FAR (1,561 square feet of floor area) to 0.9 (3,522 square feet of floor area), increase lot coverage from 34.5 percent to 45 percent, decrease open space from 65.5 percent to 55 percent, increase the rear yard from 9'-11" to 20 feet in depth at the first floor and 24 feet at the second floor and attic and maintain the existing side yards of 4'-10" to the north and 6'-8" to the south; and

WHEREAS, the applicant represents that, at the subject site, floor area may not exceed 2,000 square feet (0.5 FAR) under ZR § 23-142, lot coverage may not exceed 35 percent under ZR § 23-142, Open Space Ratio must be at least 65 percent under ZR § 23-142, the rear yard must have a depth of at least 30 feet under ZR § 23-47 and side yards must have a total width of 13 feet, with each side yard having a minimum depth of 5 feet, under ZR § 23-461; and

WHEREAS, the applicant represents that the proposed enlargement complies with all applicable flood regulations, including but not limited to Appendix G of the New York City Building Code; and

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

WHEREAS, in support of this contention, the applicant surveyed one- and two-family residences within the surrounding area, finding that 11 residences have 0.90 FAR or greater, ranging from 0.90 to 1.50 FAR, and finding that there are nine residences with lot coverages in excess of 45 percent; and

WHEREAS, the applicant also submitted a photographic streetscape study, aerial photo survey, contextual photos of the subject site and a rear yard study of the subject block demonstrating the presence of nine residences with rear yards with depths of 20 feet or less; and

WHEREAS, in response to questions from the Board regarding the effect of the rear yard incursion on adjacent residences, the applicant revised the drawings to reflect a rear yard with a depth of 24 feet at the second story and above; and

WHEREAS, with respect to the front yard, which is not within the scope of this application, the Department of Buildings must ensure that the parking space complies with ZR § 23-45(a) and other applicable regulations; and

WHEREAS, based upon its review of the record and its inspections of the site and surrounding area, the Board finds that the proposed building as enlarged will neither 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 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 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

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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. 16BSA124K, dated June 8, 2016; and

WHEREAS, the Board finds that the evidence in the record supports the findings required to be made under ZR §§ 73-622 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion.

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 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 §§ 73-622 and 73-03 to permit, in an R3-1 zoning district, the enlargement of a single-family detached residence that does not comply with zoning regulations for floor area, lot coverage, open space, rear yards and side yards, contrary to ZR §§ 23-142, 23-47 and 23-461; *on condition* that all work and site conditions shall substantially conform to drawings filed with this application marked “Received January 9, 2018”-Twenty-two (22) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: there shall be a maximum of 3,522 square feet of floor area (0.9 FAR); lot coverage shall not exceed to 45 percent; open space shall be a minimum of 55 percent; the rear yard shall have minimum depths of 20 feet at the first floor and 24 feet at the second floor and attic and the side yards shall have minimum depths of 4’-10” to the north and 6’-8” to the south, as illustrated on the Board-approved plans;

THAT all existing exterior walls and wall joints indicated to remain undisturbed on the Board-approved plans 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 January 9, 2022;

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, January 9, 2018.

2017-67-BZ

CEQR #17-BSA-108K

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 – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Sheta.....4
Negative:0

WHEREAS, the decision of the Department of Buildings (“DOB”), dated March 20, 2017, acting on Alteration Application No. 321395227, reads in pertinent part:

1. Proposed plans are contrary to ZR 23-141 in that the proposed floor area ratio exceeds the maximum permitted.
2. Proposed plans are contrary to ZR 23-461 in that the proposed side yard is less than the minimum required.
3. Proposed plans are contrary to ZR 23-141 in that the proposed open space is less than the minimum required.
4. Proposed plans are contrary to ZR 23-631 in that the perimeter wall height exceeds the maximum permitted; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03 to permit, in an R3-2 zoning district, the enlargement of an existing residence that does not comply with zoning regulations for floor area ratio (“FAR”), side yards, open space and perimeter wall height, contrary to ZR §§ 23-141, 23-461, 23-631; 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 December 12, 2017, and then to decision on January 9, 2018; 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 south side of Avenue R, between East 27th Street and East 28th 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 depth, 3,300 square feet of lot area and is occupied by an existing 2-story, with attic, detached single-family residence; and

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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 proposed to enlarge the existing residence from 1,400 square feet of floor area (0.42 FAR) to 2,251 square feet of floor area (0.68 FAR), maintain the existing 3'-10" side yard, decrease the open space from 69.2 percent to 58.48 percent and increase the perimeter wall height from 20'-8" to 22'-0"; and

WHEREAS, the applicant represents that, at the subject site, floor area may not exceed 1,650 square feet (0.50 FAR) under ZR § 23-141, side yards must have a minimum depth of 5 feet under ZR § 23-461, minimum required open space must be at least 65 percent under ZR § 23-141 and the perimeter wall height may not exceed 21 feet under ZR § 23-631; and

WHEREAS, the applicant submits that the proposed building as enlarged is consistent with the essential character of the neighborhood; and

WHEREAS, in support of this contention, the applicant surveyed properties within the immediate area surrounding the subject site occupied by single- or two-family residences, finding that 29 residences have FARs in excess of 0.71, ranging from 0.75 FAR to 1.23 FAR; and

WHEREAS, in addition to the floor area study, the applicant also submitted a photographic streetscape study, lot coverage diagram and rear yard diagram to support that the enlarged building would not alter the neighborhood's character; and

WHEREAS, based upon its review of the record and inspections of the subject site and surrounding neighborhood, the Board finds that the proposed building as enlarged will not alter the essential character of the neighborhood or district in which the subject building is located, 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

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community at large due to the proposed bulk modifications 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. 17BSA108K, dated July 24, 2017; and

WHEREAS, the Board finds that the evidence in the record supports the findings required to be made under ZR §§ 73-622 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion.

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 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 §§ 73-622 and 73-03 to *permit*, in an R3-2 zoning district, the enlargement of an existing residence that does not comply with zoning regulations for floor area ratio, side yards, open space and perimeter wall height, contrary to ZR §§ 23-141, 23-461, 23-631; *on condition* that all work and site conditions shall substantially conform to drawings filed with this application marked “Received December 22, 2017”-Twelve (12) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: floor area shall be limited to a maximum of 2,251 square feet (0.68 FAR), side yards shall have minimum depths of 3’-10” and 8’-9”, there shall be a minimum of 58.48 percent open space and height of the perimeter wall shall be no more than 22’-0”, as illustrated on the Board-approved plans;

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 appear on the certificate of occupancy;

THAT a certificate of occupancy shall be obtained within four (4) years, by January 9, 2022;

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, January 9, 2018.

2017-188-BZ

CEQR #17-BSA-131K

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 – 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 April 21, 2017, acting on Alteration Application No. 321358302, reads in pertinent part:

1. Creates non-compliance with respect to floor area by exceeding the allowable floor area ratio and is contrary to Section[] 23-142 of the Zoning Resolution.
2. Creates non-compliance with respect to the rear yard by not meeting the minimum requirements of Section 23-47 of the Zoning Resolution.
3. Creates non-compliance with respect to the side yards by not meeting the minimum requirements of Section 23-461 of the Zoning Resolution; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03 to permit, in an R5 zoning district and the Special Ocean Parkway District, the enlargement of two existing two-family detached residences into one two-family detached residence that does not comply with zoning regulations for floor area, rear yard and side yards, contrary to ZR §§ 23-142, 23-47 and 23-461; 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 October 31, 2017, and then to decision on January 9, 2018; 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, stating that it

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believes that this application is well within the special permit guidelines; and

WHEREAS, the subject site is located on the east side of Ocean Parkway, between Quentin Road and Kings Highway, in an R5 zoning district and the Special Ocean Parkway District, in Brooklyn; and

WHEREAS, the site has approximately 51 feet of frontage along Ocean Parkway, 140 feet of depth, 7,070 square feet of lot area and is improved with two existing two-family detached residences; 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 existing detached two-family residences, as contemplated in ZR § 73-622; and

WHEREAS, the applicant proposes to enlarge the existing residences from 5,634 square feet of floor area (0.80 FAR) to 9,858 square feet of floor area (1.39 FAR), decrease the rear yard from 41'-10" to depths of 20 feet at the first story, 25 feet at the second story and 30 feet at the third story and maintain the existing side yard with a width of 4'-9" to the north and increase the side yard to the south from 4'-4" to 4'-7"; and

WHEREAS, the applicant states that, at the subject site, floor area may not exceed 8,838 square feet (1.25 FAR) under ZR § 23-142, rear yards must have depths of 30 feet under ZR § 23-47 and side yards must have minimum widths of five feet for a total width of 13 feet under ZR § 23-461; and

WHEREAS, the applicant represents that the proposed building as enlarged is consistent with the built character of the neighborhood; and

WHEREAS, in support of this contention, the applicant surveyed single- and two-family residences in the surrounding area, finding that there are 18 residences with more than 1.40 FAR; and

WHEREAS, the applicant also submitted a rear yard study, lot coverage diagram, photographic streetscape montage, a contextual streetscape illustration and a photographic neighborhood study demonstrating that the

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proposed building will fit in with the built conditions of the surrounding area; and

WHEREAS, because the front yard is beyond the scope of this application, the Department of Buildings must review and determine whether the porch proposed in the front yard is permitted under applicable regulations; and

WHEREAS, based upon its review of the record and inspections of the subject site and surrounding neighborhood, the Board finds that the proposed building as enlarged will not alter the essential character of the neighborhood or district in which the subject building is located, nor impair the future use or development of the surrounding area; and

WHEREAS, in response to questions from the Board at hearing about the effect of the enlarged building on residences nearby, the applicant reduced the proposed building's incursion into the rear yard, decreased the proposed floor area and increased the amount of open 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 bulk modifications 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. 17BSA131K, dated May 22, 2017; and

WHEREAS, the Board finds that the evidence in the record supports the findings required to be made under ZR §§ 73-622 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion.

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 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 §§ 73-622 and 73-03 to *permit*, in an R5 zoning district and the Special Ocean Parkway District, the enlargement of two existing two-family detached residences into one two-family detached residence that does not comply with zoning regulations for floor area, rear yard and side yards, contrary to ZR §§ 23-142, 23-47 and 23-461; *on condition* that all work and site conditions shall substantially conform to drawings filed with this application marked "Received December 21, 2017"-Thirteen (13) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: floor area shall be limited to 9,858 square feet (1.39

FAR), the rear yard shall have minimum depths of 20 feet at the first story, 25 feet at the second story and 30 feet at the third story, and the side yards shall have minimum widths of 4'-9" to the north and 4'-7" to the south, as illustrated on the Board-approved plans;

THAT removal of existing joists or perimeter walls in excess of that shown on the Board-approved plans shall void the special permit;

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 9, 2022;

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, January 9, 2018.

2017-227-BZ

CEQR #17-BSA-137M

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 37th Street, Block 761, Lot 22, Borough of Manhattan.

COMMUNITY BOARD #4M

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 20, 2017, acting on Alteration Application No. 122898926, reads in pertinent part:

"Proposed Physical Culture Establishment . . . is not permitted as of right . . . and is contrary to ZR 32-10"; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to permit, in a C6-4M zoning district and the Special Garment Center District, the legalization of a physical culture establishment ("PCE") on the first floor,

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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 Register*, and then to decision on January 9, 2018; and

WHEREAS, Community Board 4, Manhattan, recommends approval of this application, stating that it believes the PCE constitutes a well-run operation with minimal or no disturbance to the neighborhood and to the residential portion of the building within which the PCE is located; 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 37th Street, between Eighth Avenue and Ninth Avenue, in a C6-4M zoning district and the Special Garment Center District, in Manhattan; and

WHEREAS, the site has approximately 100 feet of frontage along West 37th Street, 99 feet of depth, 9,875 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

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 4,053 square feet of floor area on the first floor as follows: a lobby, reception area, office, changing rooms, toilets, showers, closets, and a fitness studio with treadmills and other exercise equipment; and

WHEREAS, the PCE has been in operation since October 13, 2017, as Orangetheory Fitness 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 use will neither impair the essential character nor the future use or development of the surrounding area because it located entirely within the commercial first-floor space of a mixed-use building and that the surrounding area is characterized by a vibrant mix of compatible uses, such as hotels, offices, eating and drinking establishments and retail stores; and

WHEREAS, with regard to sound attenuation, the applicant submits that the PCE will feature a suspended, spring-isolated gypsum acoustic ceiling, insulated acoustic

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demising walls and rubber flooring in the fitness studio with an additional layer of rubber flooring in the weights area; 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 group-based personal 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 a 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 indicating 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-137M, dated June 7, 2017; and

WHEREAS, the Board finds that the evidence in record supports the findings required to be made under ZR §§ 73-36 and 73-03 and that the applicant had substantiated a basis for the 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 each and every one of the required findings under ZR §§ 73-36 and 73-03 *to permit*, in a C6-4M zoning district and the Special Garment Center District, the legalization of a physical culture establishment on the first floor, contrary to ZR § 32-10; *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked “Received July 14, 2017”-Five (5) sheets; and *on further condition*:

THAT the term of this grant shall be for ten (10) years,

expiring October 13, 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 remain 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 January 9, 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, January 9, 2018.

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 14th Street, Block 7293, Lot 54, Borough of Brooklyn.

COMMUNITY BOARD #15BK

THE VOTE TO REOPEN 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 continued hearing.

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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 April 4, 2018, 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

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 27, 2018, at 10 A.M., for decision, hearing closed.

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 April 17, 2018, at 10 A.M., for continued hearing.

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**REGULAR MEETING
TUESDAY AFTERNOON, JANUARY 9, 2018
1:00 P.M.**

Present: Chair Perlmutter, Vice-Chair Chanda,
Commissioner Ottley-Brown, Commissioner Sheta.

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

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, January 9, 2018.

2017-44-BZ

CEQR #17-BSA-089M

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 20th Street, Block 796, Lot 23, Borough of Manhattan.

COMMUNITY BOARD #4M

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 6, 2016, acting on Alteration Application No. 123000019, reads in pertinent part:

“Proposed Physical Culture Establishment . . . is contrary to ZR 32-10”; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to permit, in a C6-3A zoning district, the legalization of a physical culture establishment (“PCE”) on the first floor and cellar, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on January 9, 2018, after due notice by publication in *The City Register*, and then to decision on the same date; and

WHEREAS, Commissioner Ottley-Brown performed an inspection of the subject site and surrounding neighborhood; and

WHEREAS, Community Board 4, Manhattan, recommends approval of this application, stating that the PCE is a well-run operation with minimal or no disturbance to the neighborhood and to the rest of the building in which it is located; and

WHEREAS, the subject site is located on the north side of West 20th Street, between Sixth Avenue and Seventh Avenue, in a C6-3A zoning district, in Manhattan; and

WHEREAS, the subject site has approximately 46 feet of frontage along West 20th Street, 92 feet of depth, 4,206 square feet of lot area and is occupied by a five-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

MINUTES

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 3,023 square feet of floor space as follows: 1,710 square feet of floor area on the first floor, including a check-in area, fitness area with sleds, benches and other exercise equipment and a bathroom, and 1,313 square feet of floor space in the cellar, featuring locker rooms with restrooms, storage and a mechanical room; and

WHEREAS, the PCE has been in operation since March 2017 as F45 Training Flatiron with the following hours of operation: 5:00 a.m. to 9:00 p.m., Monday through Friday, 9:00 a.m. to 4:00 p.m., Saturday, and 10:00 a.m. to 12:00 p.m., Sunday; and

WHEREAS, the applicant represents that the PCE use is located entirely within an existing mixed-use building and consistent with the commercial character of the surrounding area, which is populated by a plethora of vibrant uses, including banks, restaurants, offices and retail space; and

WHEREAS, the applicant submits that sound attenuation measures have been provided within the PCE

space so as to not disturb other tenants in the building, including suspended ceilings with an STC rating of 60, double-layered partitions with batt insulation and an STC rating of 55 and rubber matting on cement floors; 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 provides group-based personal 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 a 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 indicating 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 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 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. 17BSA089M, dated February 14, 2017; and

WHEREAS, the Board finds that the evidence in the record supports the findings required to be made under 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 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 §§ 73-36 and 73-03 *to permit*, in a C6-3A zoning district, the legalization of a physical culture establishment on the first floor and cellar, contrary to ZR § 32-10; *on condition* that all work, site conditions and operations shall substantially conform to drawings filed with this application marked “Received December 28, 2017”-Seven (7) sheets; and *on further condition*:

MINUTES

THAT the term of this grant shall be for ten (10) years, expiring March 1, 2027;

Carlo Costanza, Executive Director

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 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 remain 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 January 9, 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, January 9, 2018.

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

ACTION OF THE BOARD – Laid over to January 23, 2018, at 10 A.M., for continued hearing.

BULLETIN

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February 2, 2018

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Tuesday, January 23, 2018**

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176-09-BZ	230-236 West 28 th Street, Manhattan
304-09-BZ	81-111 Junius Street, Brooklyn
7-57-BZ	2317 Ralph Avenue, aka 2317-27 Ralph Avenue, Brooklyn
528-64-BZ	240-02 Northern Boulevard, Queens
549-67-BZ	7-9 Elm Tree Lane, Bronx
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2017-225-BZ	306 East 61 st Street, Manhattan

DOCKETS

New Case Filed Up to January 23, 2018

2018-3-BZ

154-160 West 124th Street, Located at the south side of West 124th Street between Adam Clayton Powell Jr. Blvd and Lenox Avenue., Block 01908, Lot(s) 60 & 4, Borough of **Manhattan, Community Board: 10**. Variance (§72-21) to permit the development of an integrated educational and medical facility in conjunction with the Ichan School of Medicine at Mount Sinai contrary to ZR §33-432(a) (height and setback); ZR §33-26 (rear yard) and ZR §33-292 (required depth of yard along district boundaries. C4-4 zoning district. C4-4 district.

2018-4-BZ

2213 East 13th Street, Located on the east side of East 13th Street between Avenue V and Gavesend Neck Road, Block 07374, Lot(s) 0079, Borough of **Brooklyn, Community Board: 15**. Special Permit (§73-622) for the enlargement of an existing single-family home contrary ZR §23-142 (floor area, open space and lot coverage); ZR §23-48 (side yards) and ZR §23-47 (rear yard). R4 zoning district. R4 district.

2018-5-BZ

306-308 East 126th Street, Located on E. 126th Street between First and Second Avenues, Block 01802, Lot(s) 45, 46, Borough of **Manhattan, Community Board: 11**. Special Permit (§73-50) to permit the development of a two-story automotive repair building (UG 16B) contrary to ZR §43-302 (building does not provide the required 30-ft' rear yard coincidental to a residential zoning district. M1-2 zoning district. M1-2 district.

2018-6-BZ

212 Bowery, Located at the Bowery between Spring Street and Prince Street, Block 00492, Lot(s) 0029, Borough of **Manhattan, Community Board: 2**. Special Permit (§73-36) to permit the legalization of a physical cultural establishment (modelFIT) located on the second floor of an existing four-story (plus cellar) commercial building contrary to ZR §32-10. C6-1 Special Little Italy, Bowery, Canal, Kenmare Street Sub district. C6-1 district.

2018-7-BZ

291 Avenue W, Located on the North Side of Avenue W between Stryker Street and West 1st Street, Block 07151, Lot(s) 0030, Borough of **Brooklyn, Community Board: 15**. Special Permit (§73-622) for the enlargement of an existing single-family home contrary ZR §23-142 (floor area, open space and lot coverage); ZR §23-461 (side yards) and ZR §23-47 (rear yard). R4 zoning district. R4 district.

2018-8-BZ

1820 Cropsy Avenue, Located at the southeast corner of Bay 19th Street and Cropsy Avenue, Block 06464, Lot(s) 0016, Borough of **Brooklyn, Community Board: 11**. Reinstatement (§11-41) of a previously approved variance which permitted garage for trucks, motor vehicle repair shop, body and fender work and incidental painting and spraying (UG 16B) which expired on January 15, 2003: Amendment (§11-412) to permit the legalization of interior alterations; Waiver of the Board's Rules. C1-2/R5 zoning district. R5/C1-2 district.

2018-9-BZ

265 Ocean Parkway, Located on the eastern side of Ocean Parkway between Beverly Road and Avenue C, Block 05358, Lot(s) 0091, Borough of **Brooklyn, Community Board: 12**. Variance (§72-21) to permit the construction of an eight-story mixed use building contrary to ZR §23-47 (rear yard) and ZR §23-622 (setbacks). R7A Special Ocean Parkway District. R7A district.

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

CALENDAR

REGULAR MEETING FEBRUARY 13, 2018, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, February 13, 2018, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

SPECIAL ORDER CALENDAR

60-90-BZ

APPLICANT – Michael DeRuvo, R.A., for Nissim Kalev, owner.

SUBJECT – Application June 9, 2016 – Extension of Term of a previously granted Special Permit (§73-211) for the continued use of a Gasoline Service Station (Citgo) and Automotive Repair Shop which expired on February 25, 2016; Waiver of the Rules. C2-1/R3X zoning district.

PREMISES AFFECTED – 525 Forest Avenue, Block 148, Lot 29, Borough of Staten Island.

COMMUNITY BOARD #1SI

101-92-BZ

APPLICANT – Sheldon Lobel, P.C., for Portrem Realty Company, LLC, owner.

SUBJECT – Application December 2, 2016 – Extension of Term (§11-411) for the continued operation of the use of parking lot for non-commercial, non-transient parking which expired on October 26, 2013; Waiver of the Rules. C1-4/R8 zoning district.

PREMISES AFFECTED – 66-98 East Burnside Avenue, Block 2829, Lot 45, Borough of Bronx.

COMMUNITY BOARD #5BX

356-04-BZ

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for R & F 55th Street Commercial Owner LLC, owner.

SUBJECT – Application November 10, 2016 – Extension of Term of a previously approved Special Permit (§73-36) permitting the operation of a Physical Cultural Establishment (*The Core Club*) which expired on June 7, 2015; Waiver of the Rules. C5-2.5 (MID) zoning district.

PREMISES AFFECTED – 60 East 55th Street, Block 1290, Lot(s) 1103 and 1104, Borough of Manhattan.

COMMUNITY BOARD #5M

53-09-BZ

APPLICANT – David Salamon, for Schenck Avenue LLC, owner.

SUBJECT – Application September 12, 2017 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) for the construction of a three-family

home on a vacant undersized lot. This application sought to vary floor area (§23-141); front yard (§23-45) side yard (§23-461) and parking (§25-161) which expired on January 12, 2014 pursuant to ZR §73-23; Waiver of Board's Rules. R5 zoning district.

PREMISES AFFECTED – 540 Schenck Avenue, Block 4075, Lot 118, Borough of Brooklyn.

COMMUNITY BOARD #5BK

APPEALS CALENDAR

2017-103-A

APPLICANT – Law Office of Steven Simicich, for Lera Property Holdings, LLC, owner.

SUBJECT – Application April 7, 2017 – 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

PREMISES AFFECTED – 3924 Victory Boulevard, Block 2620, Lot 126, Borough of Staten Island.

COMMUNITY BOARD #2SI

2017-193-A thru 2017-199-A

APPLICANT – Eric Palatnik, P.C., for Frank McErlean, owner.

SUBJECT – Application May 26, 2017 – 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.

PREMISES AFFECTED – 9, 10, 11, 12, 14, 15, and 17 Tulepo Court, Block 2260, Lot(s) 4, 10, 60, 62, 64, 66, 68, Borough of Staten Island.

COMMUNITY BOARD #2SI

2017-218-A

APPLICANT – Law Office of Steven Simicich, for Leonard Censi, owner.

SUBJECT – Application June 20, 2017 – Proposed single family detached residential building which is within the unbuilt portion of the mapped street, contrary to General City Law 35. R3A zoning district.

PREMISES AFFECTED – 35 Howe Street, Block 302, Lot 19, Borough of Staten Island.

COMMUNITY BOARD #1SI

CALENDAR

**REGULAR MEETING
FEBRUARY 13, 2018, 1:00 P.M.**

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, February 13, 2018, 1:00 P.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

ZONING CALENDAR

89-15-BZ

APPLICANT –Law Office of Jay Goldstein, for G & W Enterprises Inc., owner.

SUBJECT – Application April 21, 2015 – Variance (§72-21) to permit the construction of a 4-story, 4-family home contrary to §42-11. M1-1 zoning district.

PREMISES AFFECTED –92 Walworth Street, Block 1735, Lot 16, Borough of Brooklyn.

COMMUNITY BOARD #3BK

2017-221-BZ

APPLICANT – Eric Palatnik, P.C., for Spartan Petroleum Corp., owner.

SUBJECT – Application June 30, 2017 – 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.

PREMISES AFFECTED – 1781 Bay Ridge Parkway, Block 6215, Lot 47, Borough of Brooklyn.

COMMUNITY BOARD #11BK

Carlo Costanza, Executive Director

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**REGULAR MEETING
TUESDAY MORNING, JANUARY 23, 2018
10:00 A.M.**

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

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 56th Street, Block 1008, Lot 7501, 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, an extension of term of a special permit, previously granted by the Board, which expired October 6, 2016, and an extension of time to obtain a certificate of occupancy; and

WHEREAS, a public hearing was held on this application on January 23, 2018, 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 area; 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 56th Street, west of Avenue of the Americas, partially within a C6-6 zoning district and partially within a C6-6.5 zoning district, in the Special Midtown District, in Manhattan; and

WHEREAS, the site has approximately 75 feet of frontage along West 56th Street, 100 feet of depth, 7,531 square feet of lot area and is occupied by a 32-story, with cellar, mixed-use building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since October 6, 1981, when, under the subject calendar number, the Board granted a special permit to permit the change in use of an accessory health club to a physical culture establishment (“PCE”) for a term of five (5)

years, expiring October 6, 1986, on condition that the hours of operation be restricted to 7:30 a.m. to 10:00 p.m., Monday through Friday, and 10:00 a.m. to 6:00 p.m., Saturday and Sunday and that the special permit shall lapse with any change in ownership or control; and

WHEREAS, on December 2, 1986, under the subject calendar number, the Board granted an extension of term for ten (10) years, expiring October 6, 1996, replacing the condition that the special permit shall lapse with any change in ownership or control with the condition that there be no change in ownership or operating control without prior application to and approval from the Board and that a new certificate of occupancy be obtained within one (1) years, by December 2, 1987; and

WHEREAS, on October 31, 2000, under the subject calendar number, the Board granted an extension of term for ten (10) years, expiring October 6, 1996, on condition that a new certificate of occupancy be obtained within one (1) year, by October 31, 2001; and

WHEREAS, on September 15, 2009, under the subject calendar number, the Board granted an extension of term for a period of ten (10) years, expiring October 6, 2016, an extension of time to obtain a certificate of occupancy to September 15, 2010, and modified the PCE’s hours of operation to 5:30 a.m. to 11:00 p.m., Monday through Friday, and 8:00 a.m. to 10:00 p.m., Saturday and Sunday, on condition that the following sound attenuation measures be provided: (1) locked sound limiters on all classroom stereos; (2) one-inch thick dense rubber floor tiles throughout the gym; (3) two-inch thick fiberglass sound-insulating batting on the concrete slab of the ceiling of the highest floor occupied by the PCE; and (4) a ten-foot drop ceiling with acoustic ceiling tiles in the yoga studio and aerobic studio on the highest floor occupied by the PCE; that the above conditions be listed on the certificate of occupancy; and that a certificate of occupancy be obtained by September 15, 2010; and

WHEREAS, the term of the special permit having expired, the applicant now seeks an extension of term, an extension of time to obtain a certificate of occupancy and a waiver of the Board’s Rules of Practice and Procedure; and

WHEREAS, the applicant submits that the PCE continues to operate as New York Health and Racquet Club and abides by the following hours of operation: 5:30 a.m. to 11:00 p.m., Monday through Friday, and 8:00 a.m. to 10:00 p.m., Saturday and Sunday; and

WHEREAS, at hearing, the applicant explained that the hours of operation had been modified by the Board prior to granting the previous term, that the PCE is currently operating with fewer hours than those approved by the Board and that the applicant is not seeking to modify the hours of operation in this application; and

WHEREAS, the applicant represents that the PCE continues to use 22,581 square feet of floor area as follows: 5,193 square feet of floor space in the cellar, 4,963 square feet of floor area in the basement, 5,620 square feet of floor area on the first floor, 4,172 square feet of floor area on the

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second floor, 3,585 square feet of floor area on the third floor, 747 square feet of floor area on the third-floor mezzanine, 2,831 square feet of floor area on the fourth floor and 663 square feet of floor area on fourth-floor mezzanine; and

WHEREAS, the applicant submits that approved fire alarm and sprinkler systems are installed throughout the PCE; and

WHEREAS, the Board notes that it has not received oral or written testimony in opposition to the continuation of the PCE use; and

WHEREAS, the Board finds that the circumstances warranting the original grant still obtain and that the applicant has substantially complied with the conditions and safeguards during the prior term; and

WHEREAS, based upon its review of the record, the Board finds that the requested relief is appropriate with certain conditions set forth below 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 *waive* the Rules of Practice and Procedure and *reopen* and *amend* the resolution, dated October 6, 1981, as amended through September 15, 2009, so that as amended this portion of the resolution shall read: “to *grant* an extension of term for ten (10) years, expiring October 6, 2026, and an extension of time to obtain a certificate of occupancy for four (4) years, expiring; *on condition* that all work and site conditions shall comply with drawings filed with this application marked ‘Received August 21, 2017- Eleven (11) sheets; and *on further condition*:

THAT the term of this grant shall be for ten (10) years, expiring October 6, 2026;

THAT the following sound attenuation measures shall be provided: (1) locked sound limiters on all classroom stereos; (2) one-inch thick dense rubber floor tiles throughout the gym; (3) two-inch thick fiberglass sound-insulating batting on the concrete slab of the ceiling of the highest floor occupied by the PCE; and (4) a ten-foot drop ceiling with acoustic ceiling tiles in the yoga studio and aerobic studio on the highest floor occupied by the PCE; that the above conditions be listed on the certificate of occupancy;

THAT there shall be no change in ownership or operating control 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 January 23, 2022;

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, January 23, 2018.

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 – 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 under ZR §§ 73-03 and 73-242 for an extension of term of a special permit, previously granted by the Board, which expired July 12, 2015; and

WHEREAS, a public hearing was held on this application on June 20, 2017, after due notice by publication in *The City Record*, with continued hearings on August 22, 2017, and then to decision on January 23, 2018; and

WHEREAS, Vice-Chair Chanda, Commissioner Ottley-Brown and former Commissioner Montanez 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 north side of Flatbush Avenue, between Hendrickson Place and Belt Parkway, in a C3 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 93,525 square feet of lot area and is occupied by a one-story building used as an eating and drinking establishment as well as a parking lot; and

WHEREAS, the applicant represents that the subject site is owned by the City of New York; 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 special permit to permit a Use Group 6 eating and drinking establishment for a term of five (5) years, expiring July 12, 2010, on condition

MINUTES

that the site be maintained free of debris and graffiti, that any graffiti located on the site be removed within 48 hours, that the above conditions appear on the certificate of occupancy and that the Board did not waive any non-compliances with respect to the rear yard or signage requirements; and

WHEREAS, on July 12, 2005, under BSA Calendar Number 345-03-A, the Board granted an appeal under General City Law § 35 to permit reconstruction in the bed of a mapped street; and

WHEREAS, on December 7, 2010, under the subject calendar number, the Board granted an extension of term for five (5) years, expiring July 12, 2015, 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; and

WHEREAS, the applicant states that the subject eating and drinking establishment suffered financial hardship as a result of Superstorm Sandy, which prevented reconstruction pursuant to the plans approved by the Board in 2010; and

WHEREAS, the applicant states that the hours of operation are Tuesday, Wednesday and Thursday, 2:00 p.m. to 10:00 p.m., and Friday and Saturday, 12:00 p.m. to 11:00 p.m., that refuse is stored on the northeast side of the building and picked up Monday and Thursday mornings and that there is parking for 110 vehicles; and

WHEREAS, in response to questions from the Board, the applicant removed extraneous signage and provided drawings illustrating remaining signage at the site; and

WHEREAS, the applicant represents that the lack of a rear yard constitutes a non-complying condition that has lawfully existed since the building was constructed in 1955; and

WHEREAS, by letter dated January 10, 2018, the New York City Department of Small Business Services (“SBS”) states that the lack of a rear yard is a lawful, non-complying condition that SBS approves the signage plans submitted by the applicant and that SBS recommends approval of this application; and

WHEREAS, the Board finds that the circumstances warranting the original grant still obtain and that the applicant has substantially complied with the conditions and safeguards during the prior term; and

WHEREAS, based upon its review of the record, the Board finds that an extension of term is appropriate with certain conditions set forth below 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 *reopen* and *amend* the resolution, dated July 12, 2005, as amended December 7, 2010, so that as amended the resolution shall read: “to *grant* an extension of term for five (5) years, expiring July 12, 2020; *on condition* that all work, site conditions and operations shall substantially conform to the Board-approved plans; and *on further condition*:

THAT the term of this grant shall be for five (5) years,

expiring July 12, 2020;

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 January 23, 2022;

THAT the Board is not waiving any non-compliances with respect to the rear yard or signage requirements;

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 Small Business Services;

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

THAT the Department of Small Business Services 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, January 23, 2018.

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 28th Street, Block 777, Lot(s) 1, 18, 37, 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

Abstain: Commissioner Sheta.....1

THE RESOLUTION –

WHEREAS, this is an application for a reopening and an extension of time to complete construction pursuant to a previously granted special permit, which expired on October 6, 2017; and

WHEREAS, a public hearing was held on this application on January 23, 2018, 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 site and surrounding neighborhood; and

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WHEREAS, this application has been filed on behalf of the Fashion Institute of Technology (“FIT”), a college of the State University of New York, a non-profit entity; and

WHEREAS, the subject site is located on the south side of West 28th Street, between Eighth Avenue and Ninth Avenue, in a C6-2 zoning district in Manhattan; and

WHEREAS, the Board has exercised jurisdiction over the subject site since October 6, 2009, when, under the subject calendar number, the Board granted a special permit, pursuant to ZR §§ 73-641 and 73-03 to permit the construction of a ten-story community facility building that does not comply with the zoning requirements for height, setback and sky exposure plane, contrary to ZR § 33-432 on condition that, *inter alia*, substantial construction be completed pursuant to ZR § 73-70, by October 6, 2013; and

WHEREAS, on January 28, 2014, under the subject calendar number, the Board granted a four-year extension of time to complete construction, which expired on October 6, 2017; and

WHEREAS, by letter dated January 26, 2018, the Board approved modifications to the plans approved in connection with the 2009 special permit grant as substantially compliant with that approval; and

WHEREAS, the time to complete construction having expired, the applicant seeks the subject relief; and

WHEREAS, the applicant submits that construction has yet to commence on the site due to a lack of funding, but anticipates obtaining full funding upon the New York State Legislature’s adoption of the State Executive budget in April 2018; the applicant expects to break ground on construction at the subject site shortly thereafter; and

WHEREAS, the applicant states that construction is anticipated to take three years with a certificate of occupancy obtained by the summer of 2021; and

WHEREAS, based upon its review of the record, the Board finds that a four (4) year extension of time to complete construction and obtain a certificate of occupancy is appropriate with certain conditions, as set forth below.

Therefore it is Resolved, that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated October 6, 2009, as amended through January 28, 2014, so that as amended this portion of the resolution reads: “to grant a four (4) year extension of time to complete construction to October 6, 2021; and *on further condition*:

THAT substantial construction shall be completed by October 6, 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 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,

January 23, 2018.

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

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; and

WHEREAS, a public hearing was held on this application on **Error! Reference source not found.**, 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 east side of **Error! Reference source not found.**, between Liberty Avenue and Glenmore Avenue, in an M1-4 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 400 feet of frontage along **Error! Reference source not found.**, 111 feet of frontage along Liberty Avenue and 111 feet of frontage along Glenmore Avenue, 44,500 square feet of lot area; and

WHEREAS, the Board has exercised jurisdiction over the subject site since June 7, 2011, when, under the subject calendar number, the Board granted a variance to permit the development of a mixed-use building with residential use on condition that the parameters of the proposed building be as follows: six stories, a total floor area of 148,165 square feet (3.33 FAR), a perimeter wall and total height of 57 feet, a rear yard with a depth of 83 feet and 24 parking spaces, as indicated 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 DEP a Notice to Proceed; that prior to the issuance by the Department of Buildings (“DOB”) of a temporary or permanent certificate of occupancy, the applicant or

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successor shall obtain from DEP a Notice of Satisfaction; that window-wall noise attenuation and variable capacity air source heat recovery air-conditioning system as an alternate means of ventilation be provided in the proposed building as indicated on the Board-approved plans; that the internal floor layouts on each floor of the proposed building be as reviewed and approved by DOB; and

WHEREAS, by letter dated December 27, 2012, as revised January 2, 2013, the Board allowed minor modifications to the Board-approved plans, including reducing the number of apartments from 176 to 160 and providing 2,029 square feet of Use Group 6 commercial space on the ground floor; and

WHEREAS, by letter dated January 2, 2014, the Board authorized a change from New Building Application No. 320024709 to New Building Application No. 320593201 for the project; and

WHEREAS, by letter dated June 1, 2015, the Board allowed minor modifications to the Board-approved plans to allow the following the following changes to the site plan: the shift of the building 2'-2¾" from the Liberty Avenue lot line to accommodate a Department of Transportation bridge structure, reductions in the length of the Liberty Avenue wing, the Glenmore Avenue wing, reductions in the depth and width of the side yard and an increase in the length of the outer court; to allow the following changes to the cellar plan: redesign of the community facility and building services space in the cellar and inclusion of a superintendent's apartment and retail storage; to allow the following changes to the first floor: reconfiguration of the lobby and community facility and commercial space and reconfiguration of apartments to satisfy HPD requirements and accommodate a ramp and Long Island Rail Road footing; and to allow the following changes to the upper floors: reconfiguration of apartments to satisfy HPD requirements and accommodate a ramp, relocation of refuse areas and an increase in the building height by eight inches to accommodate the grade change along **Error! Reference source not found.**; on condition that DOB confirm that the floor area does not exceed the 148,165 square feet reflected in the original approval; and

WHEREAS, the time to complete construction expired, the applicant seeks a waiver of the Board's Rules of Practice and Procedure and an extension of time to complete construction; and

WHEREAS, by letter dated June 15, 2015, the New York City Office of Environmental Remediation states that it has approved the Remedial Action Work Plan dated April 2015 with Stipulation Letter dated May 11, 2015, under the City's Voluntary Cleanup Program; and

WHEREAS, the applicant submits that the development is approximately 75 percent complete and that the structure been constructed with interior work underway; and

WHEREAS, based upon its review of the record, the Board finds that a waiver of the Board's Rules of Practice and Procedure and an extension of time to complete

construction are appropriate with certain conditions set forth below.

Therefore it is Resolved, that the Board of Standards and Appeals does hereby *waive* the Rules of Practice and Procedure and *reopen* and *amend* the resolution, dated June 7, 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 January 23, 2022; *on condition* that all work and site conditions shall substantially conform to the Board-approved plans; and *on further condition*:

THAT the parameters of the proposed building shall be as follows: six stories, a total floor area of 148,165 square feet (3.33 FAR), a perimeter wall and total height of 57 feet, a rear yard with a depth of 83 feet and 24 parking spaces, as indicated on the Board-approved plans;

THAT window-wall noise attenuation and variable capacity air source heat recovery air-conditioning system as an alternate means of ventilation shall be provided in the proposed building, as indicated on the Board-approved plans;

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 January 23, 2022;

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 DEP a Notice to Proceed;

THAT prior to the issuance by the Department of Buildings ("DOB") of a temporary or permanent certificate of occupancy, the applicant or successor shall obtain from DEP a Notice of Satisfaction;

THAT the internal floor layouts on each floor of the proposed building shall be as reviewed and approved by DOB;

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;

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; and

THAT the Department of Buildings must confirm that the floor area does not exceed the 148,165 square feet reflected in the original approval, as illustrated on the Board-approved plans."

Adopted by the Board of Standards and Appeals, **Error! Reference source not found.**

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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 March 6, 2018, at 10 A.M., for adjourned hearing.

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 May 15, 2018, at 10 A.M., for continued hearing.

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 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 March 6, 2018, at 10 A.M. for deferred decision.

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

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice Chair Chanda, Commissioner Ottley-Brown and Commissioner Sheta4
Negative:.....0

ACTION OF THE BOARD – Laid over to January 30, 2018, at 10 A.M., for decision, hearing closed.

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

ACTION OF THE BOARD – Laid over to March 20, 2018, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

16-15-A

APPLICANT – Sheldon Lobel, P.C., for Alan Bigel, owner; Blue School, lessee.

SUBJECT – Application January 23, 2015 – BCG304 to permit the redevelopment of the existing building, The Blue School, a new middle school, located within a flood hazard area. C6-2 zoning district.

PREMISES AFFECTED – 233-235 Water Street, east of the intersection of Water Street and Beekman Street, Block 97, Lot 49, Borough of Manhattan.

COMMUNITY BOARD #1M

ACTION OF THE BOARD – Application withdrawn without prejudice.

THE VOTE TO WITHDRAW –

Affirmative: Chair Perlmutter, Vice Chair Chanda, Commissioner Ottley-Brown and Commissioner Sheta4
Negative:.....0

Adopted by the Board of Standards and Appeals, January 23, 2018.

2016-4348-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

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partially within the bed of a mapped street, pursuant to Article 3 of General City Law 35. R6B zoning district.

PREMISES AFFECTED – 85-08 57th Avenue, Block 2882, Lot 1, 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, the decision of the Queens Borough Commissioner, dated November 10, 2016, acting on Department of Buildings (“DOB”) Application No. 421258221 reads in pertinent part:

The proposed street extension has been mapped for 10 years but the city has yet to acquire title and is not duly placed on the official map of the City of New York therefore:

- A) No building permit can be issued pursuant to Section 35 of the General City Law;
- B) The land within the mapped street is not yielding a fair return to the property owner; and

WHEREAS, this is an application to permit the construction of a four-story three-family residential building 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 January 9, 2018, after due notice by publication in *The City Record*, and then to decision on January 23, 2018; and

WHEREAS, Community Board 4, Queens 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 eastern side of 57th Avenue, between Van Horn Street and 85th Street, in an R6B zoning district, in Queens; and

WHEREAS, the site has approximately 37 feet of frontage along 57th Avenue and a depth of 100 feet; and

WHEREAS, this application is part of a series of applications for waivers of GCL § 35 for Lots 1, 2, 102, 24, 22 and 21 on the subject tax block (BSA Cal. No. 2016-4348-A through 2016-4353-A); and

WHEREAS, the applicant originally proposed to construct six four-story, three-family attached residential buildings—one building on each of Lots 1, 2, 102, 24, 22 and 21—within the bed of Haspel Street, a street mapped, but unbuilt, to a width of 50 feet; and

WHEREAS, by letter dated January 30, 2017, the Fire Department accepted the buildings proposed on Lots 1, 2 and 102 without objection, provided that the City had no intent of acquiring Haspel Street from 57th Avenue to 57th Road for public use, but objected to the buildings proposed on Lots 22 and 24, noting that they do not meet the requirements for Fire

Department Access; the Fire Department additionally requested that the building proposed on Lot 21 be fully sprinklered in accordance with Chapter 9 of the New York City Building Code; and

WHEREAS, in response, the applicant merged Lots 22 and 24 with Lot 21 to provide sufficient Fire Department access to the building proposed on that lot and withdrew the application for Lots 22 and 24 (BSA Cal. Nos. 2016-4352-A and 2016-4351-A, respectively); and

WHEREAS, the applicant provided a revised New York City Department of Finance Application for Mergers or Apportionments reapportioning former Lots 1, 101, 21 and 22 into, *inter alia*, Lots 1, 2, 102 and 21 and those lots were issued, effective July 19, 2017, though the New York City Tax Map has not yet been updated to reflect this reapportionment; and

WHEREAS, accordingly, the applicant now proposes three four-story, three-family attached residential buildings—one on each of Lots 1, 2 and 102—and a four-story ten-family residential building on Lot 21—within the bed of Haspel Street; and

WHEREAS, the subject site is also part of a larger development of eight attached buildings, four of which are not located within the bed of Haspel Street and, thus, do not require the relief requested herein; and

WHEREAS, the applicant represents that the proposed buildings will comply with all bulk regulations applicable in the underlying zoning districts; and

WHEREAS, at hearing, a Commissioner questioned the layout of the duplex residential units and whether they belied an attempt to circumvent requirements relating to parking or the provision of elevators, but acknowledged that the interior layouts of the proposed buildings are not before the Board in this application, which is concerned with the locating of buildings within the bed of mapped streets; accordingly, the Board makes no findings as to the compliance of the proposed buildings with the Zoning Resolution, Building Code, Administrative Code, or any other relevant laws under DOB’s jurisdiction and relies on DOB for such review and enforcement; and

WHEREAS, by letter dated January 4, 2017, the New York City Department of Transportation (“DOT”) states that, according to the Queens Borough President’s Topographical Bureau, Haspel Street between 57th Avenue and 57th Road is mapped at 50 feet, the City does not have title, that the subject lot is not presently included in DOT’s Capital Improvement Program, though this does not preclude a change in the program in the future, and that DOT does not have any objections to the proposed plan under the condition that the Fire Department does not have any objection to the proposed plan; and

WHEREAS, by letter dated September 12, 2017, the Fire Department requests that all proposed residences be fully sprinklered and that a hydrant be located within 250 feet of the main front entrance of each building; and

WHEREAS, in response, the applicant submitted revised plans indicating the location of hydrants and that all of

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the proposed buildings will be sprinklered; and

WHEREAS, by communication dated January 22, 2018, the Fire Department states that, in light of the submission of a revised site plan illustrating that a Fire Department aerial ladder could reach the four-story building proposed for Lot 21, it has no further objections to the proposal; and

WHEREAS, by letter dated September 11, 2017, the New York City Department of Environmental Protection (“DEP”) states that, based on DEP maps, there are no existing sewers or water mains at the subject location, that the Amended Drainage Plan for the Sewerage District No: 25 (20) & 27 (11), dated January 10, 1930, for the subject site shows a 12 inch diameter combined sewer in the bed of Haspel Street between 57th Avenue and 57th Road and requested that the applicant provide a 35 foot wide sewer corridor in the bed of Haspel Street between 57th Avenue and 57th Road for the installation, maintenance and/or reconstruction of the future sewer or amend the drainage plan; and

WHEREAS, the applicant opted to work with DEP to amend the Amended Drainage Plan and the Board herein conditions the grant on DEP’s approval of an amendment to the drainage plan prior to the issuance of DOB permits for construction at the subject site; 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 decision of the Queens Borough Commissioner, dated November 10, 2016, acting on Department of Buildings Application No. 421258221, 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 January 9, 2018” – One (1) sheet; and *on further condition*:

THAT DEP shall approve an amended drainage plan for Haspel Street between 57th Avenue and 57th Road prior to the issuance of building permits by DOB;

THAT the building shall be fully sprinklered;

THAT a hydrant shall be located within 250 feet of the main front entrance of the building;

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 23, 2022;

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 January 23, 2022;

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 23, 2018.

2016-4349-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 – 85-12 57th Avenue, Block 2882, Lot 2, 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, the decision of the Queens Borough Commissioner, dated November 10, 2016, acting on Department of Buildings (“DOB”) Application No. 421258267 reads in pertinent part:

The proposed street extension has been mapped for 10 years but the city has yet to acquire title and is not duly placed on the official map of the City of New York therefore:

(A) No building permit can be issued pursuant to Section 35 of the General City Law;

(B) The land within the mapped street is not yielding a fair return to the property owner; and

WHEREAS, this is an application to permit the construction of a four-story three-family 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 January 9, 2018, after due notice by publication in *The City Record*, and then to decision on January 23, 2018; and

WHEREAS, Community Board 4, Queens 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 eastern side of 57th Avenue, between Van Horn Street and 85th

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Street, partially within an R6B (C2-2) zoning district and partially within an R6B zoning district, in Queens; and

WHEREAS, the site has approximately 20 feet of frontage along 57th Avenue, a depth of 100 feet and 2,000 square feet of lot area; and

WHEREAS, this application is part of a series of applications for waivers of GCL § 35 for Lots 1, 2, 102, 24, 22 and 21 on the subject tax block (BSA Cal. No. 2016-4348-A through 2016-4353-A); and

WHEREAS, the applicant originally proposed to construct six four-story, three-family attached residential buildings—one building on each of Lots 1, 2, 102, 24, 22 and 21—within the bed of Haspel Street, a street mapped, but unbuilt, to a width of 50 feet; and

WHEREAS, by letter dated January 30, 2017, the Fire Department accepted the buildings proposed on Lots 1, 2 and 102 without objection, provided that the City had no intent of acquiring Haspel Street from 57th Avenue to 57th Road for public use, but objected to the buildings proposed on Lots 22 and 24, noting that they do not meet the requirements for Fire Department Access; the Fire Department additionally requested that the building proposed on Lot 21 be fully sprinklered in accordance with Chapter 9 of the New York City Building Code; and

WHEREAS, in response, the applicant merged Lots 22 and 24 with Lot 21 to provide sufficient Fire Department access to the building proposed on that lot and withdrew the application for Lots 22 and 24 (BSA Cal. Nos. 2016-4352-A and 2016-4351-A, respectively); and

WHEREAS, the applicant provided a revised New York City Department of Finance Application for Mergers or Apportionments reapportioning former Lots 1, 101, 21 and 22 into, *inter alia*, Lots 1, 2, 102 and 21 and those lots were issued, effective July 19, 2017, though the New York City Tax Map has not yet been updated to reflect this reapportionment; and

WHEREAS, accordingly, the applicant now proposes three four-story, three-family attached residential buildings—one on each of Lots 1, 2 and 102—and a four-story ten-family residential building on Lot 21—within the bed of Haspel Street; and

WHEREAS, the subject site is also part of a larger development of eight attached buildings, four of which are not located within the bed of Haspel Street and, thus, do not require the relief requested herein; and

WHEREAS, the applicant represents that the proposed buildings will comply with all bulk regulations applicable in the underlying zoning districts; and

WHEREAS, at hearing, a Commissioner questioned the layout of the duplex residential units and whether they belied an attempt to circumvent requirements relating to parking or the provision of elevators, but acknowledged that the interior layouts of the proposed buildings are not before the Board in this application, which is concerned with the locating of buildings within the bed of mapped streets; accordingly, the Board makes no findings as to the compliance of the proposed buildings with the Zoning Resolution, Building Code,

Administrative Code, or any other relevant laws under DOB's jurisdiction and relies on DOB for such review and enforcement; and

WHEREAS, by letter dated January 4, 2017, the New York City Department of Transportation ("DOT") states that, according to the Queens Borough President's Topographical Bureau, Haspel Street between 57th Avenue and 57th Road is mapped at 50 feet, the City does not have title, that the subject lot is not presently included in DOT's Capital Improvement Program, though this does not preclude a change in the program in the future, and that DOT does not have any objections to the proposed plan under the condition that the Fire Department does not have any objection to the proposed plan; and

WHEREAS, by letter dated September 12, 2017, the Fire Department requests that all proposed residences be fully sprinklered and that a hydrant be located within 250 feet of the main front entrance of each building; and

WHEREAS, in response, the applicant submitted revised plans indicating the location of hydrants and that all of the proposed buildings will be sprinklered; and

WHEREAS, by communication dated January 22, 2018, the Fire Department states that, in light of the submission of a revised site plan illustrating that a Fire Department aerial ladder could reach the four-story building proposed for Lot 21, it has no further objections to the proposal; and

WHEREAS, by letter dated September 11, 2017, the New York City Department of Environmental Protection ("DEP") states that, based on DEP maps, there are no existing sewers or water mains at the subject location, that the Amended Drainage Plan for the Sewerage District No: 25 (20) & 27 (11), dated January 10, 1930, for the subject site shows a 12 inch diameter combined sewer in the bed of Haspel Street between 57th Avenue and 57th Road and requested that the applicant provide a 35 foot wide sewer corridor in the bed of Haspel Street between 57th Avenue and 57th Road for the installation, maintenance and/or reconstruction of the future sewer or amend the drainage plan; and

WHEREAS, the applicant opted to work with DEP to amend the Amended Drainage Plan and the Board herein conditions the grant on DEP's approval of an amendment to the drainage plan prior to the issuance of DOB permits for construction at the subject site; 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 decision of the Queens Borough Commissioner, dated November 10, 2016, acting on Department of Buildings Application No. 421258267, 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 January 9, 2018"—One

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(1) sheet; and *on further condition:*

THAT DEP shall approve an amended drainage plan for Haspel Street between 57th Avenue and 57th Road prior to the issuance of building permits by DOB;

THAT the building shall be fully sprinklered;

THAT a hydrant shall be located within 250 feet of the main front entrance of the building;

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 23, 2022;

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 January 23, 2022;

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 23, 2018.

2016-4350-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 – 85-14 57th Avenue, Block 2882, Lot 102, 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, the decision of the Queens Borough Commissioner, dated November 10, 2016, acting on Department of Buildings (“DOB”) Application No. 421258276 reads in pertinent part:

The proposed street extension has been mapped for 10 years but the city has yet to acquire title and is not duly placed on the official map of the

City of New York therefore:

A) No building permit can be issued pursuant to Section 35 of the General City Law;

B) The land within the mapped street is not yielding a fair return to the property owner; and

WHEREAS, this is an application to permit the construction of a four-story three-family 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 January 9, 2018, after due notice by publication in *The City Record*, and then to decision on January 23, 2018; and

WHEREAS, Community Board 4, Queens 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 eastern side of 57th Avenue, between Van Horn Street and 85th Street, partially within an R6B (C2-2) zoning district and partially within an R6B zoning district, in Queens; and

WHEREAS, the site has approximately 20 feet of frontage along 57th Avenue, a depth of 100 feet and 2,000 square feet of lot area; and

WHEREAS, this application is part of a series of applications for waivers of GCL § 35 for Lots 1, 2, 102, 24, 22 and 21 on the subject tax block (BSA Cal. No. 2016-4348-A through 20164353-A); and

WHEREAS, the applicant originally proposed to construct six four-story, three-family attached residential buildings—one building on each of Lots 1, 2, 102, 24, 22 and 21—within the bed of Haspel Street, a street mapped, but unbuilt, to a width of 50 feet; and

WHEREAS, by letter dated January 30, 2017, the Fire Department accepted the buildings proposed on Lots 1, 2 and 102 without objection, provided that the City had no intent of acquiring Haspel Street from 57th Avenue to 57th Road for public use, but objected to the buildings proposed on Lots 22 and 24, noting that they do not meet the requirements for Fire Department Access; the Fire Department additionally requested that the building proposed on Lot 21 be fully sprinklered in accordance with Chapter 9 of the New York City Building Code; and

WHEREAS, in response, the applicant merged Lots 22 and 24 with Lot 21 to provide sufficient Fire Department access to the building proposed on that lot and withdrew the application for Lots 22 and 24 (BSA Cal. Nos. 2016-4352-A and 2016-4351-A, respectively); and

WHEREAS, the applicant provided a revised New York City Department of Finance Application for Mergers or Apportionments reapportioning former Lots 1, 101, 21 and 22 into, *inter alia*, Lots 1, 2, 102 and 21 and those lots were issued, effective July 19, 2017, though the New York City Tax Map has not yet been updated to reflect this reapportionment; and

WHEREAS, accordingly, the applicant now proposes

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three four-story, three-family attached residential buildings—one on each of Lots 1, 2 and 102—and a four-story ten-family residential building on Lot 21—within the bed of Haspel Street; and

WHEREAS, the subject site is also part of a larger development of eight attached buildings, four of which are not located within the bed of Haspel Street and, thus, do not require the relief requested herein; and

WHEREAS, the applicant represents that the proposed buildings will comply with all bulk regulations applicable in the underlying zoning districts; and

WHEREAS, at hearing, a Commissioner questioned the layout of the duplex residential units and whether they belied an attempt to circumvent requirements relating to parking or the provision of elevators, but acknowledged that the interior layouts of the proposed buildings are not before the Board in this application, which is concerned with the locating of buildings within the bed of mapped streets; accordingly, the Board makes no findings as to the compliance of the proposed buildings with the Zoning Resolution, Building Code, Administrative Code, or any other relevant laws under DOB's jurisdiction and relies on DOB for such review and enforcement; and

WHEREAS, by letter dated January 4, 2017, the New York City Department of Transportation ("DOT") states that, according to the Queens Borough President's Topographical Bureau, Haspel Street between 57th Avenue and 57th Road is mapped at 50 feet, the City does not have title, that the subject lot is not presently included in DOT's Capital Improvement Program, though this does not preclude a change in the program in the future, and that DOT does not have any objections to the proposed plan under the condition that the Fire Department does not have any objection to the proposed plan; and

WHEREAS, by letter dated September 12, 2017, the Fire Department requests that all proposed residences be fully sprinklered and that a hydrant be located within 250 feet of the main front entrance of each building; and

WHEREAS, in response, the applicant submitted revised plans indicating the location of hydrants and that all of the proposed buildings will be sprinklered; and

WHEREAS, by communication dated January 22, 2018, the Fire Department states that, in light of the submission of a revised site plan illustrating that a Fire Department aerial ladder could reach the four-story building proposed for Lot 21, it has no further objections to the proposal; and

WHEREAS, by letter dated September 11, 2017, the New York City Department of Environmental Protection ("DEP") states that, based on DEP maps, there are no existing sewers or water mains at the subject location, that the Amended Drainage Plan for the Sewerage District No: 25 (20) & 27 (11), dated January 10, 1930, for the subject site shows a 12 inch diameter combined sewer in the bed of Haspel Street between 57th Avenue and 57th Road and requested that the applicant provide a 35 foot wide sewer corridor in the bed of Haspel Street between 57th Avenue

and 57th Road for the installation, maintenance and/or reconstruction of the future sewer or amend the drainage plan; and

WHEREAS, the applicant opted to work with DEP to amend the Amended Drainage Plan and the Board herein conditions the grant on DEP's approval of an amendment to the drainage plan prior to the issuance of DOB permits for construction at the subject site; 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 decision of the Queens Borough Commissioner, dated November 10, 2016, acting on Department of Buildings Application No. 421258276, 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 January 9, 2018"—One (1) sheet; and *on further condition*:

THAT DEP shall approve an amended drainage plan for Haspel Street between 57th Avenue and 57th Road prior to the issuance of building permits by DOB;

THAT the building shall be fully sprinklered;

THAT a hydrant shall be located within 250 feet of the main front entrance of the building;

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 23, 2022;

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 January 23, 2022;

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 23, 2018.

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2016-4351-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 – 84-71 57th Avenue, Block 2882, Lot 24, Borough of Queens.

COMMUNITY BOARD #4Q

ACTION OF THE BOARD – Application withdrawn.

Adopted by the Board of Standards and Appeals, January 23, 2018.

2016-4352-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 – 84-73 57th Avenue, Block 2882, Lot 22, Borough of Queens.

COMMUNITY BOARD #4Q

ACTION OF THE BOARD – Application withdrawn.

Adopted by the Board of Standards and Appeals, January 23, 2018.

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 – 84-75 57th Avenue, Block 2882, Lot 21, 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, the decision of the Queens Borough Commissioner, dated November 10, 2016, acting on Department of Buildings (“DOB”) Application No. 421258203 reads in pertinent part:

The proposed street extension has been mapped for 10 years but the city has yet to acquire title and is not duly placed on the official map of the City of New York therefore:

A) No building permit can be issued pursuant to Section 35 of the General City Law;

B) The land within the mapped street is not yielding a fair return to the property owner; and

WHEREAS, this is an application to permit the construction of a four-story ten-family 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 January 9, 2018, after due notice by publication in *The City Record*, and then to decision on January 23, 2018; and

WHEREAS, Community Board 4, Queens 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 western side of 57th Road, approximately 200 feet southwest of that street’s intersection with Van Horn Street, in an R6B zoning district, in Queens; and

WHEREAS, the site has approximately 55 feet of frontage along 57th Avenue and a depth of 100 feet; and

WHEREAS, this application is part of a series of applications for waivers of GCL § 35 for Lots 1, 2, 102, 24, 22 and 21 on the subject tax block (BSA Cal. No. 2016-4348-A through 2016-4353-A); and

WHEREAS, the applicant originally proposed to construct six four-story, three-family attached residential buildings—one building on each of Lots 1, 2, 102, 24, 22 and 21—within the bed of Haspel Street, a street mapped, but unbuilt, to a width of 50 feet; and

WHEREAS, by letter dated January 30, 2017, the Fire Department accepted the buildings proposed on Lots 1, 2 and 102 without objection, provided that the City had no intent of acquiring Haspel Street from 57th Avenue to 57th Road for public use, but objected to the buildings proposed on Lots 22 and 24, noting that they do not meet the requirements for Fire Department Access; the Fire Department additionally requested that the building proposed on the subject site be fully sprinklered in accordance with Chapter 9 of the New York City Building Code; and

WHEREAS, in response, the applicant merged Lots 22 and 24 with the subject lot to provide sufficient Fire Department access to the building proposed on that lot and withdrew the application for Lots 22 and 24 (BSA Cal. Nos. 2016-4352-A and 2016-4351-A, respectively); and

WHEREAS, the applicant provided a revised New York City Department of Finance Application for Mergers or Apportionments reapportioning former Lots 1, 101, 21 and 22 into, *inter alia*, Lots 1, 2, 102 and 21 and those lots were issued, effective July 19, 2017, though the New York City Tax Map has not yet been updated to reflect this reapportionment; and

WHEREAS, accordingly, the applicant now proposes three four-story, three-family attached residential buildings—one on each of Lots 1, 2 and 102—and a four-story ten-family residential building on the subject site—within the bed of Haspel Street; and

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WHEREAS, the subject site is also part of a larger development of eight attached buildings, four of which are not located within the bed of Haspel Street and, thus, do not require the relief requested herein; and

WHEREAS, the applicant represents that the proposed buildings will comply with all bulk regulations applicable in the underlying zoning districts; and

WHEREAS, at hearing, a Commissioner questioned the layout of the duplex residential units and whether they belied an attempt to circumvent requirements relating to parking or the provision of elevators, but acknowledged that the interior layouts of the proposed buildings are not before the Board in this application, which is concerned with the locating of buildings within the bed of mapped streets; accordingly, the Board makes no findings as to the compliance of the proposed buildings with the Zoning Resolution, Building Code, Administrative Code, or any other relevant laws under DOB's jurisdiction and relies on DOB for such review and enforcement; and

WHEREAS, by letter dated January 4, 2017, the New York City Department of Transportation ("DOT") states that, according to the Queens Borough President's Topographical Bureau, Haspel Street between 57th Avenue and 57th Road is mapped at 50 feet, the City does not have title, that the subject lot is not presently included in DOT's Capital Improvement Program, though this does not preclude a change in the program in the future, and that DOT does not have any objections to the proposed plan under the condition that the Fire Department does not have any objection to the proposed plan; and

WHEREAS, by letter dated September 12, 2017, the Fire Department requests that all proposed residences be fully sprinklered and that a hydrant be located within 250 feet of the main front entrance of each building; and

WHEREAS, in response, the applicant submitted revised plans indicating the location of hydrants and that all of the proposed buildings will be sprinklered; and

WHEREAS, by communication dated January 22, 2018, the Fire Department states that, in light of the submission of a revised site plan illustrating that a Fire Department aerial ladder could reach the four-story building proposed for the subject site, it has no further objections to the proposal; and

WHEREAS, by letter dated September 11, 2017, the New York City Department of Environmental Protection ("DEP") states that, based on DEP maps, there are no existing sewers or water mains at the subject location, that the Amended Drainage Plan for the Sewerage District No: 25 (20) & 27 (11), dated January 10, 1930, for the subject site shows a 12 inch diameter combined sewer in the bed of Haspel Street between 57th Avenue and 57th Road and requested that the applicant provide a 35 foot wide sewer corridor in the bed of Haspel Street between 57th Avenue and 57th Road for the installation, maintenance and/or reconstruction of the future sewer or amend the drainage plan; and

WHEREAS, the applicant opted to work with DEP to amend the Amended Drainage Plan and the Board herein conditions the grant on DEP's approval of an amendment to

the drainage plan prior to the issuance of DOB permits for construction at the subject site; 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 decision of the Queens Borough Commissioner, dated November 10, 2016, acting on Department of Buildings Application No. 421258203, 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 January 9, 2018" – One (1) sheet; and *on further condition*:

THAT DEP shall approve an amended drainage plan for Haspel Street between 57th Avenue and 57th Road prior to the issuance of building permits by DOB;

THAT the building shall be fully sprinklered;

THAT a hydrant shall be located within 250 feet of the main front entrance of the building;

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 23, 2022;

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 January 23, 2022;

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 23, 2018.

2017-264-BZY

APPLICANT – Kenneth K. Lowenstein, for SLC2 Holdings, LLC, owner; Pestana New York East Side 39 LLC, lessee.

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).

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PREMISES AFFECTED – 23 East 39th Street, north side of East 39th Street, Block 869, Lot 25, 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 under ZR § 11-331 to renew building permits and authorize an extension of time to permit, in a C5-3 zoning district and the East Midtown Subdistrict of the Special Midtown District, the completion of required foundations; and

WHEREAS, a public hearing was held on this application on January 9, 2018, after due notice by publication in *The City Record*, and then to decision on January 23, 2018; 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 East 39th Street, between Madison Avenue and Park Avenue, in a C5-3 zoning district and the East Midtown Subdistrict of the Special Midtown District, in Manhattan; and

WHEREAS, the subject site has approximately 25 feet of frontage along East 39th Street, 99 feet of depth, 2,369 square feet of lot area and is being developed with a 27-story, with cellar, hotel building; and

WHEREAS, in March 2017, the Department of Buildings (“DOB”) issued earthwork, foundation–earthwork, plumbing, standpipe-system, sprinkler-system, fence and new-building permits in conjunction with New Building Application No. 121192253 to allow the construction of a 27-story, with cellar, hotel building at the subject site; and

WHEREAS, effective August 9, 2017, pursuant to ZR § 81-621, a special permit is required to allow the development of a transient hotel in Use Group 5 within the newly established East Midtown Subdistrict; and

WHEREAS, the applicant states that, as a single building, the subject building constitutes a minor development under ZR § 11-31(c)(1)(i), which defines a minor development as “construction of any single *building* which will be *non-conforming* or *non-complying* under the provisions of any applicable amendment to this Resolution”; and

WHEREAS, the applicant states that the subject building permits automatically lapsed on August 9, 2017, because all work on foundations had not yet been completed prior to such effective date as required to continue construction as of right under ZR § 11-331; and

WHEREAS, within 30 days of the lapse of the subject building permit, the applicant filed this application; and

WHEREAS, the applicant represents that, as of August 1, 2017, all excavation work as well as shoring and wood

lagging had been completed; and

WHEREAS, the applicant submits that, by August 9, 2017, approximately 75 percent of work on foundation components, including steel reinforcing bars, framework laid in place to complete foundations and pouring and waterproofing concrete foundations, had been completed; and

WHEREAS, in support of this contention and in response to questions from the Board at hearing, the applicant submitted field reports, a construction narrative, affidavits, daily breakdowns of excavation and foundation work performed, photographs of construction progress and revised color-coded diagrams of work completed, in progress and yet to be started; and

WHEREAS, at hearing, the applicant clarified that, as stages of excavation were completed, foundation work was also undertaken from rear to front as indicated in photographs showing working being done concurrently; and

WHEREAS, in response to questions from the Board, the applicant represents that all work and site conditions have been undertaken in accordance with the New York City Construction Codes, the Zoning Resolution and other applicable laws; and

WHEREAS, the Board finds that the evidence in the record supports that, on the date the subject building permits lapsed, excavation had been completed and substantial progress made on foundations and that the applicant has substantiated a basis to warrant exercise of discretion.

Therefore it is Resolved, that the Board of Standards and Appeals does hereby *renew* New Building Permit No. 121192253-01-NB, as well as all related permits for various work types, either already issued or necessary to complete construction, and *grants* an extension of time to permit the completion of the required foundations for one term of six (6) months from the date of this resolution, expiring August 7, 2018.

Adopted by the Board of Standards and Appeals, January 23, 2018.

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 March 20, 2018, at 10 A.M., for adjourned 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 44th Street, Block 702, Lot 57, Borough of Queens.

COMMUNITY BOARD #1Q

ACTION OF THE BOARD – Laid over to May 1, 2018, at 10 A.M., for continued hearing.

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 44th Street, Block 702, Lot 56, Borough of Queens.

COMMUNITY BOARD #1Q

ACTION OF THE BOARD – Laid over to April 17, 2018, at 10 A.M., for continued hearing.

ZONING CALENDAR

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

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 December 9, 2014, acting on Alteration Application No. 320864276, reads in pertinent part:

1. Proposed plans are contrary to Z.R. 23-141 in that the proposed floor area ratio exceeds the maximum permitted.
2. Proposed plans are contrary to Z.R. 23-141 in that the proposed open space ratio is less

than the minimum required.

3. Proposed plans are contrary to Z.R. 23-461 in that the proposed side yard is less than the minimum required; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03 to permit, partially in an R6 zoning district and partially in an R4 (C2-2) zoning district, the enlargement of a single-family residence that does not comply with zoning regulations for floor area ratio (“FAR”), open space and side yards, contrary to ZR §§ 23-141 and 23-461; and

WHEREAS, a public hearing was held on this application on January 9, 2018, after due notice by publication in *The City Record*, and then to decision on January 23, 2018; 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; and

WHEREAS, the subject site is located on the south side of Avenue N, between East 29th Street and Nostrand Avenue, partially in an R6 zoning district and partially in an R4 (C2-2) zoning district, in Brooklyn; and

WHEREAS, the site has approximately 35 feet of frontage along Avenue N, 100 feet of depth, 3,500 square feet of lot area and is occupied by an existing three-story, with cellar, single-family 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-*

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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 existing detached two-family residences, as contemplated in ZR § 73-622; and

WHEREAS, the applicant originally proposed to enlarge the existing residence from 2,226 square feet of floor area (0.64 FAR) to 2,707 square feet of floor area (0.99 FAR), decrease open space from 99 percent to 56 percent, decrease the rear yard from 32'-5" to 24'-11", maintain the existing side yards with depths of 6'-11" and 0'-5" and increase the building height from 32 feet to 35 feet; and

WHEREAS, in response to questions from the Board,

the applicant modified the proposed building to decrease the height of the proposed building from 35 feet to 34 feet and increased the proposed rear yard from 24'-11" to 31'-5"; and

WHEREAS, the applicant proposes to enlarge the existing residence from 2,226 square feet of floor area (0.64 FAR) to 3,523 square feet of floor area (1.00 FAR), decrease open space from 99 percent to 56 percent, decrease the rear yard from 32'-5" to 31'-5" and maintain existing side yards with depths of 6'-11" and 0'-5"; and

WHEREAS, the applicant states that, at the subject site, floor area may not exceed 1,750 square feet (0.5 FAR) under ZR § 23-141, open space must be at least 1.50 under ZR § 23-141, a rear yard must have a minimum depth of 30 feet under ZR § 23-47 and side yards must have depths of 5'-0" under ZR § 23-461 and 6'-4" under ZR § 23-48; and

WHEREAS, the applicant represents that the proposed building as enlarged is consistent with the built character of the neighborhood; and

WHEREAS, in support of this contention, the applicant surveyed single- and two-family residences in the surrounding area, finding that 24 have 0.90 FAR or above, of which 20 have 1.0 FAR or above; and

WHEREAS, the applicant also submitted a study of rear yards and open space on the subject block as well as a photographic streetscape montage and a photographic neighborhood study demonstrating that the proposed building will fit in with the built conditions of the surrounding area; and

WHEREAS, the applicant provided a historic map from the 1930s indicating that the proposed side yards constitute lawful non-compliances; and

WHEREAS, in response to questions from the Board, the applicant revised the drawings to reflect that the proposed construction will sufficiently maintain the existing building on the second floor and to clarify that, in the attic, the floor layout and maximum floor area as well as the dormer shall be as reviewed and approved by DOB; and

WHEREAS, based upon its review of the record and inspections of the subject site and surrounding neighborhood, the Board finds that the proposed building as enlarged will not alter the essential character of the neighborhood or district in which the subject building is located, 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 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

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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. 15BSA135K, dated December 30, 2014; and

WHEREAS, the Board finds that the evidence in the record supports the findings required to be made under ZR §§ 73-622 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion.

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 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 §§ 73-622 and 73-03 to *permit*, partially in an R6 zoning district and partially in an R4 (C2-2) zoning district, the enlargement of a single-family residence that does not comply with zoning regulations for floor area ratio (“FAR”), open space, and side yards, contrary to ZR §§ 23-141 and 23-461; *on condition* that all work and site conditions shall substantially conform to drawings filed with this application marked “Received January 18, 2018”-Twelve (12) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: floor area shall be limited to 3,523 square feet (1.00 FAR); open space shall be at least 56 percent; and side yards shall have minimum depths of 6’-11” and 0’-5”, as illustrated on the Board-approved plans;

THAT removal of existing joists or perimeter walls in excess of that shown on the Board-approved plans shall void the special permit;

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 23, 2022;

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, January 23, 2018.

2017-215-BZ

CEQR #17-BSA-148M

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 3rd Avenue, Block 1309, Lot 32, Borough of Manhattan.

COMMUNITY BOARD #4M

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 26, 2017, acting on Alteration Application No. 121288837, reads in pertinent part:

“Proposed use . . . as a Physical Culture Establishment (PCE) is not permitted as of right . . . and is contrary to ZR Section 32-10”; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to permit, in a C6-6 zoning district and the Special Midtown District, the legalization of a physical culture establishment (“PCE”) on the first floor and cellar of the subject building, 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 January 23, 2018; and

WHEREAS, Commissioner Ottley-Brown performed an inspection of the site and surrounding neighborhood; and

WHEREAS, Community Board 6, Manhattan, recommends approval of this application on condition that the term be limited to five (5) years, as is the Community Board’s standing policy to allow more frequent feedback from the surrounding community; and

WHEREAS, the subject site is located on the northwest corner of Third Avenue and East 54th Street, in a C6-6 zoning district and the Special Midtown District, in Manhattan; and

WHEREAS, the site has approximately 151 feet of frontage along Third Avenue, 120 feet of frontage along East 54th Street, 16,905 square feet of lot area and is occupied by a 36-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

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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, in response to the recommendation of Community Board 6 as to feedback from the surrounding community, 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 5,274 square feet of floor space as follows: 48 square feet of floor area on the first floor, including an entry vestibule, and 4,943 square feet of floor space in the cellar, used for check-in, retail space, a consultation circle, bathrooms, boxing ring, free weights, heavy bag stand, storage room, closet and electrical room; and

WHEREAS, the PCE has been in operation as Title Boxing Club since May 15, 2017, with the following hours of operation: Monday, Wednesday and Friday, 6:30 a.m. to 9:15 p.m., Tuesday and Thursday, 5:30 a.m. to 9:15 p.m., and Saturday and Sunday, 9:30 a.m. to 1:30 p.m.; and

WHEREAS, the applicant represents that the PCE use is consistent with the vibrant commercial area in which it is located, that the PCE use is fully contained within the envelope of an existing building and that the subject site has pedestrian access to rapid transit facilities within the vicinity; and

WHEREAS, in addition, the applicant submits that sound attenuation measures, including suspended acoustic ceiling tiles, suspended gypsum board ceiling, 1"-thick rubber mat flooring and unfinished concrete slab, have been provided within the space so as to not disturb other tenants in the building; and

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

WHEREAS, the applicant states that the PCE provides boxing-based workouts designed to facility fat burning, cardiovascular health, muscle toning and wellness; 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 exist, 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

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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 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. 17BSA148M, dated June 16, 2017 and

WHEREAS, the Board finds that the evidence in the record supports the findings required to be made under ZR §§ 73-36 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion; and

WHEREAS, in response to the recommendation of Community Board 6 to reduce the term of the special permit, the Board notes that the term of this grant has been reduced to reflect the period of time that the PCE has operated without a special permit.

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 §§ 73-36 and 73-03 *to permit*, in a C6-6 zoning district and the Special Midtown District, the legalization of a physical culture establishment, contrary to ZR § 32-10; *on condition* that all work, site conditions and operation shall substantially conform to drawings filed with this application marked “Received January 3, 2018”-Five (5) sheets; and *on further condition*:

THAT this special permit shall expire May 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 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 remain 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 January 23, 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, January 23, 2018.

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 182nd Street aka 2165-75 Southern Boulevard, Block 3111, Lot 59, Borough of Bronx.

COMMUNITY BOARD #2BX

ACTION OF THE BOARD – Laid over to February 27, 2018, at 10 A.M., for continued hearing.

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

THE VOTE TO REOPEN HEARING –

Affirmative: Chair Perlmutter, Vice Chair Chanda, Commissioner Ottley-Brown and Commissioner Sheta4
Negative:.....0

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice Chair Chanda, Commissioner Ottley-Brown and Commissioner Sheta4
Negative:.....0

ACTION OF THE BOARD – Laid over to January 30, 2018, at 10 A.M., for decision, hearing closed.

MINUTES

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 45th Avenue. Block 5538, Lot 30. Borough of Queens.

COMMUNITY BOARD #11Q

ACTION OF THE BOARD – Laid over to April 17, 2018, at 10 A.M., for adjourned hearing.

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 March 27, 2018, at 10 A.M., for adjourned hearing.

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 14th Street, Block 7293, Lot 54, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to January 30, 2018, at 10 A.M., for continued hearing.

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 79th Street, Block 5976, Lot 20, Borough of Brooklyn.

COMMUNITY BOARD #10BK

ACTION OF THE BOARD – Laid over to March 27,

2018, at 10 A.M., for continued hearing.

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 39th Avenue, Block 5347, Lot(s) 13 & 71, Borough of Brooklyn.

COMMUNITY BOARD #2BK

ACTION OF THE BOARD – Laid over to March 20, 2018, at 10 A.M., for continued hearing.

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 May 22, 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 24th Street, Block 7605, Lot 76, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Laid over to March 27, 2018, at 10 A.M., for continued hearing.

MINUTES

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 14th Avenue, Block 5649, Lot(s) 44, 46, Borough of Brooklyn.

COMMUNITY BOARD #12BK

ACTION OF THE BOARD – Laid over to March 20, 2018, at 10 A.M., for adjourned hearing.

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 April 10, 2018, at 10 A.M., for continued hearing.

REGULAR MEETING

TUESDAY AFTERNOON, JANUARY 23, 2018

1:00 P.M.

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

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

ACTION OF THE BOARD – Laid over to April 17, 2018, at 10 A.M., for continued hearing.

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

ACTION OF THE BOARD – Laid over to February 27, 2018, at 10 A.M., for continued hearing.

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

ACTION OF THE BOARD – Laid over to February 27, 2018, at 10 A.M., for continued hearing.

MINUTES

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 3rd 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.

2017-225-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 305 East 61st 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 61st Street, Block 1436, Lot 5, Borough of Manhattan.

COMMUNITY BOARD #8M

ACTION OF THE BOARD – Laid over to January 30, 2018, at 10 A.M., for continued hearing.

Carlo Costanza, Executive Director

BULLETIN

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February 9, 2018

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2016-4230-BZ	1912 & 1920 Amethyst Street, Bronx
2016-4301-BZ	136 Oxford Street, Brooklyn
2017-190-BZ	23-11 31 st Road, Queens

Afternoon Calendar67

Affecting Calendar Numbers:

2016-4217-BZ	1665 Bartow Avenue, Bronx
2017-39-BZ	271 Church Street, Manhattan

Correction73

Affecting Calendar Numbers:

218-03-BZ	19-73 38 th Street, Queens
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DOCKETS

New Case Filed Up to January 30, 2018

2018-10-BZ

1238 East 26th Street, The premises is located on the south side of East 26th Street between Avenue L and Avenue M., Block 07643, Lot(s) 0060, Borough of **Brooklyn, Community Board: 14**. Special Permit (§73-622) to permit the enlargement of a detached single-family home contrary to ZR §23-141 (FAR and open space ratio); ZR §23-631 (front yard sky exposure plane) and ZR §23-632 (rear yard and side yards). R2 zoning district. R2 district.

2018-11-BZ

1495 3rd Avenue, Located on the east side of 3rd Avenue between 84th Street and 85th Street, Block 01530, Lot(s) 0003, Borough of **Manhattan, Community Board: 8**. Special Permit (§73-36) to permit the operation of a physical cultural establishment (Rumble Fitness) within 5 stories and cellar of an existing building contrary to ZR §32-10. C1-9 zoning district. C1-9 district.

2018-12-BZ

173 N. 3rd Street, Located on N. 3rd Street between Driggs Avenue and Bedford Avenue, Block 02352, Lot(s) 0009, Borough of **Brooklyn, Community Board: 1**. Special Permit (§73-36) to permit the legalization of a physical cultural establishment (Flywheel) within a portion of the first floor of an existing building contrary to ZR §42-10. M1-2/R6B Greenpoint-Williamsburg Anti-Harassment District. M1-2/R6B district.

2018-13-BZ

30-32 Village Road North, Located on the south side of Village Road North between Van Sicklen Street and McDonald Avenue, Block 07123, Lot(s) 29,30, Borough of **Brooklyn, Community Board: 15**. Special Permit (§73-19) to permit a school (UG 3) (Yeshivat Lev Torah) contrary to ZR §42-00. Variance (§72-21) to permit the construction of a new building for the proposed school contrary to ZR §43-122 (floor area); ZR §43-43 (wall height greater than the maximum permitted); ZR §43-304 (front yard); ZR §43-25 (side yards) and the proposal does not provide the required parking and loading zone. M1-1 zoning district. M1-1 district.

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

CALENDAR

REGULAR MEETING FEBRUARY 27, 2018, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, February 27, 2018, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

SPECIAL ORDER CALENDAR

31-91-BZ

APPLICANT – Alfonso Duarte, for Frank Mancini, owner.
SUBJECT – Application April 13, 2017 – Extension of term and amendment (§ 1-07.3(3) (ii)) of the Board's Rules of Practice and Procedures for a previously granted Variance (§72-21) which permitted a one story enlargement to an existing non-conforming eating and drinking establishment (Use Group 6) which expired on July 28, 2012; Waiver of the Rules. R6 & R6B zoning districts.

PREMISES AFFECTED – 173 Kingsland Avenue aka 635 Meeker Avenue, Block 2705, Lot 34, Borough of Brooklyn.

COMMUNITY BOARD #1SI

172-97-BZ

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

SUBJECT – Application August 28, 2017 – Re-Hearing of a previously approved Variance (§72-21) which permitted the conversion of a portion of the subject building from theater use (UG8) to catering hall (UG 9) which was denied on December 9, 2003. Upon request for an Extension of Term; Amendment to legalize the change in use of a portion of the ground floor from catering hall (UG 9) to a supermarket (UG 6). The remainder of the building remains subject to a variance granted pursuant to BSA calendar number: 530-32-BZ. C1-3/R6 & R6 zoning district.

PREMISES AFFECTED – 1029 Brighton Beach Avenue, Block 8709, Lot 60, Borough of Brooklyn.

COMMUNITY BOARD #13BK

247-08-BZ

APPLICANT – Eric Palatnik, P.C., for 3454 Star Nostrand LLC, owner.

SUBJECT – Application March 25, 2016 – Extension of Term of a previously approved Special Permit (§73-243) to permit the operation of an accessory drive-thru facility to an eating and drinking establishment (Popeye's), which expired on May 12, 2014; Waiver of the Rules. C1-2/R4 zoning district.

PREMISES AFFECTED – 3454 Nostrand Avenue, Block 7362, Lot 10, Borough of Brooklyn.

COMMUNITY BOARD #15BK

REGULAR MEETING FEBRUARY 27, 2018, 1:00 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, February 27, 2018, 1:00 P.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

ZONING CALENDAR

2017-56-BZ

APPLICANT – Rampulla Associates Architects, LLP, for Block 853, LLC, owner.

SUBJECT – Application February 24, 2017 – 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. R1-2 zoning district. R1-2 Lower Density Growth Management Area.

PREMISES AFFECTED – 1321 Richmond Road, Block 853, Lot(s) 91 & 93, Borough of Staten Island.

COMMUNITY BOARD #2SI

2017-240-BZ

APPLICANT – Troutman Sanders LLP, for Red Rooster Harlem LLC, owner.

SUBJECT – Application August 15, 2017 – 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).

PREMISES AFFECTED – 310 Lenox Avenue, Block 1723, Lot 69, Borough of Manhattan.

COMMUNITY BOARD #10M

2017-245-BZ

APPLICANT – Akerman, LLP for Capital One Financial Corporation, owner.

SUBJECT – Application August 17, 2017 – Reinstatement (§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.

PREMISES AFFECTED – 32-02 Francis Lewis Boulevard, Block 4940, Lot 1, Borough of Queens.

COMMUNITY BOARD #11Q

Carlo Costanza, Executive Director

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**REGULAR MEETING
TUESDAY MORNING, JANUARY 30, 2018
10:00 A.M.**

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

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

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 variance, previously granted by the Board, which expired March 23, 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 January 30, 2018; and

WHEREAS, Commissioner Ottley-Brown performed an inspection 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 southwest corner of Horace Harding Expressway and Marathon Parkway, in an R3-2 (C1-2) zoning district, in Queens; and

WHEREAS, the subject site has approximately 142 feet of frontage along Horace Harding Expressway, 70 feet of frontage along Marathon Parkway, 13,900 square feet of lot area and is occupied by a one-story automotive service station; and

WHEREAS, on June 24, 1930, under the subject calendar number, the Board dismissed an application to permit the construction and maintenance of a garage for the storage of more than five motor vehicles and the installation of a gasoline service station for lack of prosecution; and

WHEREAS, on January 10, 1950, under the subject calendar number, the Board voted to reopen the application to permit the construction and maintenance of a gasoline service station, auto washing, lubrication, office and sale of auto accessories, with curb cuts on Horace Harding Boulevard, more than 25 feet from Marathon Parkway; and

WHEREAS, the Board has exercised jurisdiction over the subject site since June 13, 1950, when, under the subject calendar number, the Board granted a variance to permit the use of a portion of the subject site to be occupied as a gasoline service station for a term of fifteen (15) years, expiring June 13, 1965, on condition that all buildings and uses on such portion of the plot shall be removed and the plot shall be leveled substantially to the grade of Horace Harding Boulevard and shall be arranged as indicated on such plans and of the design as shown; that the accessory building shall be constructed of the materials as indicated and in all respects shall comply with the requirements of the Building Code that the boiler room shall be separated from the balance of the building by fireproof construction and shall be enterable only from the rear except that the ceiling of the boiler room may be fire retarded; that pumps shall not be erected with pump base not nearer than 10 feet to the building line; that pumps shall be of the low type, as approved by the Board; that curb cuts shall be restricted to three curb cuts from Horace Harding Boulevard, two 30 feet in width and one 20 feet in width and no curb cut to be nearer than five feet from the street building line of Marathon Parkway or the side lot line to the west as prolonged and one curb to Marathon Parkway not over 20 feet in width, to be constructed within 25 feet of the street building line; that at the rear of the subject site a retaining wall shall be maintained continuously across the rear of the property and to an average total height of not less than 5’-6”’; that planting areas shall be maintained with suitable planting, protected with curbing as indicated; that the number of gasoline storage tanks shall not exceed six 550-gallon tanks; that the balance of the subject site shall be paved with concrete or bituminous paving; that the sidewalks and curbing shall be constructed to the satisfaction of the Borough President; that such portable fire-fighting appliances shall be maintained as the fire commissioner shall direct; that signs shall 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 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; and that in all other respects the building and occupancy shall comply with all laws, rules and regulations applicable thereto, other than as modified by the Board under BSA Calendar Number 25-50-A; and

WHEREAS, on June 13, 1950, under BSA Calendar Number 25-50-A, the Board granted an appeal under General City Law § 35 to permit the portion of Marathon

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Parkway as proposed to be widened to be occupied in conjunction with the balance of the plot as a gasoline station on condition that the portion to be widened shall be consolidated with the sidewalk along the subject site and shall not be occupied with any equipment and that in the event of the property within the proposed widening of Marathon Parkway being acquired by the City for street purposes that the award in condemnation shall be in an amount as determined by the court; and

WHEREAS, on March 23, 1954, under the subject calendar number, the Board amended a condition of the variance so that the number of gasoline storage tanks not exceed ten (10) 550 gallon tanks and that in all other respects the resolution be complied with; and

WHEREAS, on October 17, 1961, under the subject calendar number, the Board amended the variance to permit the enlargement in area and the construction of an extension to the existing gasoline service station building and uses to include the parking of more than five motor vehicles and minor repairs with hand tools for a term of fifteen (15) years, expiring October 17, 1976, on condition that any retaining walls required in connection with this work shall be constructed by the owner at his expense to the satisfaction of the Borough Superintendents and that a certificate of occupancy be obtained; and

WHEREAS, on October 30, 1962, under the subject calendar number, the Board granted an extension of time to complete construction and to obtain a certificate of occupancy, expiring October 30, 1963; and

WHEREAS, on September 15, 1970, under the subject calendar number, the Board amended the variance to permit the installation of one new 4,000-gallon approved type gasoline tank and the addition of one new pump to the two existing pump islands; and

WHEREAS, on March 23, 1976, under the subject calendar number, the Board granted an extension of term of ten (10) years, expiring October 17, 1986, on condition that a new certificate of occupancy be obtained; and

WHEREAS, on November 9, 1976, under the subject calendar number, the Board amended the variance so that Lots 658 and 659 be omitted from the description of the subject site and that the variance be limited to Lot 660 (formerly Lots 658, 659 and 660); and

WHEREAS, on December 1, 1987, under the subject calendar number, the Board granted an extension of term of ten (10) years, expiring March 23, 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 December 1, 1988; and

WHEREAS, on March 13, 1990, under the subject calendar number, the Board amended the variance to permit changing the design and arrangement of the existing automotive service station, constructing a new metal canopy over four (4) new gasoline pump islands with new "MPD" self-serve pumps, demolishing the existing building and to construct a new 8' x 16' kiosk and eliminating all uses other

than gasoline service station on condition that there be two (2) attendants on the subject site available from 7:00 a.m. to 6:00 p.m., to provide full service as requested, that the landscaping be maintained and replaced when necessary, that all signs comply with the C1 zoning district regulations and 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 May 9, 1995, under the subject calendar number, the Board amended the variance to permit the construction of a one-story accessory building to be occupied as a lubritorium, minor automobile repair establishment (hand tools only), with occasional (hand) car washing, office and sales/storage of auto accessories on condition that new fencing be installed and maintained in accordance with Board-approved plans, that concrete bumpers be provided in accordance with Board-approved plans and that a certificate of occupancy be obtained within one year, by May 9, 1996; and

WHEREAS, on May 27, 1998, under the subject calendar number, the Board granted an extension of term of ten (10) years, expiring March 23, 2006, on condition that a new certificate of occupancy be obtained within one (1) year, by May 27, 1999; and

WHEREAS, on March 14, 2000, under the subject calendar number, the Board granted an extension of time to obtain a certificate of occupancy of thirty-six (36) months, expiring May 27, 2001; and

WHEREAS, on August 8, 2006, under the subject calendar number, the Board granted an extension of term of ten (10) years, expiring March 23, 2016, on condition that the term appear on the certificate of occupancy and that DOB review all signage for compliance with C1-1 zoning district regulations; and

WHEREAS, the term of the variance having expired, the applicant now seeks an extension of term and a waiver of the Board's Rules of Practice and Procedure to permit the late filing of this application; and

WHEREAS, at hearing, the Board questioned the subject site's compliance with fencing, landscaping, concrete bumpers and sign regulations; and

WHEREAS, in response, the applicant submitted evidence demonstrating complying landscaping, fencing and walls, bumpers and dispensing islands; and

WHEREAS, the Board finds that the evidence in the record demonstrates that an extension of term and a waiver of the Board's Rules of Practice and Procedure are appropriate with certain conditions as set forth below and that the applicant has substantiated a basis to warrant exercise of discretion.

Therefore it is Resolved, that the Board of Standards and Appeals does hereby *waive* the Rules of Practice and Procedure and *reopen* and *amend* the resolution dated June 13, 1950, as amended through August 8, 2006, so that as amended this portion of the resolution shall read: "*to permit* an extension of term for ten (10) years, expiring March 23, 2026; *on condition* that all work and site conditions shall

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substantially conform to plans filed with this application marked 'Received January 12, 2018'-Six (6) sheets; and *on further condition:*

THAT the term of this grant shall be limited to ten (10) years, expiring March 23, 2026;

THAT landscaping, fencing and maintenance of the site shall be maintained and replaced when necessary, as illustrated on the Board-approved plans;

THAT there be two (2) attendants on the subject site available from 7:00 a.m. to 6:00 p.m., to provide full service as requested;

THAT all signs comply with the C1 zoning district regulations;

THAT there be no parking of vehicles on the sidewalk or in such a manner as to obstruct pedestrian or vehicular traffic;

THAT concrete bumpers be provided in accordance with 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 January 20, 2022;

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, January 30, 2018.

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 – 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 special permit, previously granted by the Board, which expired May 12, 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 a continued hearing on October 17, 2017, and then to decision on January 30, 2018; 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 13, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the north side of Mermaid Avenue between West 20th Street and West 21st Street, in an R5 (C1-2) zoning district, in Brooklyn; and

WHEREAS, the subject site 1 has approximately 178 feet of frontage along Mermaid Avenue, 130 feet of frontage along West 20th Street, 35 feet of frontage along West 21st Street, 6,503 square feet of lot area and is occupied by a one-story commercial building; and

WHEREAS, under the subject calendar number, the Board previously denied applications to permit a proposed funeral establishment on July 16, 2002, and December 9, 2003; and

WHEREAS, pursuant to an order by the Supreme Court of the State of New York, Index No. 123/04, the Board has exercised jurisdiction over the subject site since May 12, 2004, when, under the subject calendar number, the Board granted a special permit to allow the construction of a one-story funeral establishment in Use Group 7 for a term of ten (10) years, expiring May 12, 2014, on condition that adequate landscaping and screening be installed to buffer the funeral home from any adjacent residential uses and that the above conditions appear on the certificate of occupancy; and

WHEREAS, the term having expired, the applicant now seeks a waiver of the Board's Rules of Practice and Procedure and an extension of term; and

WHEREAS, in response to questions from the Board, the applicant revised the drawings to reflect numbered parking spaces, dimension the access lane, note that any new signage will comply with regulations applicable to C1 zoning districts and designate the 6-foot-high decorative

1 The applicant proposes to subdivide tentative Lot 54—located at the northeast corner of Mermaid Avenue and West 21st Street, with 20 feet of frontage along Mermaid Avenue, 85 feet of frontage along West 21st Street and 1,700 square feet of lot area—from the subject zoning lot. The Board has no objection to such zoning-lot subdivision so long as the Department of Buildings ensures that all resulting zoning lots and all buildings thereon comply with all applicable provisions of the Zoning Resolution, Building Code and other laws, rules and regulations.

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fence screening adjacent uses; and

WHEREAS, the applicant also submitted evidence that landscaping has been maintained with evergreen planting and provided further information regarding street trees; and

WHEREAS, the applicant has satisfactorily demonstrated compliance with the conditions of the previous term, and the evidence in the record indicates that the circumstances warranting the original grant still obtain; and

WHEREAS, the Board finds that the requested waiver and ten (10) year extension of term are appropriate, with the conditions set forth below.

Therefore it is Resolved, that the Board of Standards and Appeals does hereby *waive* the Rules of Practice and Procedure and *reopen* and *amend* the resolution, dated May 12, 2004, so that as amended this portion of the resolution shall read: “to *permit* an extension of term for ten (10) years, expiring May 12, 2024; *on condition* that all work and site conditions shall conform to drawings filed with this application marked ‘Received January 29, 2018’-Five (5) sheets; and *on further condition*:

THAT the term of this grant shall be for ten (10) years, expiring May 12, 2024;

THAT adequate landscaping and screening shall be installed to buffer the funeral home from any adjacent residential uses;

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 30, 2022;

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, January 30, 2018.

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 – Application withdrawn.

THE VOTE TO WITHDRAW –

Affirmative: Chair Perlmutter, Vice Chair Chanda, Commissioner Ottley-Brown and Commissioner Sheta4

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for an extension of time to complete construction and obtain a certificate of occupancy pursuant to a previously granted special permit, which expired November 15, 2015; 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 August 8, 2017, and then to decision on January 30, 2018; 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 a triangular corner lot bound by Sheepshead Bay Road to the south, East 14th Street to the west and Avenue Z to the north, in a C4-2 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 144 feet of frontage along Sheepshead Bay Road, 13 feet of frontage along East 14th Street and 125 feet of frontage along Avenue Z; and

WHEREAS, the Board has exercised jurisdiction over the subject site since November 15, 2011, when, under the subject calendar number, the Board granted a special permit, pursuant to ZR §§ 73-44 and 73-03, to permit the reduction in the required number of accessory parking spaces for an existing five-story plus cellar mixed-use residential, commercial and community facility building from 77 to 53, contrary to ZR § 36-21, on condition that, *inter alia*, there be no change in the operation of the site without prior review and approval by the Board; a minimum of eight parking spaces be provide in the accessory parking garage in the subject building; at least 45 parking spaces be provided in an accessory parking lot located at 2554 East 16th Street, Brooklyn and that all conditions of the grant appear on the certificate of occupancy for the subject site; and

WHEREAS, pursuant to ZR § 73-70, a special permit for a modification of bulk regulations automatically lapses if substantial construction in accordance with plans for which such permit was granted has not been completed within four (4) years from the date of granting such permit by the Board; and

WHEREAS, accordingly, substantial construction in connection with the special permit was required to have completed by November 15, 2015; and

WHEREAS, the applicant asserts that, while construction on the five-story mixed-use building on the subject site was completed prior to the Board’s grant, the accessory parking lot located at 2554 East 16th Street has not yet been constructed and no new certificate of occupancy has been obtained for the subject site indicating the Board’s grant; and

WHEREAS, accordingly, the applicant seeks the subject relief; and

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WHEREAS, by letter dated August 6, 2017, the applicant requested withdrawal of the application; and

WHEREAS, at hearing on January 30, 2018, the applicant stated that all of the parking spaces required for the existing five-story mixed-use building located at the subject site will be provided on-site and at 2554 East 16th Street; and

WHEREAS, thus, the applicant requests withdrawal of this application because the site no longer requires relief from the accessory off-street parking requirements applicable in the underlying zoning district, including, but not limited to, ZR § 36-21; and

WHEREAS, pursuant to § 1-12.2 of the Board's Rules of Practice and Procedure, because the request for withdrawal was made prior to the close of the hearing on this application, the Board may permit withdrawal of the application without prejudice.

Therefore, it is Resolved, that the Board of Standards and Appeals accepts the withdrawal of this application without prejudice and the surrender of the special permit.

Adopted by the Board of Standards and Appeals, January 30, 2018.

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 20, 2018, 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 91st 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 March 6, 2018, at 10 A.M., for adjourned hearing.

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

ACTION OF THE BOARD – Laid over to March 20, 2018, at 10 A.M., for continued hearing.

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 May 1, 2018, at 10 A.M., for continued 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 March 6, 2018, at 10 A.M., for continued hearing.

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 2nd Street, Block

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8841, Lot 500, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to April 10, 2018, at 10 A.M., for adjourned hearing.

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 9th Street, Block 450, Lot 28, Borough of Manhattan.

COMMUNITY BOARD #3M

ACTION OF THE BOARD – Laid over to March 6, 2018, at 10 A.M., for postponed hearing.

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

ACTION OF THE BOARD – Laid over to March 6, 2018, at 10 A.M., for continued hearing.

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 38th Street, Block 5295, Lot(s) 52 & 109, Borough of Brooklyn.

COMMUNITY BOARD #12BK

ACTION OF THE BOARD – Laid over to March 20, 2018, at 10 A.M., for continued hearing.

35-10-BZ

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

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

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

COMMUNITY BOARD #8Q

ACTION OF THE BOARD – Laid over to April 10, 2018, at 10 A.M., for continued hearing.

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 February 27, 2018, at 10 A.M., for deferred decision.

ZONING CALENDAR

224-14-BZ & 225-14-A

CEQR #15-BSA-066R

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 – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Sheta.....4

Negative:0

MINUTES

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated October 14, 2014, acting on DOB Application No. 520085185, reads in pertinent part:

1. ZR 51-00: Medical Office (Zoning Use Group-4) is not as-of-right use within existing R1-2 zoning district pursuant to ZR 22-14;
ZR 52-41: The proposed increase of required existing accessory parking spaces for 16 cars in previous R3-1 zoning district, per C of O #078925 (dated 08/07/1992) . . . increases the degree of existing non-conformance;
2. GCL 35: The proposed private front roadway that is located within existing Widening Line, to connect access driveways into the property is contrary to GCL 35; and

WHEREAS, this is an application under ZR § 72-21 to permit, on a site located in an R1-2 zoning district, the addition of five (5) accessory off-street parking spaces to a Use Group 4 ambulatory diagnostic or treatment health care facility, contrary to ZR §§ 22-14 and 52-41 (BSA Cal. No. 224-14-BZ), and construction within the bed of a mapped street, contrary to General City Law (“GCL”) § 35 (BSA Cal. No. 225-14-A); and

WHEREAS, a public hearing was held on this application on April 4, 2017, after due notice by publication in *The City Record*, with continued hearings on July 25, 2017, August 8, 2017, and January 23, 2018, and then to decision on January 30, 2018; 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 disapproval of this application on the bases that the area was rezoned in order to limit density in the area, particularly with regards to ambulatory diagnostic or treatment health care facilities, and the applicant has not shown that the proposal would be the only development possible to provide a reasonable return nor would this proposal be in keeping with the existing character or the intended future development of the area; and

WHEREAS, the Staten Island Borough President James S. Oddo submitted letters in opposition to the subject application, stating that the approval of this application will adversely affect the quality of life for nearby residents, create additional traffic congestion along Victory Boulevard and set a precedent that vested zoning lots need not be restricted by the Zoning Resolution provisions relating to non-conforming uses set forth in Article V, particularly, that a non-conforming use can be expanded to include new lot area that this presently conforming and complying with applicable zoning regulations; and

WHEREAS, New York City Councilmember Steven Matteo submitted letters in opposition to the subject application, stating that the proposal is out of character with the 2004 text change to the Zoning Resolution that rezoned

the subject site, among others, to an R1-2 zoning district, a rezoning intended to ensure that the area be forever populated with detached homes and removed ambulatory diagnostic or treatment health care facilities from the list of as-of-right uses; and

WHEREAS, New York City Councilmember Debi Rose also submitted a letter in opposition to the subject application, stating that the Zoning Resolution does not permit the conversion of a conforming lot to a non-conforming lot and that an approval in this case would allow the expansion of existing ambulatory diagnostic or treatment health care facilities onto adjacent residential lots in order to provide parking; and

WHEREAS, the subject site is comprised of two former tax lots located on the south side of Victory Boulevard, between Little Clove Road and Slosson Avenue, in an R1-2 zoning district, in the Lower Density Growth Management Zone, on Staten Island; and

WHEREAS, the site has approximately 132 feet of frontage along Victory Boulevard, 45,394 square feet of lot area and is occupied by a one-story Use Group 4 ambulatory diagnostic or treatment health care facility (the “Health Care Facility”) with 16 accessory off-street parking spaces and a one-and-a-half story residential building; and

WHEREAS, the Health Care Facility is a legal non-conforming use, developed at the site as-of-right in 1982 when the subject site was an R3-1 zoning district and Certificate of Occupancy No. 078925 was issued for the site on August 7, 1992, for a one-story plus cellar Use Group 4 medical office with required accessory parking for 16 cars; and

WHEREAS, the site was most recently two separate tax lots—former lot 80, a flag lot with approximately 50 feet of frontage along Victory Boulevard (the “Flagpole Portion”), and former lot 81, a rectangular lot with approximately 82 feet of frontage along Victory Boulevard and a depth of 225 feet (the “Regular Portion”); and

WHEREAS, the applicant originally proposed to expand the Health Care Facility, located on the Regular Portion, demolish the existing one-and-a-half story residential building on the Flagpole Portion, and redevelop the Flagpole Portion with 28 off-street parking spaces accessory to the Health Care Facility; and

WHEREAS, the applicant asserts that the existing 16 parking spaces are inadequate for the Health Care Facility’s needs and that, was the Health Care Facility built today, subsequent to amendments to community facility bulk and use regulations effective as of 2004, the floor space in the cellar would be included in the calculation for required parking and 34 parking spaces would be required¹; and

WHEREAS, in response to opposition, the applicant revised the application to redevelop the Flagpole Portion with a 30 foot wide residential driveway and two detached one-family residential buildings to maintain its residential

¹ These text amendments also prohibited medical offices from locating in R1 zoning districts as-of-right.

MINUTES

use and alter the parking layout of the Regular Portion to provide a one-way drive around the existing one-story Health Care Facility building and five additional accessory parking spaces for a total of 21 accessory parking spaces on the Regular Portion; and

WHEREAS, the Board notes that it is not waiving any regulations with regards to the two residential buildings proposed for the Flagpole Portion and that such buildings are subject to Department of Buildings' approval for compliance with, among other things, the Zoning Resolution; and

WHEREAS, the Board additionally notes that the two residential buildings may require a waiver of Section 36 of the General City Law but such relief was not included in the subject application and, thus, not considered or granted by the Board; and

WHEREAS, in connection with this application, the applicant proposes to reapportion the site into three tax lots—one for each of the buildings on the site—but maintain a single zoning lot; and

WHEREAS, the applicant states that, pursuant to ZR § 72-21, the depth and limited frontage of the Flagpole Portion 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, specifically, the applicant asserts that the Flagpole Portion, with a depth of 340 feet measured from its front lot line to rear lot line, and concave shape that results in the “pole” section being at its most narrow in the middle of the lot, renders access throughout the site, particularly from the street to the rear “flag” section, difficult and the lack of additional street access from the rear of the site further exacerbates this condition; and

WHEREAS, in support of this contention, the applicant submitted a study of sites located within 800 feet of the subject site within an R1 or R2 zoning district (the “Study Area”) concluding that, the Flagpole Portion of the subject site is the deepest lot in the Study Area that is neither a corner lot nor a through lot (noting also that the depth of the subject block—at 450 feet—is exceptional as compared to other blocks within the Study Area), and that, of the ten other concave lots in the Study Area, five are corner lots or through lots with multiple street frontages; one is part of a planned subdivision development; three are currently developed with complying residential developments similar in size and shape to surrounding homes and, thus, comparatively, less burdened by their concave shape than the Flagpole Portion, and one is held in common ownership with an adjacent lot that alleviates any shape-based hardship as evidenced by the fact that both lots are currently developed with residences; and

WHEREAS, accordingly, the Board finds that the depth and concave shape of the Flag Portion 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 development in strict conformity with the Zoning Resolution will bring a reasonable return and, in support of that contention, submitted a financial analysis for as-of-right residential developments on the Flagpole Portion consisting of (1) three detached single-family residences, each with 1,092 square feet of floor area plus 546 square feet of floor space in a basement (the “Three Family Scenario”) and (2) two detached single-family residences, each having 2,630 square feet of floor areas and 1,330 square feet of floor space in a basement (the “Two Family Scenario”); and

WHEREAS, the financial analyses submitted with the application conclude that both the Three Family Scenario and the Two Family Scenario result in a loss (17.1 percent and 10.9 percent, respectively), but the Two Family Scenario results in a less of a financial loss and is, therefore, more feasible; and

WHEREAS, the analyses include the construction of a roadway along the “pole” section of the Flagpole Portion in order to provide access to the residences located at the rear (in the “flag” section) of the site from the Victory Boulevard frontage in each Scenario and that this cost, particularly in the case of the Three Family Scenario, prevents either Scenario from realizing a positive return; and

WHEREAS, nevertheless, the applicant states that by merging the Flagpole Portion and the Regular Portion, the Regular Portion can take advantage, in part, of the enlarged width of the zoning lot to improve vehicular circulation around and provide additional parking spaces accessory to the Health Care Facility and that rent for medical offices located on that portion of the site can be increased by a nominal amount (\$5 per square foot) to enable the site, as a whole, to realize a positive return; 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 additional parking provided on the Regular Portion will reduce traffic and parking congestion along Victory Boulevard, a new drop off and pick up zone in the front of the Health Care Facility will allow ambulettes to access the site without blocking street traffic; that the development complies with applicable landscaping, fencing and lighting provisions in the Zoning Resolution and, thus, will shield adjacent neighbors from noise and light emanating from the subject site; and that, in response to concerns from the Community Board regarding the storage of refuse on the site, new refuse containers enclosed by a 6 foot high opaque masonry wall will be located at the southeast corner of the lot; and

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WHEREAS, the Board additionally notes that the applicant is providing a 4 foot high fence and landscaping along the proposed tax line separating the Regular Portion from the Flagpole Portion so as to prevent “creep” by the parking accessory to the Health Care Facility into the 30 foot wide driveway proposed to provide access from Victory Boulevard to the two one-family residences proposed on the Flagpole Portion and, further, that the plan submitted by the applicant in response to a Board inquiry regarding the safe and efficient management of parking at the site has been incorporated as a condition of this grant; 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, to the contrary, the inclusion of the Flagpole Portion in the subject zoning lot improves, in part, the development conditions for the Regular Portion of the subject site, providing additional lot area in which the Regular Portion can improve vehicular maneuverability and the layout of the parking spaces; 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. 15BSA066R, received September 15, 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; 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, no 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, with regards to the relief requested pursuant to GCL § 35 due to the proposed location of a private roadway within the bed of Victory Boulevard, by

letter dated November 17, 2016, the New York City Department of Transportation states that the improvement of Victory Boulevard between Slosson Avenue and Little Cove Road, which would involve a taking of a portion of former lot 81 is not presently included in the DOT’s Capital Improvement Program, though a change in the capital program is not precluded in the future; and

WHEREAS, by letter dated December 30, 2015, the New York City Department of Environmental Protection (“DEP”) states that there are existing 12 inch diameter and 20 inch diameter water mains in the bed of Victory Boulevard at the subject site and also an existing 8 inch diameter sanitary sewer in the bed of Victory Boulevard between Slosson Avenue and Little Cove Road and, based on its review of site plans, which did not show any structures above or below ground within the widening line, DEP has no objections to this application; and

WHEREAS, the applicant represents that the two single-family residences will be fully sprinklered; 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, accordingly, determines that the applicant has submitted adequate evidence to warrant a waiver of GCL § 35 under certain conditions.

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 R1-2 zoning district, the addition of five (5) accessory off-street parking spaces to a Use Group 4 ambulatory diagnostic or treatment health care facility, contrary to ZR §§ 22-14 and 52-41 (BSA Cal. No. 244-14-BZ), and, further, modifies the decision of the Department of Buildings, dated October 14, 2014, acting on Department of Buildings Application No. 520085185, by the power vested in it by Section 35 of the General City Law to grant this appeal (BSA Cal. No. 225-14-A), limited to the decisions noted above, permitting a proposed private front roadway within the bed of a mapped street, *on condition* that all work shall substantially conform to drawings filed with this application marked “Received January 26, 2018”- Six (6) sheets; and *on further condition:*

THAT a maximum of 21 parking spaces shall be permitted accessory to the UG 4 ambulatory diagnostic or treatment health care facility; and

THAT no parking for the UG 4 ambulatory diagnostic or treatment health care facility shall be permitted on the site other than in the 21 parking spaces indicated on the BSA-approved plans;

THAT fencing and landscaping shall be provided as indicated on the BSA-approved plans, repaired and/or replaced as necessary to maintain them in a first class condition;

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THAT no curbing of fencing shall be permitted in the driveway proposed for former lot 80, specifically along the proposed tax lot line separating the tax lots for the two single-family residences, as stated on the BSA-approved plans;

THAT cross easements shall be recorded against and for the benefit of each of the tax lots proposed to be created, one for each of the two proposed single-family residences, to provide both tax lots with full access to the full width of the 30 foot wide residential driveway and street frontage, as stated on the BSA-approved plans;

THAT the two single-family residents proposed on former lot 80 shall comply with all applicable provisions of the Zoning Resolution and any other applicable laws and codes;

THAT no waiver of General City Law § 36 has been granted by this application;

THAT parking on the portion of the lot dedicated to the UG 4 ambulatory diagnostic or treatment health care facility shall comply with the following parking management plan:

1. 1534 Victory Boulevard site ingress shall occur at the easterly driveway only;
2. 1534 Victory Boulevard site egress shall occur at the westerly driveway only;
3. Site circulation shall be clockwise;
4. Ambulette/paratransit vehicles shall discharge and collect patients in the northerly driveway aisle, parallel to Victory Boulevard, where no parking shall be designated or permitted;
5. The Parking Operations Manager shall be on premises during business hours to foster efficient site maneuverability, including but not limited to: maintaining a clear driveway throat, reducing queuing and congestion, and prohibiting unnecessary reverse maneuvers;
6. During instances when all off-street parking spaces are occupied, the Parking Operations Manager shall temporarily indicate to drivers that the lot is full and to use available on-street parking; and
7. The Parking Operations Manager shall maintain adequate traffic control devices (e.g., pavement markings and signs) and inform ownership when replacement of the same is required;

THAT the parking operations manager shall actively prevent double parking in front of the UG 4 ambulatory diagnostic or healthcare facility;

THAT the residential buildings on the site shall be fully sprinklered;

THAT substantial construction with respect to the variance (BSA Cal. No. 224-14-BZ) shall be completed pursuant to ZR § 72-23 and all DOB and related agency application(s) filed in connection with the roadway proposed to be located in the bed of Victory Boulevard (BSA Cal. No.

225-14-A) shall be signed off by DOB and all other relevant agencies by January 30, 2022;

THAT certificates of occupancy for all buildings at the site 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, January 30, 2018.

2016-4181-BZ CEQR #16-BSA-116K

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 14th Street, Block 7293, 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 and Commissioner Sheta.....4
Negative:0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated April 1, 2016, acting on Alteration Application No. 321271413, reads in pertinent part:

1. Creates non-compliance with respect to the side yards by not meeting the minimum requirements of Section 23-461 of the Zoning Resolution.
2. 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 and 73-03 to *permit*, in an R5 zoning district, the enlargement of an existing detached residence that does not comply with zoning regulations for side yards and rear yards, contrary to ZR §§ 23-461 and 23-47; and

WHEREAS, a public hearing was held on April 25, 2017, after due notice by publication in *The City Record*,

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with continued hearings on June 20, 2017, August 15, 2017, October 31, 2017, January 9, 2018, and January 23, 2018, and then to decision on January 30, 2018; 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 east side of East 14th Street, between Avenue S and Avenue T, in an R5 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 40 feet of frontage, 100 feet of depth, 4,000 square feet of lot area and is occupied by a three-story, with cellar, two-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 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 residence, as contemplated in ZR § 73-622; and

WHEREAS, the applicant originally proposed to convert the two-family residence to a single-family detached residence and to enlarge the subject building by reducing the rear yard from 23'-2" to 20'-0", maintaining the existing side yards with depths of 2'-6" and 8' 1" increasing the floor area ratio ("FAR") from 0.59 (2,372 square feet of floor area) to 1.13 (4,890 square feet of floor area), decreasing open space from 70 percent to 51 percent and increasing the height of the proposed building from 36 feet to 40 feet; and

WHEREAS, in response to questions from the Board regarding the incursion of the enlarged building's rear yard and massing on the built character of the subject block and neighborhood, the applicant redesigned the proposed building to maintain the existing rear yard and to reduce the floor area and height while increasing open space; and

WHEREAS, the applicant also revised the drawings to clarify that the proposed building will be an enlargement of an existing building and submitted evidence of existing non-compliances; and

MINUTES

WHEREAS, the applicant proposes to enlarge the subject building by maintaining the existing side yards with depths of 2'6" and 8'1" and maintaining the existing the rear yard with a depth of 23'-2"; and

WHEREAS, the applicant represents that, at the subject site, side yards must have a minimum depth of 5 feet and 8 feet under ZR § 23-461 and rear yards must have a minimum depth of 30 feet under ZR § 23-47; and

WHEREAS, the applicant represents that the enlarged building proposed is consistent with the character of the neighborhood; and

WHEREAS, in support of this contention, the applicant surveyed properties in the surrounding area, finding that 10 properties have rear yards with depths less than 26 feet, eight of which have rear yards with depths less than 23'-3", and that the distances between most of the residences on the east side of East 14th Street are equal to or smaller than the existing conditions between the subject site and adjacent residences; and

WHEREAS, the applicant also submitted, among other evidence, a photographic streetscape illustrating that the proposed enlargement is in context with surrounding properties as well as a building-face width diagram, front yard diagram, streetscape study and lot coverage diagram; and

WHEREAS, based upon its review of the record and inspections of the subject site and surrounding neighborhood, the Board finds that the proposed building as enlarged will not alter the essential character of the neighborhood or district in which the subject building is located, 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 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. 16BSA116K, dated May 2, 2016; and

WHEREAS, the Board finds that the evidence in the record supports the findings required to be made under ZR §§ 73-622 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion.

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 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 §§73-622 and 73-03 to *permit*, in an R5 zoning district, the enlargement of an existing detached residence that does not comply with zoning regulations for side yards and rear yards, contrary to ZR §§23-461 and 23-47; *on condition* that all work and site conditions shall substantially conform to drawings filed with this application marked "Received December 21, 2017"-Fifteen (15) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: side yards shall have minimum depths of 2'-6" and 8'1", and the rear yard shall have a minimum depth of 23'2", as illustrated on the Board-approved plans;

THAT removal of existing joists or perimeter walls in excess of that shown on the Board-approved plans shall void the special permit;

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 30, 2022;

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, January 30, 2018.

2017-225-BZ

CEQR #18-BSA-004M

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 305 East 61st 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 61st Street, Block 1436, Lot 5, Borough of Manhattan.

COMMUNITY BOARD #8M

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 20, 2017, acting on

MINUTES

Alteration Application No. 122829591, reads in pertinent part:

“Proposed change of use to a physical culture establishment as defined by ZR 12-10 is contrary to ZR 32-10”; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to permit, in an R8B (C2-5) zoning district, the operation of a physical culture establishment (“PCE”) on portions of the cellar, basement and first floor of the subject building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on January 23, 2018, after due notice by publication in *The City Record*, and then to decision on January 30, 2018; and

WHEREAS, Commissioner Ottley-Brown performed an inspection of the site and surrounding neighborhood; and

WHEREAS, Community Board 8, Manhattan, recommends disapproval of this application without stating a reason for disapproval; and

WHEREAS, the subject site is located on the north side of East 61st Street, between Second Avenue and First Avenue, within an R8B (C2-5) zoning district, in Manhattan; and

WHEREAS, the site has approximately 50 feet of frontage along East 61st Street, 125 feet of depth, 6,208 square feet of lot area and is occupied by a 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

WHEREAS, the subject PCE will occupy 9,149 square feet of floor space as follows: 4,404 square feet of floor area in the basement, including a reception area with entrance, bath areas, massage areas and offices, 3,122 square feet of floor area on the first floor, used for bath and massage areas, changing rooms, a hot tub and floating areas, and 1,623 square feet of floor space in the cellar, including mechanical rooms and utility rooms for baths located on upper levels; and

WHEREAS, the PCE will operate as Aire Ancient Baths with the following hours of operation: 9:00 a.m. to 11:00 p.m., seven days per week; and

WHEREAS, the applicant represents that the PCE use is consistent with the dynamic mixed-use area in which it is located, that the PCE use is fully contained within the

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envelope of an existing building and that ground-level commercial use is typical of the surrounding area; and

WHEREAS, the applicant submits that the PCE will provide relaxation services that will not impose on residents' quiet enjoyment of their homes within the subject building; and

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

WHEREAS, the applicant states that the PCE will be a spa facility offering massages and baths of varying temperatures to patrons; 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, in response to questions from the Board at hearing, the applicant provided additional information about a different PCE operated by Aire Ancient Baths at 88 Franklin Street, Manhattan, by special permit granted under BSA Calendar Number 27-11-BZ; 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 exist, 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 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 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. 18BSA004M, dated July 11, 2017; and

WHEREAS, the Board finds that the evidence in the record supports the findings required to be made under ZR §§ 73-36 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion.

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 §§ 73-36 and 73-03 to *permit*, in an R8B (C2-5) zoning district, the operation of a physical culture establishment on portions of the cellar, basement and first floor of the subject building, contrary to ZR § 32-10; *on*

condition that all work, site conditions and operation shall substantially conform to drawings filed with this application marked "Received September 29, 2017"-Five (5) sheets; and *on further condition*:

THAT the term of this grant shall be for ten (10) years, expiring January 30, 2028;

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 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 January 30, 2022;

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, January 30, 2018.

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 93rd Street, Block 1521, Lot 40, Borough of Manhattan.

COMMUNITY BOARD #8M

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ACTION OF THE BOARD – Laid over to March 20, 2018, at 10 A.M., for continued hearing.

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 76th Road, Block 6686, Lot 1, Borough of Queens.

COMMUNITY BOARD #8Q

ACTION OF THE BOARD – Laid over to April 17, 2018, at 10 A.M., for continued hearing.

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 21st Street, Block 6783, Lot 18, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to February 13, 2018, at 10 A.M., for deferred decision.

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 May 1, 2018, at 10 A.M., for adjourned hearing.

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 19th Street, Block 794, Lot 63, Borough of Manhattan.

COMMUNITY BOARD #4M

ACTION OF THE BOARD – Laid over to February 13, 2018, at 10 A.M., for continued hearing.

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 27th Street, for Block 7662, Lot 70, Borough of Brooklyn.

COMMUNITY BOARD #14BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice Chair Chanda, Commissioner Ottley-Brown and Commissioner Sheta4
Negative:.....0

ACTION OF THE BOARD – Laid over to February 13, 2018, at 10 A.M., for decision, hearing closed.

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 March 6, 2018, at 10 A.M., for continued hearing.

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 April 17, 2018, 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 31st Road, Block 569, Lot 17, Borough of Queens.

COMMUNITY BOARD #1Q

ACTION OF THE BOARD – Laid over to March 20, 2018, at 10 A.M., for continued hearing.

REGULAR MEETING

TUESDAY AFTERNOON, JANUARY 30, 2018

1:00 P.M.

Present: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta.

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

ACTION OF THE BOARD – Laid over to May 1, 2018, at 10 A.M., for continued hearing.

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

ACTION OF THE BOARD – Laid over to April 10, 2018, at 10 A.M., for continued hearing.

Carlo Costanza, Executive Director

MINUTES

*CORRECTION

This resolution adopted on October 17, 2017, under Calendar No. 218-03-BZ and printed in Volume 102, Bulletin Nos. 42-43, is hereby corrected to read as follows:

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 38th 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 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

MINUTES

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 minimum of 135 parking spaces shall be provided at the subject site;

THAT the term of this grant shall be limited to (i) the life of the regulatory agreement, dated March 21, 2014, and submitted with this application, (ii) the life of any subsequent amended, renewed, extended or new regulatory agreement that restricts the dwelling units to a substantially similar income mix or, in the alternative, at least the number of accessory residential parking spaces required pursuant to the parking regulations applicable in the zoning district closest to the subject site permitting as-of-right residential use shall be provided on site;

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.

***The resolution has been amended to correct the conditions only. Corrected in Bulletin No. 6, Vol. 103, dated February 9, 2018.**

BULLETIN

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February 16, 2018

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Tuesday, February 6, 2018**

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186-08-BZ	3065 Atlantic Avenue, Brooklyn
248-08-BZ	3550 Eastchester Road, Bronx
96-11-BZ	514-516 East 6 th Street, Manhattan
144-12-A	339 West 29 th Street, Manhattan
386-12-BZ	1925 Union Street, Brooklyn
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DOCKETS

New Case Filed Up to February 6, 2018

2018-14-A

596 East 81st Street, Property is situated on lot 90, which is bound by East 81st Street and Farragut Road, Block 07959, Lot(s) 0090, Borough of **Brooklyn, Community Board: 18**. Application by the NYC Department of Buildings pursuant to New York City Charter §§ 645(b)(3)(e) and 666.6(a) to request that the NYC Board of Standards and Appeals revoke the Certificate of Occupancy No. 300859122 issued on May 5, 2000. R5 zoning district R5 district.

2018-15-BZ

250 West 26th Street, Located at West 26th Street between 7th Avenue and 8th Avenue, distant 215.5' east of the corner of 8th Avenue and West 26th Street., Block 00775, Lot(s) 0064, Borough of **Manhattan, Community Board: 4**. Special Permit (§73-36) to permit the operation of a physical cultural establishment (Marcelo Garcia Brazilian Jiu Jitsu) on the third floor of an existing building contrary to ZR §32-10. C6-2A zoning district. C6-2A district.

2018-16-BZ

974 Sacket Avenue, Located on the south side of Sacket Avenue at intersection of Sacket Avenue and Radcliff Avenue, Block 04062, Lot(s) 0049, Borough of **Bronx, Community Board: 11**. Re-instatement (§11-411) of a previously approved variance which permitted the operation of non-storage garage which expired on April 19, 2002; Extension of Time to Obtain a Certificate of Occupancy which expired on April 13, 2000; Waiver of the Board's Rules. R4 zoning district. R4 district.

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

CALENDAR

REGULAR MEETING MARCH 6, 2018, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, March 6, 2018, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

SPECIAL ORDER CALENDAR

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 9th Street, Block 450, Lot 28, Borough of Manhattan.

COMMUNITY BOARD #3M

197-08-BZ

APPLICANT – Law Office of Jay Goldstein, for Carroll Gardens Realty, LLC, owner.

SUBJECT – Application March 6, 2018 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) to permit a four-story and penthouse residential building. The proposal was contrary to ZR Sections 23-141 (Floor Area, FAR & Open Space Ratio), 23-22 (Number of Dwelling Units), 23-45 (Front Yard), 23-462 (Side Yard), and 23-631 (Wall Height) which expired on March 16, 2014; Waiver of the Rules. R4 district.

PREMISES AFFECTED – 341 Troy Avenue, Block 1407, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #9BK

31-12-BZ

APPLICANT – Sheldon Lobel, P.C., for Cactus of Harlem, LLC, owner.

SUBJECT – Application August 16, 2016 – Extension of Time to Complete Construction of a previously approved Special Permit (§73-50) permitting a waiver of rear yard requirements (§33-292) to permit the construction of commercial building which expired on August 17, 2016. C8-3 zoning district.

PREMISES AFFECTED – 280 West 155th Street, Block 2040, Lot(s) 48, 61, 62, Borough of Manhattan.

COMMUNITY BOARD #10M

55-13-BZ

APPLICANT – Law Office of Jay Goldstein, for Yeshivas Novominsk, owner.

SUBJECT – Application March 6, 2018 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) to permit the enlargement of an existing yeshiva and dormitory (*Yeshiva Novominsk*), contrary to floor area (§24-11), wall height and sky exposure plane (§24-521), and side yard setback (§24-551) which expired on December 10, 2017. R5 zoning district.

PREMISES AFFECTED – 1690 60th Street (6002-6024 17th Avenue, 1680-1694 60th Street, 1695 61st Street), Block 5517, Lot 39, Borough of Brooklyn.

COMMUNITY BOARD #12BK

65-13-BZ

APPLICANT – Eric Palatnik, P.C., for Israel Rosenberg, owner.

SUBJECT – Application October 27, 2017 – Amendment of a previously approved Variance (§72-21) which permitted the construction of a three-story multiple dwelling (Use Group 2), contrary to ZR §42-00. The amendment seeks to permit an on-site parking space at the cellar level contrary to the previous Board approval. M1-1 & M1-2/R6A Special Mixed MX-4 district.

PREMISES AFFECTED – 123 Franklin Avenue, Block 1899, Lot 9, Borough of Brooklyn.

COMMUNITY BOARD #3BK

APPEALS CALENDAR

2017-254-255-A

APPLICANT – Eric Palatnik, P.C., for Ottavio Savo, owner.

SUBJECT – Application August 28, 2017 – Proposed construction of a one-family home not fronting a legally mapped street contrary to General City Law 36. R3X/SRD zoning district.

PREMISES AFFECTED – 115 and 117 Arbutus Avenue, Block 6523, Lot(s) 24, 27, Borough of Staten Island.

COMMUNITY BOARD #3SI

CALENDAR

**REGULAR MEETING
MARCH 6, 2018, 1:00 P.M.**

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, March 6, 2018, 1:00 P.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

ZONING CALENDAR

2017-192-BZ

APPLICANT – Greenberg Traurig, LLP, for Fort Hamilton, LLC, owner.

SUBJECT – Application May 26, 2017 – 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.

PREMISES AFFECTED – 5402-5414 Fort Hamilton Parkway/1002-1006 54th Street, Block 5673, Lot(s) 42 & 50, Borough of Brooklyn.

COMMUNITY BOARD #12BK

2017-204-BZ

APPLICANT – Paul F. Bonfilio, for Sergio Fernandez Vette Works, owner.

SUBJECT – Application June 7, 2017– Variance (§72-21) to permit the enlargement of a non-conforming Automotive Repair Facility (UG 16B) contrary to ZR §52-22. R4A zoning district.

PREMISES AFFECTED – 124-14 20th Avenue, Block 4169, Lot 21, Borough of Queens.

COMMUNITY BOARD #7Q

2017-228-BZ

APPLICANT – Fox Rothschild LLP, for Charles B. Wang Community Health Center, Inc., owner.

SUBJECT – Application July 17, 2017 – 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.

PREMISES AFFECTED – 131-66 40th Road, 131-68 40th Road, 40-46 College Point Boulevard, Block 5060, Lot(s) 37, 42, Borough of Queens.

COMMUNITY BOARD #7Q

2017-237-BZ

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

SUBJECT – Application August 11, 2017 – 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.

PREMISES AFFECTED – 134-37 35th Avenue, Block 4949, Lot 31, Borough of Queens.

COMMUNITY BOARD #7Q

2017-238-BZ

APPLICANT – Eric Palatnik, P.C., for C & G Empire Realty, LLC, owner.

SUBJECT – Application August 11, 2017 – 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.

PREMISES AFFECTED – 134-03 35th Avenue, Block 4949, Lot 46, Borough of Queens.

COMMUNITY BOARD #7Q

2017-283-BZ

APPLICANT – Law Office of Jay Goldstein, for 289 Grand Street Unit LLC, owner; Functional Fitness Studio 1, LLC, lessee.

SUBJECT – Application October 26, 2017 – 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.

PREMISES AFFECTED – 289 Grand Street, Block 2383, Block 7502, Borough of Brooklyn.

COMMUNITY BOARD #1BK

Carlo Costanza, Executive Director

MINUTES

**SPECIAL HEARING
TUESDAY MORNING, FEBRUARY 6, 2018
10:00 A.M.**

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

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

ACTION OF THE BOARD – Application withdrawn.

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 and an extension of term of a variance, previously granted by the Board, which expired June 19, 1999; 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 February 6, 2018, and then to decision on that same date; and

WHEREAS, by letter dated February 1, 2018, the applicant requests to withdraw this application, stating that an application to reinstate the previous grant will be required and that the applicant plans to file a new application accordingly.

Therefore it is Resolved, that the Board of Standards and Appeals does hereby *permit* the withdrawal of this application.

Adopted by the Board of Standards and Appeals, February 6, 2018.

186-08-BZ

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

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

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

COMMUNITY BOARD #5BK

ACTION OF THE BOARD – Application withdrawn.

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 and an extension of time to complete construction, which expired June 8, 2014; and

WHEREAS, a public hearing was held on this application on October 20, 2015, after due notice by publication in *The City Record*, with continued hearings on November 17, 2015, January 12, 2016, and April 5, 2016, and then to decision on February 6, 2018; and

WHEREAS, by correspondence dated February 2, 2018, the applicant request withdrawal of this application, stating that, as of May 2017, the subject site is located in an R8A zoning district and that a special permit is no longer necessary to establish a school at the subject site.

Therefore it is Resolved, that that Board of Standards and Appeals does hereby *permit* the withdrawal of this application.

Adopted by the Board of Standards and Appeals, February 6, 2018.

248-08-BZ

APPLICANT – New York City Board of Standards
OWNER – Joseph Alexander/New Covenant Christian Church, Inc.

SUBJECT – Application October 6, 2008 – Dismissal for Lack of Prosecution -- Variance (§72-21) to permit the development of a religious-based school and church, ontrary to floor area (§24-11), rear yard (§24-36), and parking (§25-31) regulations. R5 zoning district.

PREMISES AFFECTED – 3550 Eastchester Road, eastern side of Eastchester Road between Hicks Street and Needham Avenue, Block 4726, Lot 7, 36, 38, Borough of Bronx.

COMMUNITY BOARD #12BX

ACTION OF THE BOARD – Application withdrawn.

THE VOTE TO WITHDRAW –

MINUTES

Affirmative: Chair Perlmutter, Vice-Chair Chanda,
Commissioner Ottley-Brown and Commissioner Sheta.....4

Negative:0

THE RESOLUTION –

WHEREAS, this is an application under ZR § 72-21 to permit, in an R5 zoning district, the development of community-facility building for use as a school and house of worship that does not comply with zoning regulations for floor area ratio, rear yards and parking, contrary to ZR §§ 24-11, 24-36 and 25-31; and

WHEREAS, a public hearing was held on this application on January 24, 2012, after due notice by publication in *The City Record*, and then to decision on February 6, 2018; and

WHEREAS, by letter dated January 10, 2018, the applicant requests withdrawal of this application.

Therefore it is Resolved, that the Board of Standards and Appeals does hereby *permit* the withdrawal of this application.

Adopted by the Board of Standards and Appeals, February 6, 2018.

96-11-BZ

APPLICANT – Law Office of Marvin B. Mitzner, for 514-516 East 6th Street, owners.

SUBJECT – Application June 30, 2011 – Variance (§72-21) to legalize enlargements to an existing residential building, contrary to floor area (§23-145) and dwelling units (§23-22). R7B zoning district.

PREMISES AFFECTED – 514-516 East 6th Street, south side of east 6th Street, between Avenue A and Avenue B, Block 401, Lot 17, 18, Borough of Manhattan.

COMMUNITY BOARD #3M

ACTION OF THE BOARD – Application withdrawn.

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 under ZR §§ 72-21 to permit, in an R7B zoning district, a residential building that does not comply with zoning regulations for floor area and dwelling units, contrary to ZR §§ 23-145 and 23-22; and

WHEREAS, a public hearing was held on this application on December 6, 2011, after due notice by publication in *The City Record*, with a continued hearing on June 12, 2012, and then to decision on February 6, 2018; and

WHEREAS, by letter dated February 2, 2018, the applicant requests withdrawal of this application in light of the grant of vested rights under BSA Calendar Number 125-11-A and the grant of an application under Multiple Dwelling Law § 310 under BSA Calendar Number 217-09-A.

Therefore it is Resolved, that the Board of Standards and Appeals does hereby *permit* the withdrawal of this

application.

Adopted by the Board of Standards and Appeals, February 6, 2018.

144-12-A

APPLICANT – Law Offices of Marvin Mitzner LLC, for 339 W 29th LLC, owners.

SUBJECT – Application May 3, 2012 – Appeal of the Multiple Dwelling Law pursuant to §310 to allow the enlargement to a five-story building, contrary to §171(2)(f). R8B zoning district.

PREMISES AFFECTED – 339 West 29th Street, north side of West 29th Street between Eighth and Ninth Avenues, Block 753, Lot 16, Borough of Manhattan.

COMMUNITY BOARD #4M

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 under Multiple Dwelling Law (“MDL”) § 310 to permit, in an R8B zoning district, the enlargement of a five-story multiple dwelling, contrary to MDL § 171(2)(f); and

WHEREAS, a public hearing was held on this application, on September 25, 2012, after due notice by publication in *The City Record*, with continued hearings on November 20, 2012, February 12, 2013, and April 23, 2013, and then to decision on February 6, 2018; and

WHEREAS, by letter dated February 2, 2018, the applicant requests withdrawal of this application, stating that it appears a final determination on a related application before the New York City Landmarks Preservation Commission will render this application unnecessary.

Therefore it is Resolved, that the Board of Standards and Appeals does hereby *permit* the withdrawal of this application without prejudice.

Adopted by the Board of Standards and Appeals, February 6, 2018.

286-12-BZ

APPLICANT – Eric Palatnik, P.C., for People of Destiny Ministries International, Inc., owners.

SUBJECT – Application October 15, 2012 – Variance (§72-21) to permit a vertical enlargement and conversion of an existing two-story automotive repair facility to a four-story UG 4A House of Worship (*People of Destiny Church*), contrary to coverage ratio (§24-11),. R6 zoning district.

PREMISES AFFECTED – 1925 Union Street, north side of Union Street between Portal Street and Ralph Avenue, Block 1399, Lot 82, Borough of Brooklyn.

COMMUNITY BOARD #8BK

ACTION OF THE BOARD – Application withdrawn.

MINUTES

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 under ZR § 72-21 to permit, in an R6 zoning district, the enlargement and conversion of an existing two-story automotive repair facility to a four-story house of worship that does not comply with zoning regulations for lot coverage, rear yards and parking, contrary to ZR §§ 24-11, 24-391 and 25-30; and

WHEREAS, a public hearing was held on this application, on June 22, 2014, after due notice by publication in *The City Record*, with continued hearings on December 16, 2014, and March 3, 2015, and then to decision on February 6, 2018; and

WHEREAS, by letter dated January 10, 2018, the applicant requests withdrawal of this application.

Therefore it is Resolved, that the Board of Standards and Appeals does hereby *permit* the withdrawal of this application.

Adopted by the Board of Standards and Appeals, February 6, 2018.

189-13-A

APPLICANT – Rothkrug Rothkrug & Spector, for Linwood Avenue Building Corp., owner.

SUBJECT – Application June 25, 2013 – Proposed building does not front on legally mapped street, contrary to Section 36 of the General City Law. R3-1 zoning district.

PREMISES AFFECTED – 20 Dea Court, south side of Dea Court, 101’ West of intersection of Dea Court and Madison Avenue, Block 3377, Lot 100, Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Application withdrawn.

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 under General City Law § 36 to permit, in an R3-1 zoning district, the construction of a three-story building not fronting on a mapped street; and

WHEREAS, a public hearing was held on this application, on June 24, 2014, after due notice by publication in *The City Record*, with continued a hearing on March 10, 2015, and then to decision on February 6, 2018; and

WHEREAS, by letter dated February 2, 2018, the applicant requests withdrawal of this application, stating that plans for the subject site are under review for an alternate development proposal.

Therefore it is Resolved, that the Board of Standards and Appeals does hereby *permit* withdrawal of this

application.

Adopted by the Board of Standards and Appeals, February 6, 2018.

204-14-BZ

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

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

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

COMMUNITY BOARD #1BK

ACTION OF THE BOARD – 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 under ZR §§ 73-44 and 73-03 to permit, in an M1-2 zoning district, a reduction of parking spaces for an ambulatory diagnostic or treatment facility in Use Group 4 and commercial office use in parking requirement category B1 in Use Group 6, contrary to ZR § 44-21; and

WHEREAS, a public hearing was held on this application, on March 31, 2015, after due notice by publication in *The City Record*, and then to decision on February 6, 2018; and

WHEREAS, by letter dated February 5, 2018, the applicant requests withdrawal of this application without prejudice.

Therefore it is Resolved, that the Board of Standards and Appeals does hereby *permit* the withdrawal of this application without prejudice.

Adopted by the Board of Standards and Appeals, February 6, 2018.

63-15-BZ

APPLICANT – Sheldon Lobel, P.C., for Sutton Owners Corporation, Inc., owner; Harriet Harkavy, Esq., lessee.

SUBJECT – Application March 23, 2015 – Variance (§72-21) to legalize the three existing enclosures of portions of the terrace of Unit PHC located on the penthouse floor of the premises. R10 zoning district.

PREMISES AFFECTED – 35 Sutton Place, corner through-lot with frontage on 59th Street between Sutton Place and Riverview Terrace, Block 01372, Lot 73, Borough of Manhattan.

COMMUNITY BOARD #6M

MINUTES

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 under ZR § 72-21 to permit, in an R10 zoning district, the enclosures of portions of the terrace of Unit PHC on the penthouse floor of the subject building that do not comply with zoning regulations for permitted obstructions, floor area and height, contrary to ZR §§ 23-62, 23-145, 54-31, 23-633 and 23-692; and

WHEREAS, a public hearing was held on this application on December 15, 2015, after due notice by publication in *The City Record*, with a continued hearing on February 9, 2016, and then to decision on February 6, 2018; and

WHEREAS, by letter dated December 27, 2017, the applicant requests withdrawal of this application without prejudice.

Therefore it is Resolved, that the Board of Standards and Appeals does hereby *permit* the withdrawal of this application without prejudice.

Adopted by the Board of Standards and Appeals, February 6, 2018.

330-13-BZ

APPLICANT – Alexander Levkovich, for Dilshoda Nasriddinova, owner.

SUBJECT – Application December 31, 2013 – Special Permit (§73-622) for the legalization of an enlargement to an existing single family home contrary to floor area (ZR 23-141). R4-1 zoning district.

PREMISES AFFECTED – 2801 Brown Street, east side of Brown Street, 230’ south of intersection with Shore Parkway, Block 08800, Lot 0095, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Application dismissed for lack of jurisdiction.

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 under ZR §§ 73-622 and 73-03 to permit, in an R4-1 zoning district, the enlargement of a single-family detached residence that does not comply with zoning regulations for floor area and rear yards, contrary to ZR §§ 23-141 and 64-A353; 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 April 12, 2016, June 2, 2016, July 19, 2016, and October 14, 2016, and then to decision on February 6, 2018; and

WHEREAS, the subject site is occupied by an existing

residence that has been vertically elevated or reconstructed as of right under ZR § 64-00; and

WHEREAS, under ZR §§ 64-A20 and 64-A30, no building that is vertically elevated or reconstructed may subsequently be enlarged under ZR § 73-622.

Therefore it is Resolved, that the Board of Standards and Appeals does hereby *dismiss* this application for lack of jurisdiction.

Adopted by the Board of Standards and Appeals, February 6, 2018.

350-12-BZ

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

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

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

COMMUNITY BOARD #7BK

ACTION OF THE BOARD – Dismissed for lack of jurisdiction.

THE VOTE TO DISMISS –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Sheta.....4

Negative:0

THE RESOLUTION –

WHEREAS, this is an application for a variance, pursuant to ZR § 72-21, to permit the construction of an 11-story mixed-use community facility and residential building in an M3-1 zoning district, contrary use regulations applicable in the underlying district, specifically, ZR § 42-00; and

WHEREAS, the subject site is located on the northeast corner of 32nd Street and 2nd Avenue, in an M3-1 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 313 feet of frontage along 32nd Street, 109 feet of frontage along 2nd Avenue and 34,117 square feet of lot area; and

WHEREAS, a public hearing was held on June 17, 2014, after due notice by publication in *The City Record*, with continued hearings on August 19, 2014, March 24, 2015, March 31, 2015 and May 19, 2015, and then to decision on February 6, 2018; and

WHEREAS, by letter dated March 20, 2015, the New York City Economic Development Corporation states that, as the site is part of the Sunset Park Industrial Business Zone, residential and community facility use is inappropriate and contrary to city policy and requests that the application for a variance not be approved; and

WHEREAS, on May 19, 2015, the application was taken off the Board’s hearing calendar, at the applicant’s request; and

WHEREAS, by letter dated December 22, 2017, the applicant was informed that the application would be restored

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to the calendar and a public hearing held on February 6, 2017; and

WHEREAS, ownership of the site was transferred from the United States of America pursuant to the McKinney-Vento Homeless Assistance Act to the applicant for homeless assistance purposes by deed recorded on January 5, 2012; and

WHEREAS, on October 2, 2015, a Notice of Reverter was recorded against the property by the United States of America, acting by and through the Secretary of Health and Human Services, demanding the re-conveyance of the premises to the United States of America on account of a "substantial breach" by the applicant for failing to place the property into use for the purposes conveyed within 36 months from the date of the deed; and

WHEREAS, accordingly, the property is no longer owned by the applicant of record and is, in fact, owned by the federal government; and

Therefore, it is Resolved, that the subject application is hereby dismissed for lack of jurisdiction.

Adopted by the Board of Standards and Appeals, February 6, 2018.

182-95-BZ

APPLICANT – Rothkrug & Spector LLP, for 2465 Broadway Associates LLC., owner.

SUBJECT – Application October 14, 2014 – Extension of Term of a previously granted Special Permit (§73-36) for the continued operation of a PCE (*Equinox Fitness Club*) which expires on November 1, 2015; Amendment to expand the PCE into the cellar and the full third floor; Waiver of the Rules. C4-6A/R8 zoning district.

PREMISES AFFECTED – 2465 Broadway, West side of Broadway, 50' south of southwest corner of intersection of Broadway and West 92nd Street, Block 01239, Lot 52, Borough of Manhattan.

COMMUNITY BOARD #7M

ACTION OF THE BOARD – Off-Calendar.

183-95-BZ

APPLICANT – Rothkrug & Spector LLP, for Haymes Broadway LLC, owner.

SUBJECT – Application October 14, 2014 – Extension of Term of a previously granted Special Permit (§73-36) for the continued operation of a PCE (*Equinox Fitness Club*) which expires on November 1, 2015; Amendment to expand the PCE into the cellar and the full third floor; Waiver of the Rules. C4-6A/R8 zoning district.

PREMISES AFFECTED – 2473 Broadway, southwest corner of intersection of Broadway and West 92nd Street, Block 01239, Lot 55, Borough of Manhattan.

COMMUNITY BOARD #7M

ACTION OF THE BOARD – Off-Calendar.

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 – Application Denied.

THE VOTE TO GRANT –

Affirmative:0

Negative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Sheta.....4

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 previously granted variance, which expired on August 19, 2011; and

WHEREAS, a public hearing was held on May 23, 2017, after due notice by publication in *The City Record*, and granted on that same date; and

WHEREAS, no resolution was issued and the application was reopened at public hearing on February 6, 2018, and denied on that date due to a procedural defect; and

WHEREAS, the subject site is located on the northeast corner of Boller Avenue and Erskine Place, within an R3A zoning district, in the Bronx; and

WHEREAS, the site has approximately 40 feet of frontage along Boller Avenue, 190 feet of frontage along Erskine Place, 40 feet of frontage along Hunter Avenue, 7,661 square feet of lot area and is currently vacant; and

WHEREAS, the Board has exercised jurisdiction over the subject site since June 8, 2004, when, under the subject calendar number, the Board granted a variance, pursuant to ZR § 72-21 in what was then an R3-2 zoning district, to permit the construction of a church and community outreach center (Use Group 4) that does not comply with the zoning requirements for open space ratio, floor area ratio, height and setback and front and side yards, contrary to ZR §§ 24-11, 24-34, 24-35 and 24-521; and

WHEREAS, by letter dated January 23, 2006, the Board approved the removal of the sub-cellar from the plans approved in connection with the variance based on representation by the applicant's representative that unforeseen soil conditions and the significant costs associated with addressing them led the applicant to abandon the sub-cellar level of the proposed building; and

WHEREAS, on August 19, 2008, under the subject calendar number, the Board reopened the variance to grant a three (3) year extension of time to substantially complete construction pursuant to the 2004 variance, expiring August 19, 2011; and

WHEREAS, by letter dated November 18, 2016, the Board permitted modifications determined to be in substantial

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compliance with the previously approved plans, including a reduction in the floor area of the proposed building, and noted that the applicant's time to complete substantial construction of the proposed building had expired; and

WHEREAS, the applicant presently seeks an extension of time to complete construction and, pursuant to § 1-14.2 of the Board's Rules of Practice and Procedure, a waiver of § 1-07.3(c)(4) of the Board's Rules to permit the filing of this application more than four (4) years after the expiration of the time to complete construction; and

WHEREAS, with regards to post-1961 variances, § 1-07.3(c)(4) of the Board's Rules also states:

Applications for an extension of time to complete construction for post-1961 variances or post-1961 special permits must be filed as a new variance or special permit on the BZ calendar; and

WHEREAS, because the variance for this site was granted after 1961 and this application was filed more than four (4) years after expiration of the time to complete construction, the subject application is inappropriate and a new variance application must be filed; and

WHEREAS, the applicant filed for a new variance at the subject site on August 17, 2017, and that application was assigned BSA Cal. No. 2017-244-BZ; and

Therefore, it is Resolved, that the subject application is hereby denied and the underlying variance has lapsed as a matter of law.

Adopted by the Board of Standards and Appeals, February 6, 2018.

Carlo Costanza, Executive Director

BULLETIN

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February 23, 2018

DIRECTORY

MARGERY PERLMUTTER, *Chair*

SHAMPA CHANDA, *Vice-Chair*

DARA OTTLEY-BROWN

NASR SHETA

VACANT

Commissioners

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Tuesday, February 13, 2018**

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Affecting Calendar Numbers:

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Affecting Calendar Numbers:

89-15-BZ	92 Walworth Street, Brooklyn
2017-221-BZ	1781 Bay Ridge Parkway, Brooklyn

DOCKETS

New Case Filed Up to February 13, 2018

2018-17-BZ

2600 Hylan Boulevard, Located on the southern portion of block bounded by Hylan Boulevard, Ebbitts Street and New Dorp Lane, Block 03969, Lot(s) 0001, Borough of **Staten Island, Community Board: 2**. Special Permit (§73-36) to permit the operation of a Physical Culture Establishment (LA Fitness) to occupy 37,583 sq. ft. within a shopping center contrary to ZR §32-10. C4-1 zoning district. C4-1 district.

2018-18-BZ

2250 Linden Boulevard, Located on the southerly blockfront of Linden Boulevard between Ashford Street and Cleveland Street, Block 04359, Lot(s) 1,6, Borough of **Brooklyn, Community Board: 5**. Re-instatement (§11-411) of a previously approved variance permitted retail uses which expired on June 18, 2001; Amendment (§11-411) to permit the enlargement of one of the existing buildings; Waiver of the Board's Rules. R5 zoning district. R5 district.

2018-19-BZ

119 West 23rd Street, Located at N/S West 23rd Street between 6th and 7th Avenues, Block 00799, Lot(s) 0028, Borough of **Manhattan, Community Board: 4**. Special Permit (§73-36) to permit the operation of a physical cultural establishment (Humming Puppy) within a portion of the second floor of an existing building contrary to ZR §32-10. M1-6 and C6-3X zoning district. C6-3X & M1-6 district.

2018-20-BZ

2801 Avenue M, Located on the northeast corner of Avenue M and East 28th Street, Block 07646, Lot(s) 0007, 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) and ZR §23-461(1) (required side yard). R2 zoning district. 14 district.

2018-21-BZ

1773 East 22nd Street, Located at the East side of East 22nd Street between Quentin Road and Avenue R, Block 06805, Lot(s) 0078, Borough of **Brooklyn, Community Board: 15**. Special Permit (§73-622) to permit the enlargement of an existing single-family home contrary to ZR §23-142 (floor area, open space and lot coverage) and ZR §23-461(a) (required side yard). R3-2 zoning district. R3-2 district.

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

CALENDAR

**REGULAR MEETING
MARCH 20, 2018, 10:00 A.M.**

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, March 20, 2018, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

SPECIAL ORDER CALENDAR

551-37-BZ

APPLICANT – Eric Palatnik, P.C., for 91-23 LLC, owner.
SUBJECT – Application March 11, 2016 – Amendment (§11-413) to permit a change in use from an Automotive Repair Facility (UG 16B) to Automobile Sales (UG 16B). R1-2 zoning district.

PREMISES AFFECTED – 233-02 Northern Boulevard, Block 8166, Lot 20, Borough of Queens.

COMMUNITY BOARD #11Q

334-78-BZ

APPLICANT – Eric Palatnik, P.C., for 9123 LLC, owner.
SUBJECT – Application March 18, 2016 – Extension of Term of a previously approved Variance (§72-21) which permitted the operation of an Automotive Repair Facility (UG 16B) which expired on October 4, 2008; Amendment to permit changes to interior partitions and signage; Waiver of the Rules. R1-2 zoning district.

PREMISES AFFECTED – 233-20 Northern Boulevard, Block 8166, Lot 25, Borough of Queens.

COMMUNITY BOARD #11Q

540-84-BZ

APPLICANT – Eric Palatnik, P.C., for 341 Soundview Corp., owner.

SUBJECT – Application June 20, 2016 – Extension of Term of a previously approved Variance (§72-21) which permitted the operation of an Automotive Service Station (UG 16B) which expired on Jun 20, 2016. R3-2 zoning district.

PREMISES AFFECTED – 341 Soundview Avenue, Block 3473, Lot 43, Borough of Bronx.

COMMUNITY BOARD #9BX

175-95-BZ

APPLICANT – Alan J. Sigman, for Twi-light Roller Skating Rink, Inc., owner.

SUBJECT – Application April 17, 2017 – Extension of Term of a previously approved Variance (§72-21) which permitted the use of banquet hall (catering establishment) (UG9) which expired on December 10, 2016; Waiver of the Rules. C1-3/R5B & R3A zoning districts.

PREMISES AFFECTED – 205-35 Linden Boulevard, Block

11078, Lot 1, Borough of Queens.

COMMUNITY BOARD #12Q

216-07-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 1429 Second Avenue Associated LLC, owner; Equinox 74th Street, Inc., lessee.

SUBJECT – Application November 14, 2017 – Extension of Term of a previously approved Special Permit (§73-36) permitting the operation of physical culture establishment (Equinox) on all five levels of a mixed-use building which expires on January 8, 2018. C1-9 district.

PREMISES AFFECTED – 255 East 74th Street, Block 1429, Lot 7502, Borough of Manhattan.

COMMUNITY BOARD #8M

28-15-BZ

APPLICANT – Law Offices of Marvin B. Mitzner, LLC, for 33 Bre Inc., owner; Spa 88 LLC, lessee.

SUBJECT – Application November 16, 2017 – Extension of Time to Obtain a Certificate of Occupancy for a previously approved Special Permit (§73-36) which permitted the operation of a physical culture establishment (*Spa 88*) on the first, cellar and sub-cellar floors of the existing building which expired on October 14, 2017; Amendment of the previous Board approval to permit that a Temporary Certificate of Occupancy be obtain. C6-4 zoning district.

PREMISES AFFECTED – 88 Fulton Street, Block 77, Lot 24, Borough of Manhattan.

COMMUNITY BOARD #1M

CALENDAR

**REGULAR MEETING
MARCH 20, 2018, 1:00 P.M.**

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, March 20, 2018, 1:00 P.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

ZONING CALENDAR

2017-54-BZ

APPLICANT – Law Office of Lyra J. Altman, for Hadasa Mendelsohn & Marcus Mendelsohn, owners.

SUBJECT – Application February 23, 2017 – 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.

PREMISES AFFECTED – 1215-1217 East 28th Street, Block 7646, Lot 39, Borough of Brooklyn.

COMMUNITY BOARD #14BK

2017-187-BZ

APPLICANT – John M. Marmora, Esq. c/o K & L Gates LLP, for 3680 Tremont Realty, owner; McDonald's USA, LLC, lessee.

SUBJECT – Application May 22, 2017 – 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/R4-1 zoning district.

PREMISES AFFECTED – 3660 East Tremont Avenue, Block 5543, Lot 86, Borough of Bronx.

COMMUNITY BOARD #10BX

2017-214-BZ

APPLICANT – Eric Palatnik, P.C., for Mark Strimber, owner.

SUBJECT – Application June 16, 2017 – 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.

PREMISES AFFECTED – 1459 East 24th Street, Block 7678, Lot 25, Borough of Brooklyn.

COMMUNITY BOARD #14BK

2017-216-BZ

APPLICANT – Sheldon Lobel, P.C., for Safeguard Chemical Corp., owner; Civic Builders, Inc., lessee.

SUBJECT – Application July 16, 2017 – 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.

PREMISES AFFECTED – 411 Wales Avenue, Block 2574, Lot 82, Borough of Bronx.

COMMUNITY BOARD #1BX

2017-217-BZ

APPLICANT – Akerman, LLP, for Hylan Properties, LLC, owner.

SUBJECT – Application June 20, 2017 – 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).

PREMISES AFFECTED – 4855 Hylan Boulevard, Block 6401, Lot(s) 1, 3, 5 & 6, Borough of Staten Island.

COMMUNITY BOARD #3 SI

Carlo Costanza, Executive Director

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REGULAR MEETING TUESDAY MORNING, FEBRUARY 13, 2018 10:00 A.M.

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

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

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

Absent: Chair Perlmutter.....1

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 a variance, previously granted by the Board, which expired on June 2, 2017, and an extension of time to obtain a certificate of occupancy, which expired on July 10, 2008; 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 February 13, 2018; and

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

WHEREAS, the subject site is located on the east side of Amboy Road, between Buffalo Street and Hopkins Avenue, in an R3-1 zoning district, in the Special South Richmond Development District, on Staten Island; and

WHEREAS, the site has approximately 112 feet of frontage along Amboy Road, a depth of 91 feet at the southern end of the site and 141 feet at the northern end of the site and is occupied by a one-story retail store and 11 accessory parking spaces; and

WHEREAS, the Board has exercised jurisdiction over the subject site since June 2, 1987, when, under the subject calendar number, the Board granted a variance, pursuant to ZR § 72-21, to legalize, at site that was then located in an R3-2 zoning district, a one-story horizontal enlargement and the construction of an additional one-story enlargement of an existing one-story non-conforming Use Group 6 retail store

for a term of ten (10) years, expiring June 2, 1997, on condition that the hours of operation be limited to 8:00 a.m. to 9:00 p.m.; there be no open uses; all loading and unloading be done during business hours; all signs comply with C1 district regulations; the lot be kept clean and free of debris at all times; all outdoor lighting face down and away from adjoining residences; and all conditions appear on the certificate of occupancy; and

WHEREAS, on February 3, 1998, under the subject calendar number, the Board extended the term of the variance for a term of ten (10) years, expiring June 2, 1007, and amended the variance to permit the change in hours of operation to 6:00 a.m. to 11:00 p.m. Monday through Saturday and 7:00 a.m. to 11:00 p.m. on Sundays, on condition that the fencing and gates be maintained; signs be limited to those shown on the BSA-approved drawings; accessory parking be maintained in accordance with the BSA approved plans; the premises be maintained graffiti free and a new certificate of occupancy be obtained within one (1) year, by February 3, 1999; and

WHEREAS, on July 10, 2007, under the subject calendar number, the Board again extended the term of the variance for an addition ten (10) year term, expiring June 2, 2017, on condition that the hours outdoor seating to be limited to 7:00 a.m. to 7:00 p.m. Monday through Sunday on condition that all conditions be listed on the certificate of occupancy and all conditions from prior resolution not specifically waived by the Board remain in effect, including that a new certificate of occupancy be obtained within one (1) year of the amended resolution, by July 10, 2008; and

WHEREAS, the previous term having expired, the applicant seeks a 20 year extension of the term of the variance; and

WHEREAS, the applicant explains that a longer term is requested in order to obtain bank financing to facilitate site repairs, that a bank will only amortize a loan for the duration of the variance term, that, due to this fact, the owners of the site have had to pay for site improvements—including the re-stuccoing of the building more than a decade ago—out of pocket, and that many more improvements—including the repaving of the parking lot, replacement of interior flooring and replacement of the roof—will need to be made in the near future; and

WHEREAS, at hearing, the Board expressed a concern that in the future, the granting of a 20 year term at this time would make 20 year terms appear to be the rule when, in fact, they are the exception; and

WHEREAS, however, the Board also notes that it maintains the absolute discretion in setting the duration of future terms, if any, for the subject variance; and

WHEREAS, additionally, the applicant requests 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 one thirty (30) days after the expiration of the time to obtain a new certificate of occupancy; and

WHEREAS, at hearing the Board inquired about the

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compliance of signage at the site with C1 signage regulations and requested that the applicant remove any excess signage; the Board additionally requested that the plans provided be revised to more accurately reflect site conditions—including the type, number and spacing of plantings, HVAC equipment, an ice box and a dumpster—and that debris, including an old fence, be removed from the site; and

WHEREAS, the applicant having satisfactorily addressed the Board’s concerns, the Board finds that a 20 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 June 2, 1987, as amended through July 10, 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 twenty (20) years from the expiration of the last grant, to expire on June 2, 2037, *on condition* that all work and site conditions shall comply with drawings filed with this application marked ‘Received October 4, 2017- One (1) sheet; and *on further condition*:

THAT the term of this grant shall expire on June 2, 2037;

THAT the hours of operation shall be limited to 6:00 a.m. to 11:00 p.m. Monday through Saturday and 7:00 a.m. to 11:00 p.m. on Sundays;

THAT the hours of outdoor seating shall be limited to 7:00 a.m. to 7:00 p.m. Monday through Sunday;

THAT all loading and unloading be done during business hours;

THAT all signs comply with C1 district regulations;

THAT the lot be kept clean and free of debris at all times;

THAT the fencing and gates shall be maintained

THAT all outdoor lighting face down and away from adjoining residences;

THAT the accessory parking shall be maintained in accordance with the BSA-approved plans;

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, February 13, 2018.

173-95-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 30 East 85th 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 85th Street, Block 1496, Lot 7501, Borough of Manhattan.

COMMUNITY BOARD #8M

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

Absent: Chair Perlmutter.....1

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 a previously granted special permit for a physical culture establishment (“PCE”), which expired on August 15, 2015, and an amendment to the same to permit a change in operator of the PCE; and

WHEREAS, a public hearing was held on this application on December 5, 2017, after due notice by publication in *The City Record*, with a continued hearing on February 13, 2018, and then to decision on that date; and

WHEREAS, Vice-Chair Chanda and former Vice-Chair Hinkson 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 at the southwest corner of East 85th Street and Madison Avenue, partially within a C5-1 zoning district and the Special Madison Avenue Preservation District and partially within an R8B zoning district, in Manhattan; and

WHEREAS, the site has approximately 120 feet of frontage along East 85th Street, 142 feet of frontage along Madison Avenue and is occupied by a 30-story mixed-use residential and commercial building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since March 3, 1998, when, under the subject calendar number, the Board granted a special permit, pursuant to ZR § 73-36, legalizing an existing PCE on a portion of the first floor and the entire second floor of the subject building on conditions that there be no change in ownership or operating control of the PCE without prior application to and approval from the Board; locked tamper-proof sound controllers on the aerobics and house sound systems be maintained in order to minimize adverse noise impacts on the residential units in the building; aerobics’ instructors’ voice be non-amplified; all speakers be hung

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from acoustically non-transmitting wires in accordance with BSA-approved plans; individual video systems with headphones and no external speakers be provided and maintained for each client in the cardio-vascular area in accordance with BSA-approved plans; all free weights be rubberized and maintained with rubberized or other sound attenuating materials; all weight machines be maintained with sound-attenuating springs; fire prevention measures be installed and maintained in accordance with BSA-approved plans; the hours of operation be limited to 6:00 a.m. to 11:00 p.m. Monday through Friday and 8:00 a.m. to 10:00 p.m. Saturday and Sunday; the aerobics room not be used before 7:00 a.m. Monday through Friday and not before 9:00 a.m. on Saturdays and Sundays; this special permit be limited to a term of ten (10) years from August 15, 1995, to expire on August 15, 2005; and a certificate of occupancy be obtained within one year; and

WHEREAS, on December 19, 2000, under the subject calendar number the Board waived its Rules of Practice and Procedure, reopened and amended the March 1998 resolution to grant a one year extension of time to obtain a certificate of occupancy, expiring December 19, 2001; and

WHEREAS, on August 8, 2006, under the subject calendar number, the Board granted a ten (10) year extension of term, expiring August 15, 2015, on condition that all conditions from prior resolutions not specifically waived by the Board remain in effect; and

WHEREAS, the previous term having expired, the applicant seeks the subject relief; and

WHEREAS, the applicant additionally 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 (2) years after the expiration of the term; and

WHEREAS, finally, the applicant requests an amendment of the resolution approving a change in the owner and operator of the PCE from David Barton Gym to Equinox as well as modifications to the interior layout; and

WHEREAS, the applicant represents that the hours of operation remain the same as was approved in 1998 and that an interior fire alarm and sprinklers are installed within the subject PCE space; and

WHEREAS, at hearing, the Board inquired as to whether the PCE was permitted within the portion of the building located in an R8-B zoning district, the district boundary for which is located 100 feet to the west of and parallel to Madison Avenue (an area approximately 20 wide by 102 feet deep), or whether, pursuant to ZR § 77-11, the use regulations applicable in a C5-1 zoning district may be applied to the entire zoning lot, thus permitting the PCE use in that portion of the building; and

WHEREAS, in response, the applicant provided plans for the subject building approved by the Department of Buildings on January 8, 1987, and indicating on the site plan, with regards to the portion of the building located in an R8-B zoning district, "R8B Treated As C5-1/R10 As Per 77-03 & 77-11;" 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 March 3, 1998, as amended through August 8, 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 August 15, 2025, *on condition* that all work and site conditions shall comply with drawings filed with this application marked 'Received August 3, 2017-Five (5) sheets; and *on further condition*:

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

THAT locked tamper-proof sound controllers on the aerobics and house sound systems shall be maintained in order to minimize adverse noise impacts on the residential units in the building;

THAT aerobics' instructors' voice shall be non-amplified; all speakers shall be hung from acoustically non-transmitting wires in accordance with BSA-approved plans;

THAT individual video systems with headphones and no external speakers shall be provided and maintained for each client in the cardiovascular area in accordance with BSA-approved plans;

THAT all free weights shall be rubberized and maintained with rubberized or other sound attenuating materials;

THAT all weight machines shall be maintained with sound-attenuating springs;

THAT the existing sprinklers and fire alarm systems shall be modified per the modifications to the interior layout, operational and maintained;

THAT the hours of operation shall be limited to 6:00 a.m. to 11:00 p.m. Monday through Friday and 8:00 a.m. to 10:00 p.m. Saturday and Sunday;

THAT the aerobics room shall not be used before 7:00 a.m. Monday through Friday and not before 9:00 a.m. on Saturdays and Sundays;

THAT this special permit shall be limited to a term of ten (10) years from August 15, 2015, to expire on August 15, 2025;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a 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);

THAT the Department of Buildings must ensure

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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 13, 2018.

53-09-BZ

APPLICANT – David Salamon, for Schenck Avenue LLC, owner.

SUBJECT – Application September 12, 2017 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) for the construction of a three-family home on a vacant undersized lot. This application sought to vary floor area (§23-141); front yard (§23-45) side yard (§23-461) and parking (§25-161) which expired on January 12, 2014 pursuant to ZR §73-23; Waiver of Board’s Rules. R5 zoning district.

PREMISES AFFECTED – 540 Schenck Avenue, Block 4075, Lot 118, Borough of Brooklyn.

COMMUNITY BOARD #5BK

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
Absent: Chair Perlmutter.....1

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Board’s Rules of Practice and Procedure, reopening and an extension of time to complete construction pursuant to a previously granted variance, which expired on January 12, 2014; and

WHEREAS, a public hearing was held on this application on February 13, 2018, 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 site and surrounding neighborhood; and

WHEREAS, the subject site is located on the southwest corner of Schenck Avenue and Dumont Avenue, in an R5 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 20 feet of frontage along Schenck Avenue, 80 feet of frontage along Dumont Avenue, 1,600 square feet of lot area and is currently vacant; and

WHEREAS, the Board has exercised jurisdiction over the subject site since January 10, 2010, when, under the subject calendar number, the Board granted a variance, pursuant to ZR § 72-21 to permit the construction of a three-story three-family home that does not comply with zoning requirements relating to lot area and front yards, contrary to ZR §§ 23-32, 23-33 and 23-45, on condition that the parameters of the proposed building be as follows: a maximum floor area of 1,980 square feet (1.25 FAR), a lot

coverage of approximately 41 percent, 940 square feet of open space, a side yard with a width of 37 feet along the western lot line, a front yard with a depth of 10 feet along the eastern lot line, a wall height of 30 feet, a total height of 30 feet, and parking for a minimum of three cars; the internal floor layouts on each floor of the proposed building be as reviewed and approved by the Department of Buildings (“DOB”); there be no habitable room in the cellar; and that significant construction proceed in accordance with ZR § 72-23, that is, by January 10, 2014; and

WHEREAS, the time for substantial construction to have been completed having expired, the applicant seeks the subject relief; and

WHEREAS, the applicant additionally requests a waiver, pursuant to § 1-14.2 of the Board’s Rules of Practice and Procedure, of Rule § 1-07.3(c)(3) to permit the filing of this application less than four (4) years after the expiration of the time to complete construction; and

WHEREAS, the applicant states that construction has yet to commence on the site because of difficulty in securing financing, but that financing at favorable interest rates has been secured; and

WHEREAS, at hearing, the Board noted that the last Board approval was prior to the 2014 revision to the New York City Building Code and the previously approved plans may require modifications to comply with that Code; and

WHEREAS, in response, the applicant states that they have already met with DOB to identify and address any Building Code issues; and

WHEREAS, nevertheless, the Board notes that this application is only with regards to extending the time in which to complete construction pursuant to the 2010 variance grant, the Board makes no findings nor grants any waivers with regards to Building Code compliance and no plans other than those previously approved by the Board in 2010 have been reviewed as part of this application; 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 January 10, 2010, so that as amended this portion of the resolution reads: “to grant a four (4) year extension of time to complete construction to February 13, 2022; and *on further condition*:

THAT substantial construction shall be completed by February 13, 2022, as evidenced by an inspection and determination by the Department of Buildings;

THAT the parameters of the proposed building be as follows: a maximum floor area of 1,980 square feet (1.25 FAR), a lot coverage of approximately 41 percent, 940 square feet of open space, a side yard with a width of 37 feet along the western lot line, a front yard with a depth of 10 feet along the eastern lot line, a wall height of 30 feet, a total height of 30 feet, and parking for a minimum of three cars;

THAT the internal floor layouts on each floor of the proposed building be as reviewed and approved by the

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Department of Buildings;

THAT there be no habitable room in the cellar;

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); 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, February 13, 2018.

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 – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Sheta.....3

Negative:0

Absent: Chair Perlmutter.....1

THE RESOLUTION –

WHEREAS, this is an application for an amendment to a previously granted special permit and an extension of term for the same, which expired on September 14, 2015; and

WHEREAS, a public hearing was held on this application on August 8, 2017, after due notice by publication in *The City Record*, with a continued hearing on December 12, 2017, and then to decision on February 13, 2018; and

WHEREAS, Commissioner Ottley-Brown performed an inspection of the site and surrounding neighborhood; and

WHEREAS, Community Board 10, Bronx, recommends approval of the subject application; and

WHEREAS, the subject site is located at the northeast corner of Roebing Avenue and Hutchinson River Parkway, in an R4 (C1-2) zoning district, in the Bronx; and

WHEREAS, the site has approximately 143 feet of frontage along Roebing Avenue, 99 feet of frontage along Hutchinson River Parkway, 12,483 square feet of lot area

and is occupied by a one-story eating and drinking establishment with a drive-through and accessory on-site parking; and

WHEREAS, the Board has exercised jurisdiction over the subject site since June 2, 1987, when, under BSA Cal. No. 473-86-BZ, the Board granted a special permit, pursuant to ZR § 73-243, legalizing the addition of a drive-through facility to an existing eating and drinking establishment for a term of five (5) years, expiring June 2, 1992, on several conditions; and

WHEREAS, on September 14, 2010, under the subject calendar number, the Board granted a special permit, pursuant to ZR §§ 73-243 and 73-03, permitting the operation of an accessory drive-through facility in conjunction with an as-of-right Use Group 6 easing and drinking establishment for a term of five (5) years, expiring September 14, 2015, on condition that the premises be maintained free of debris and graffiti; parking and queuing space for the drive-through be provided as indicated on the BSA-approved plans; all landscaping and/or buffering be maintained as indicated on the BSA-approved plans; exterior lighting be directed away from the nearby residential uses; all signage conform with the underlying C1 zoning district regulations and conditions appear on the certificate of occupancy; and

WHEREAS, the previous term having expired, the applicant seeks the subject relief; and

WHEREAS, the applicant additionally seeks an amendment to the resolution to permit a one-hour extension to the hours of operation on Friday and Saturday (to Sunday through Thursday, 6:00 a.m. to 2:00 a.m. and Friday and Saturday, 6:00 a.m. to 3:00 a.m.) and change the landscaping indicated on the 2010 BSA-approved plans to permit modifications to the planting areas at the southern edge of the site; and

WHEREAS, in light of the request to increase the hours of operation, the Board requested that the application send notification of the proposed amendment to neighbors located within 400 feet of the subject site; and

WHEREAS, the Board received one form objection citing the smell emanating from the site as nuisance; and

WHEREAS, the applicant states that the drive-through facility provides reservoir spaces sufficient for ten (10) cars in satisfaction of ZR § 73-243(a); that the drive-through facility will cause minimal, if any, interference with traffic flow in the immediate area in satisfaction of ZR § 73-243(b); that the 11 on-site accessory parking spaces comply with parking regulations in satisfaction of ZR § 73-243(c); that the character of the commercially-zoned street frontage within 500 feet of the site remains oriented towards motor vehicle traffic in compliance with ZR § 73-243(d); that the drive-through has operated at this site for decades without adverse impact on nearby residences in satisfaction of ZR § 73-243(e); and that the existing opaque chain link fencing between the subject site and the adjacent residential building is adequate buffering adequate in satisfaction of ZR § 73-243(f); and

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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 September 14, 2010, 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 September 14, 2015, to expire on September 14, 2020; *on condition* that all work and site conditions shall comply with drawings filed with this application marked ‘Received January 25, 2018’-Seven (7) sheets; and *on further condition*:

THAT the term of this grant shall expire on September 14, 2020;

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

THAT parking and queuing space for the drive-through shall be provided as indicated on the BSA-approved plans;

THAT all landscaping and/or buffering shall be maintained as indicated on the BSA-approved plans;

THAT exterior lighting shall be directed away from the nearby residential uses;

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 signage shall comply with the underlying C1 zoning district regulations;

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, February 13, 2018.

60-90-BZ

APPLICANT – Michael DeRuvo, R.A., for Nissim Kaley, owner.

SUBJECT – Application June 9, 2016 – Extension of Term of a previously granted Special Permit (§73-211) for the continued use of a Gasoline Service Station (Citgo) and Automotive Repair Shop which expired on February 25, 2016; Waiver of the Rules. C2-1/R3X zoning district.

PREMISES AFFECTED – 525 Forest Avenue, Block 148, Lot 29, Borough of Staten Island.

COMMUNITY BOARD #1SI

ACTION OF THE BOARD – Laid over to March 27, 2018, at 10 A.M., for postponed hearing.

101-92-BZ

APPLICANT – Sheldon Lobel, P.C., for Portrem Realty Company, LLC, owner.

SUBJECT – Application December 2, 2016 – Extension of Term (§11-411) for the continued operation of the use of parking lot for non-commercial, non-transient parking which expired on October 26, 2013; Waiver of the Rules. C1-4/R8 zoning district.

PREMISES AFFECTED – 66-98 East Burnside Avenue, Block 2829, Lot 45, Borough of Bronx.

COMMUNITY BOARD #5BX

ACTION OF THE BOARD – Laid over to May 1, 2018, at 10 A.M., for continued hearing.

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

ACTION OF THE BOARD – Laid over to March 27, 2018, at 10 A.M. for deferred decision.

356-04-BZ

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for R & F 55th Street Commercial Owner LLC, owner.

SUBJECT – Application November 10, 2016 – Extension of Term of a previously approved Special Permit (§73-36) permitting the operation of a Physical Cultural Establishment (*The Core Club*) which expired on June 7, 2015; Waiver of the Rules. C5-2.5 (MID) zoning district.

PREMISES AFFECTED – 60 East 55th Street, Block 1290, Lot(s) 1103 and 1104, Borough of Manhattan.

COMMUNITY BOARD #5M

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THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice Chair Chanda,
Commissioner Ottley-Brown and Commissioner Sheta4
Negative:.....0

ACTION OF THE BOARD – Laid over to February
27, 2018, at 10 A.M., for decision, hearing closed.

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 March 27,
2018, at 10 A.M., for continued hearing.

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

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice Chair Chanda,
Commissioner Ottley-Brown and Commissioner Sheta4
Negative:.....0

ACTION OF THE BOARD – Laid over to March 27,
2018, at 10 A.M., for decision, hearing closed.

2017-103-A

APPLICANT – Law Office of Steven Simicich, for Lera
Property Holdings, LLC, owner.

SUBJECT – Application April 7, 2017 – 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

PREMISES AFFECTED – 3924 Victory Boulevard, Block
2620, Lot 126, Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Laid over to April 10,
2018, at 10 A.M., for continued hearing.

2017-193-A thru 2017-199-A

APPLICANT – Eric Palatnik, P.C., for Frank McErlean,
owner.

SUBJECT – Application May 26, 2017 – 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.

PREMISES AFFECTED – 9, 10, 11, 12, 14, 15, and 17
Tulepo Court, Block 2260, Lot(s) 4, 10, 60, 62, 64, 66, 68,
Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Laid over to March 27,
2018, at 10 A.M., for continued hearing.

2017-218-A

APPLICANT – Law Office of Steven Simicich, for Leonard
Censi, owner.

SUBJECT – Application June 20, 2017 – Proposed single
family detached residential building which is within the
unbuilt portion of the mapped street, contrary to General
City Law 35. R3A zoning district.

PREMISES AFFECTED – 35 Howe Street, Block 302, Lot
19, Borough of Staten Island.

COMMUNITY BOARD #1SI

ACTION OF THE BOARD – Laid over to April 10,
2018, at 10 A.M., for continued hearing.

ZONING CALENDAR

91-14-BZ

APPLICANT – Fox Rothschild, LLP, 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 – Application denied.

THE VOTE TO GRANT –

Affirmative: Commissioner Ottley-Brown.....1
Negative: Chair Perlmutter and Vice-Chair Chanda.....2
Abstain: Commissioner Sheta.....1

THE RESOLUTION –

WHEREAS, the decision of the Department of
Buildings (“DOB”), dated April 14, 2014, acting on DOB
Application No. 320595450 reads in pertinent part:

1. ZR 23-141(a): Proposed floor area is more
than permitted and contrary to ZR 23-141(a);
2. ZR 23-141(a): Proposed open space ratio is
less than required and contrary to ZR 23-

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141(a); and

WHEREAS, the Board notes that since the filing of this application, the Zoning Resolution has been amended and the text formerly found at ZR § 23-141(a), setting forth the maximum floor area ratio and minimum required open space ratio permitted in an R2 zoning district, is now simply found in ZR § 23-141; thus, the Board treats the citation to ZR § 23-141(a) in DOB's objection as a citation to ZR 23-141; and

WHEREAS, this is an application under ZR § 73-622 to permit, in an R2 zoning district, the proposed enlargement of an existing single-family 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 September 16, 2014, after due notice by publication in *The City Record*, with a continued hearing on October 28, 2014; and

WHEREAS, at the hearing scheduled for March 3, 2015, the application was marked off the Board's calendar due to the applicant's request for the adjournment of the four preceding hearings, scheduled for December 9, 2014, January 13, 2015, February 3, 2015, and March 3, 2015; and

WHEREAS, the application was returned to the Board's hearing calendar for continued hearings on December 6, 2016, and February 13, 2018, with four additional continued hearings adjourned at the applicant's request in the interim, and then to decision on February 13, 2018; 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 14, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the southwest corner of Bedford Avenue and Avenue M, in an R2 zoning district, in Brooklyn; and

WHEREAS, the site consists of four consecutive tax lots with approximately 170 feet of frontage along Bedford Avenue, 100 feet of frontage along Avenue M and 17,000 square feet of lot area; and

WHEREAS, each of the four tax lots is occupied by a two-story plus attic dwelling with a garage in the rear yard; and

WHEREAS, the applicant proposes to demolish the existing two-story plus attic structures located on tax lots 48, 50 and 52 and enlarge the two-story plus attic single-family residence located on tax lot 45, which has a total of 3,371 square feet of floor area, a floor area ratio ("FAR") of 0.67 and an open space ratio of 99 percent; 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

- (c) Avenue I, Nostrand Avenue, Kings Highway, Avenue O and Ocean Avenue, Community District 14, in the Borough of Brooklyn; and 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

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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 originally proposed to merge three full tax lots (Lots 45, 48 and 50) and a portion of a fourth tax lot (Lot 52) into a single zoning lot with 160 feet of frontage along Bedford Avenue and 16,000 square feet of total lot area, demolishing the residences located on Lots 48, 50 and 52 and enlarging the existing two-story plus attic single-family residence located on Lot 45 into a residence with 14,560 square feet of floor area, 0.91 FAR, 8,318 square feet of open space, an open space ratio of 57 percent and a 21'-11" rear yard, contrary to zoning requirements for FAR, open space ratio and rear yards; and

WHEREAS, the applicant now proposes to merge the entirety of Lots 45, 48, 50 and 52 into a single zoning lot with 170 feet of frontage along Bedford Avenue and 17,000 square feet of total lot area, demolishing the residences located on Lots 48, 50 and 52 and enlarging the single-family residence located on Lot 45 into a residence with 12,459 square feet of floor area, 0.73 FAR, 9,897 square feet of open space, an open space ratio of 79.4 and a 30 foot rear yard, contrary to zoning requirements for FAR and open space ratio; and

WHEREAS, at the subject site, a maximum FAR of 0.50 (8,500 square feet of floor area) and an open space ratio of 150.0 are required pursuant to ZR § 23-141; and

WHEREAS, the proposed building is additionally proposed to provide 42 percent lot coverage, a building footprint of 7,103 square feet, a 15'-1" front yard fronting Bedford Avenue and a 17'-11" front yard on Avenue M, a building wall width of 144'-1" on the Bedford Avenue frontage (85 percent of the frontage) and a building width of 79'-10" on the Avenue M frontage (80 percent of the frontage); and

WHEREAS, the applicant submitted an analysis of single- or two-family dwellings located within 400 feet of the subject premises within an R2 zoning district (the "Study Area") concluding that, of the 99 residences in the Study Area, excluding the subject lots, 80 (81 percent) have an FAR of more than 0.50 and 20 (20 percent) have an FAR of 0.73 or greater; and 97 (98 percent) have an open space ratio of less than 150.00 and 25 (25 percent) have an open space ratio of 79.4 or less; and

WHEREAS, the Board acknowledges that 13 of the residences in the Study Area (13 percent) have obtained

special permits pursuant to ZR § 73-622 and constructed enlargements pursuant to those grants, including a residence located directly across Bedford Avenue from the subject site that obtained a special permit in 2003 for an enlargement that resulted in dwelling with an FAR of 1.02, 5,088 square feet of floor area and an open space ratio of 29.0, as claimed by the subject applicant's consultant, but unverified by the Board¹; and

WHEREAS, with regards to the consistency of the subject proposal with the existing streetscape, however, a majority of the Board finds that the subject proposal is oversized as compared to its neighbors and, thus, alters its essential character; in particular, the building wall of the proposed enlargement is taller and several times longer along its Bedford Avenue frontage than its neighbors on that block, measuring approximately 144'-1" (85 percent of its frontage) where every other residence with frontage on Bedford Avenue within the Study Area has a building wall ranging from 17 to 66 feet wide occupying between 50 and 90 percent of their total lot frontage; and

WHEREAS, this conclusion is further evidenced by the applicant's additional analyses of the floor area, building width, building width as a percentage of lot frontage, building footprint, front yard depth, lot area, lot width/frontage and lot coverage of the 99 dwellings located within the Study Area; and

WHEREAS, these analyses demonstrate that, with regards to floor area, 4 dwellings in the Study Area (4 percent) have more than 5,000 square feet of floor area; with regards to building width, zero dwellings have a width equal to or greater than 144'-1" and one dwelling (1 percent) has a width greater than or equal to 79'-10"; with regards to the widths of dwellings as a percentage of their lot frontage, 7 lots (7 percent) are occupied by dwellings that take up 80 percent or more of their lot frontage and 2 lots (2 percent) are occupied by dwellings with a width of 85 percent or more of their lot frontage; with regards to building footprint, zero dwellings have a building footprint of 7,103 square feet or greater; with regards to front yard depth, 47 dwellings (47 percent) have at least one front yard with a depth of 15'-1" or less; with regards to lot area, 8 dwellings (8 percent) are located on lots having 5,000 square feet of lot area or greater and one lot (1 percent) has more than 10,000 square feet of lot area; with regards to lot width/frontage, 12 lots (12 percent) have 100 feet of frontage or more and zero dwellings are on lots having frontage equal to or greater than 170 feet; and with regards to lot coverage, 11 dwellings (11 percent) have lot coverage of 42 percent or greater; and

WHEREAS, one Board Commissioner states, however, that the subject proposal is within the limits of special permits previously granted by the Board, the only difference being that the subject zoning lot is larger; and

¹ The Board's resolution for that special permit, granted under BSA Cal. No. 31-03-BZ (July 22, 2003), is silent with regards to the FAR and open space ratio permitted by that grant.

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WHEREAS, the Board acknowledges that the subject site, comprised of multiple tax lots, is atypically large for the immediate area—there is only one other property within the Study Area (1 percent) with a lot area of more than 10,000 square feet—and a majority of the Board identifies this fact as one that distinguishes this application from the 13 other special permit applications previously granted by the Board and constructed within the Study Area, all which are located on lots with lot areas of between 3,000 square feet and 8,363 square feet and frontages between 37.5 feet and 100 feet; and

WHEREAS, the Board notes that, as evidenced by the 1997 City Planning Commission Report for the New York City Department of City Planning’s (“DCP”) application to, among other things, add ZR § 73-622 to the Zoning Resolution (N 970203 ZRY, December 22, 1997, the “1997 CPC Report”), the purpose of the special permit was to provide owners of residences developed prior to the adoption of the 1961 Zoning Resolution the opportunity to enlarge those homes, many of which were rendered legal non-compliances by the 1961 Zoning Resolution, in order to house growing families or meet contemporary living standards in a manner that is consistent with the surrounding neighborhood; and

WHEREAS, specifically, the 1997 CPC Report cites the “need for an alternative method [to a variance or a special permit pursuant to ZR § 73-621] for allowing for the upgrading of an aging housing stock,” which was “designed for life styles that have significantly changed over time”; the special permit was intended to enable the construction of “additional bathrooms, upgraded kitchens, family rooms and additional bedrooms that necessitate major structural changes to existing homes,” which was theretofore thwarted by the Zoning Resolution and resulted in “much of the housing stock remaining unimproved and many households leaving the city who might otherwise have stayed”; and

WHEREAS, the 2016 City Planning Commission Report on the application submitted by Community Board 10, Brooklyn, to remove Community District 10 from applicability under ZR § 73-622 (N 160377 ZRK, September 12, 2016, the “2016 CPC Report”) reiterates that the original intent of the special permit “was to provide a means for growing families to add a bedroom, bathroom or extend a kitchen, within certain limitations, that would allow the enlargement consistent with the existing neighborhood character”; and

WHEREAS, the 1997 CPC Report also references a comprehensive review of zoning regulations affecting residential developments in R3, R4 and R5 districts being prompted by “a surge in the demolition of sound single and two-family detached and semi-detached homes and their replacement with bulky, often attached three story buildings that were not in context with the surrounding area”; and

WHEREAS, the Board notes that while the subject proposal is not an “attached” building, it is premised on the demolition of three two-family residences and the construction, in their place, of an enlargement that the

majority of the Board finds is not in context with the surrounding area and may serve as precedent for a renewed surge in the demolition of “sound single and two-family detached and semi-detached homes” and their replacement with large residences constructed across multiple tax lots, similar to the one herein proposed, via the subject special permit, which was not created for such purpose; and

WHEREAS, in light of the foregoing, the Board has determined that the evidence in the record does not support the findings required to be made under ZR § 73-622.

Therefore it is Resolved, that the subject application is hereby denied.

Adopted by the Board of Standards and Appeals, February 13, 2018.

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 21st Street, Block 6783, Lot 18, Borough of Brooklyn.

COMMUNITY BOARD #15BK

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

Absent: Chair Perlmutter.....1

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated November 20, 2015, acting on DOB Application No. 320914702 reads in pertinent part:

1. ZR 23-141(b): The proposed floor area exceeds the maximum .50 FAR permitted; contrary to ZR 23-141(b);
2. ZR 23-141(b): The proposed lot coverage exceeds the maximum permitted lot coverage of 35 percent; contrary to ZR 23-141(b);
3. ZR 23-141(b): The proposed open space is less than the minimum required 65 percent; contrary to ZR 23-141(b);
4. ZR 23-461(a): The proposed side yards are less than the minimum required width of (5) feet and minimum combined width of (13) feet; contrary to ZR 23-461(a);
5. ZR 23-47: The proposed rear yard depth is less than the minimum required (30) feet; contrary to ZR 23-47;
6. ZR 23-631(b): The proposed perimeter wall

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exceeds the maximum permitted height of (21) feet; contrary to ZR 23-631(b); and

WHEREAS, the Board notes that since the filing of this application, the Zoning Resolution has been amended and the text formerly found at 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 § 73-622 to permit, in an R3-2 zoning district, the proposed conversion of a two-family residence to a single-family residence and enlargement of the same that does not comply with the zoning requirements for floor area, lot coverage, open space, side yards, rear yard and perimeter wall height, contrary to ZR §§ 23-142, 23-461(a), 23-47 and 23-631(b); 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 June 27, 2017, and then to decision on February 13, 2018; and

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

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

WHEREAS, the subject site is located on the west side of East 21st Street, between Avenue P and Quentin Road, 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 two story plus cellar and attic detached two-family residence with 2,534 square feet of floor area, a floor area ratio ("FAR") of 0.63, 75 percent open space, 25 percent open space, side yards measuring 4'-3" and 4'-9.5", a 49'-10" rear yard and an existing perimeter wall height of 23'-11.5"; 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

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the subject special permit is available; and

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

WHEREAS, the applicant originally proposed an extension at the rear that would result in a residence with 4,343 square feet of floor area, 1.09 FAR and a rear yard of 20 feet at all levels; and

WHEREAS, in response to the Board's comments regarding the maintenance of sufficient floor joists and walls for the proposal to constitute an "enlargement" of an "existing" residence for the purposes of the special permit and the neighborhood character study, which illustrated that adjacent property owners have compliant rear yards and the building located at the rear of this site has a rear yard with a depth of 35 feet, the applicant revised the proposal and now proposes to convert the existing two-family residence to a single-family residence and enlarge the residence with a two-story plus cellar and attic extension at the rear resulting in a residence with 4,209 square feet of floor area, 1.05 FAR, 46 percent lot coverage, 54 percent open space, side yards measuring 4'-3" and 4'-9.5", a rear yard of 20 feet at the first floor and 25 feet at the second floor and attic, and a perimeter wall with a height of 22'-5.75"; and

WHEREAS, at the subject site, a maximum FAR of 0.50 is permitted, maximum lot coverage of 35 percent is permitted and at least 65 percent open space is required pursuant to ZR § 23-142; two side yards, each with a minimum width of five feet and a combined total width of at least 13 feet, are required pursuant to ZR § 23-461(a); a rear yard with a depth of not less than 30 feet is required pursuant to ZR § 23-47; and a maximum perimeter wall height of 21 feet is permitted pursuant to ZR § 23-47(b); and

WHEREAS, the applicant provided a 1930 Sanborn map of the area demonstrating that since at least that time, the subject site has been occupied by a dwelling in substantially the same location on the zoning lot as the existing dwelling and that, therefore, the existing side yard widths are legal non-compliances; and

WHEREAS, the applicant submitted an analysis of single- or two-family dwellings located within 400 feet of the subject premises within an R3-2 zoning district (the "Study Area") concluding that, of the 40 residences in the Study Area, excluding the subject site, 31 (78 percent) have more than 35 percent lot coverage and less than 65 percent open space; and

WHEREAS, for purposes of evaluating the floor area and FAR herein proposed, the applicant submitted an analysis of single- or two-family dwellings on the subject tax block (Block 6783) and the tax block located immediately to the east (Block 6784) located in an R3-2 zoning district concluding that, of those 37 residences, 30 (81 percent) have FARs greater than 0.50 (between 0.52 and 1.15 FAR); and

WHEREAS, with regards to the proposed rear yard conditions, the applicant submitted an analysis of the rear yard conditions on subject tax block demonstrating that, among the 12 single- or two-family residences on the subject

tax block located in an R3-2 zoning district, two (17 percent) have rear yards with a depth of less than 30 feet (their rear yards measure 27 feet and 28 feet); and

WHEREAS, finally, with regards to the perimeter wall height, the applicant submits that the proposed perimeter wall height is more than a foot lower than the existing non-complying perimeter wall; 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 conversion of a two-family residence to a single-family residence and enlargement of the same that does not comply with the zoning requirements for floor area, lot coverage, open space, side yards, rear yard and perimeter wall height, contrary to ZR §§ 23-142, 23-461(a), 23-47 and 23-631(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 June 8, 2017"-Seven (7) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area ratio of 1.04 (4,209 square feet of floor area), a maximum lot coverage of 46 percent, at least 54 percent open space, side yards measuring at least 4'-3" and 4'-9.5", a rear yard of at least 20 feet at the first floor and at least 25 feet at the second floor and attic levels and a maximum perimeter wall height of 22'-5.75", 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 filling in of the double height space in the attic above the master bedroom shall render the special permit 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, February 13, 2018.

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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 27th Street, for Block 7662, Lot 70, Borough of Brooklyn.

COMMUNITY BOARD #14BK

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

Absent: Chair Perlmutter.....1

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated December 19, 2017, acting on Department of Buildings (“DOB”) Application No. 321040743 reads in pertinent part:

1. Proposed F.A.R. of .98 and O.S.R. of .58 constitute an increase in the degree of the existing non-compliance contrary to Sec. 23-141 of the NYC Zoning Resolution;
2. Proposed horizontal enlargement provides less than the required rear yard contrary to Sec. 23-47 of the N.Y.C. Zoning Resolution;
3. The proposed horizontal enlargement provides less than the minimum required side yard contrary to Sec. 23-461 of the N.Y.C. Zoning Resolution; 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 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 October 17, 2017, after due notice by publication in *The City Record*, with a continued hearing on January 30, 2018, and then to decision on February 13, 2018; and

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

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

WHEREAS, the subject site is located on the west side of East 27th 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 27th Street, a depth of 100 feet and 4,000 square feet of lot area; and

WHEREAS, the site is occupied by a three-story plus

basement and attic single-family detached residence with 3,869 square feet of floor area, a floor area ratio (“FAR”) of 0.97, an existing open space ratio of 76, side yards measuring 9’-9” and 3’-11” and a rear yard with a depth of 32’-7”; 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

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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 originally proposed a one-story plus basement enlargement resulting in 5,153 square feet of floor area, 1.29 FAR, an open space ratio of 45 and a 20 foot rear yard at the first floor; and

WHEREAS, at hearing, the Board requested a reduction in the degree of the enlargement and the applicant revised the proposal; and

WHEREAS, the applicant now proposes to enlarge the existing residence with a one-story plus basement enlargement resulting in a dwelling with 3,941 square feet of floor area, 0.99 FAR, an open space ratio of 58 percent, side yards with widths of 9'-9" and 3'-11" and a 20 foot rear yard at the first floor with 36 foot rear yards at all levels above; and

WHEREAS, the proposed floor area was reduced, in part, by lowering the floor-to-ceiling height of the basement beneath the existing dwelling to 6'-10" so as to create a cellar, instead, and floor space that is exempt from floor area calculations; and

WHEREAS, the Board makes no finding as to whether the lowering of the floor-to-ceiling height in this manner is compliant with the Zoning Resolution or the applicable New York City Building Code and defers to the Department of Buildings regarding the characterization of this space; and

WHEREAS, regardless of DOB's determination as to the correct characterization of the cellar/basement space, the maximum FAR permitted for the subject dwelling by this grant shall be limited to 0.99 FAR; and

WHEREAS, at the subject site, a maximum FAR of 0.50 is permitted and a minimum open space ratio of 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 with a depth of not less than 30 feet is required pursuant to ZR § 23-47; and

WHEREAS, the applicant provided a historical Sanborn map and 1940 tax photograph of the site to demonstrate that the subject building existed at the site in substantially the same location on the zoning lot prior to adoption of the 1961 Zoning Resolution and, thus, the existing side yards are legal non-compliances; 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 133 dwellings in the Study Area, excluding the subject site, 98 dwellings (74 percent) have an FAR greater than 0.50 and, of those 98 dwellings, 30 dwellings (31 percent) have an FAR greater than 0.92; 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 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 5, 2018"-Eighteen (18) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area ratio of 0.99 (3,941 square feet of floor area), a minimum open space ratio of 58, side yards with widths of at least 9'-9" and 3'-11" and a rear yard of at least 20 feet at the first story and at least 30 feet at the second story and above, 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 DOB shall make the determination as to the proper characterization of the lowest floor of the residence as a cellar or basement for purposes of the inclusion of that floor space in floor area calculations, but under no circumstance shall the maximum floor area ratio of the subject building be in excess of 0.99; and

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

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

Adopted by the Board of Standards and Appeals, February 13, 2018.

2016-4340-BZ

CEQR #17-BSA-046Q

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 40th Road, Block 5066, Lot(s) 110-150, Borough of Queens.

COMMUNITY BOARD #7Q

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

Absent: Chair Perlmutter.....1

THE RESOLUTION –

WHEREAS, the decision on behalf of the Queens Borough Commissioner, dated November 14, 2016, acting on Department of Buildings (“DOB”) Application No. 421374845 reads in pertinent part:

The proposed building height exceeds the maximum height limitation by the Flight Obstruction map of La Guardia airport as per Sect. ZR 6[1]-20 [et seq.] . . . ; and

WHEREAS, this is an application under ZR § 73-66 to permit, on a site located 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 July 18, 2017, after due notice by publication in *The City Record*, with a continued hearing on October 3, 2017, and then to decision on February 13, 2018; and

WHEREAS, Vice-Chair Chanda and Commissioner Ottley-Brown 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 an irregularly shaped lot comprised of two adjacent tax lots (Lot 110 and Lot 150) located at the termination of 40th Road, west of College Point Boulevard, to the east of the Van Wyck Expressway and to the north of Long Island Railroad tracks, within a C4-2 zoning district, in Queens; and

WHEREAS, a Zoning Lot Description, recognizing the merger of the two lots, was filed with the New York City Department of Finance on November 30, 2017; and

WHEREAS, the site has approximately 116,157 square

feet of lot area and is currently occupied by a two-story building; and

WHEREAS, the applicant proposes to redevelop the site, which is located within the LaGuardia Airport Flight Obstruction Area, with two residential buildings (the “North Tower” and “South Tower”) and one commercial building (the “Hotel Center”, collectively, the “Development”) whose heights penetrate transitional surfaces within the Airport Approach District, contrary to ZR § 61-21, and requests a special permit, pursuant to ZR § 73-66, to permit their construction; and

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 Development 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, because 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 sixteen (16) Determination of No Hazard to Air Navigation, dated January 11, 2018, under Aeronautical Study Nos. 2017-AEA-13064-OE, 2017-AEA-13065-OE,

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2017-AEA-13066-OE, 2017-AEA-13067-OE, 2017-AEA-13068-OE, 2017-AEA-13069-OE, 2017-AEA-13070-OE, 2017-AEA-13071-OE, 2017-AEA-13072-OE, 2017-AEA-13073-OE, 2017-AEA-13074-OE, 2017-AEA-13075-OE, 2017-AEA-13076-OE, 2017-AEA-13077-OE, 2017-AEA-13078-OE and 2017-AEA-13079-OE, stating that the FAA's aeronautical study of the Development, 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 228 above mean sea level ("AMSL"), the Development would have no substantial adverse effect on the safe and efficient utilization of the navigable airspace by aircraft or by the operation of air navigation facilities and not be a hazard to air navigated provided that (1) all structures are marked and lighted in accordance with FAA Advisory circular 70/7460-1 L Change 1, Obstruction Marking and Lighting, red lights – Chapters 4,5(Red),&12; and (2) any failure or malfunction that lasts more than thirty (30) minutes and affects a top light or flashing obstruction light, regardless of its position, should be reported immediately so a Notice to Airmen ("NOTAM") can be issued and reported against as soon as normal operation is restored (the "FAA Determinations"); and

WHEREAS, accordingly, the maximum building heights approved by the FAA are 228 feet AMSL or 216 feet above ground level ("AGL"); and

WHEREAS, the Board notes that the elevations, as represented on the plans, of the highest points on the North Tower, South Tower and Hotel Center are 225'-1" AMSL, 225'-1" AMSL and 225'-7" AMSL respectively, all of which are less than 228 feet AMSL; and

WHEREAS, the Board notes that the obstruction standards referenced in the FAA Determinations are similar, but not identical, to those found in the Zoning Resolution and that the maximum building heights of 228 feet AMSL includes temporary construction equipment such as cranes, derricks, etc., which may be used during actual construction of the structure, but notes that equipment shall not exceed the overall height of 228 feet AMSL and any temporary construction equipment of greater height would require separate notice to the FAA; and

WHEREAS, the FAA Determinations further require that (1) FAA Form 7460-2, Notice of Actual Construction or Alteration, be e-filed any time the project is abandoned or (a) at least ten (10) days prior to start of construction and (b) within five (5) days after the construction reaches its greatest height; (2) any changes in coordinates, heights and frequencies or use of greater power, except those frequencies specified in the Colo Void Clause Coalition; Antenna System Co-Location; Voluntary Best Practices, effective November 21, 2007, voids the determination; (3) any future construction or alteration, including increase to heights, power or the addition of other transmitters, requires separate notice to the FAA; and (4) cranes to be used for the project be e-filed with the FAA at least 60-90 days prior to exceeding the greatest structure AGL height to prevent

construction delays; and

WHEREAS, the FAA Determinations expire on July 11, 2019, unless (a) the construction is started (not necessarily completed) and FAA Form 7460-2, Notice of Actual Construction or Alteration, is received by the FAA; (b) extended, revised or terminated by the issuing office; (c) construction is subject to the licensing authority of the Federal Communications Commission ("FCC") and an application for a construction permit has been filed; and

WHEREAS, all conditions contained in the FAA Determinations 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, the Port Authority of New York and New Jersey, which operates LaGuardia Airport, requests that all conditions stated in the FAA Determinations 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, 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. 17BSA046Q, dated November 23, 2016; and

WHEREAS, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-66 and 73-03; 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 the required findings under under ZR §§ 73-66 and 73-03, to permit, on a site located in a C4-2 zoning district, the construction of buildings that exceed 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 January 24, 2018"-fifteen (15) sheets; and *on further condition*:

THAT the maximum height of all buildings, including all appurtenances, shall be as follows: 228 feet AMSL or 216 feet AGL;

THAT all structures shall be marked and lighted in accordance with FAA Advisory circular 70/7460-1 L Change 1, Obstruction Marking and Lighting, red lights – Chapters 4,5(Red),&12;

THAT any failure or malfunction that lasts more than thirty (30) minutes and affects a top light or flashing obstruction light, regardless of its position, shall be reported immediately so a Notice to Airmen ("NOTAM") can be

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issued and reported against as soon as normal operation is restored;

THAT temporary construction equipment shall not exceed the overall height of 228 feet AMSL or 216 feet AGL;

THAT any temporary construction equipment greater than 228 feet AMSL or 216 feet AGL in height shall require separate notice to the FAA;

THAT FAA Form 7460-2, Notice of Actual Construction or Alteration, shall be e-filed any time the project is abandoned or (a) at least ten (10) days prior to start of construction and (b) within five (5) days after the construction reaches its greatest height;

THAT any changes in coordinates, heights and frequencies or use of greater power, except those frequencies specified in the Colo Void Clause Coalition; Antenna System Co-Location; Voluntary Best Practices, effective November 21, 2007, shall void this special permit;

THAT any future construction or alteration, including increase to heights, power or the addition of other transmitters, shall require separate notice to the FAA;

THAT cranes to be used for the project be e-filed with the FAA at least 60-90 days prior to exceeding the greatest structure AGL height to prevent construction delays;

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, February 13, 2017.

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

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice Chair Chanda, Commissioner Ottley-Brown and Commissioner Sheta4

Negative:.....0

ACTION OF THE BOARD – Laid over to April 10,

2018, at 10 A.M., for decision, hearing closed.

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 97th Street aka 116 East 98th Street, Block 1625, Lot 7, Borough of Manhattan.

COMMUNITY BOARD #11M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice Chair Chanda, Commissioner Ottley-Brown and Commissioner Sheta4

Negative:.....0

ACTION OF THE BOARD – Laid over to March 27, 2018, at 10 A.M., for decision, hearing closed.

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 19th Avenue, Block 5457, Lot 166, Borough of Brooklyn.

COMMUNITY BOARD #12BK

ACTION OF THE BOARD – Laid over to May 1, 2018, at 10 A.M., for continued hearing.

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 19th Street, Block 794, Lot 63, Borough of Manhattan.

COMMUNITY BOARD #4M

ACTION OF THE BOARD – Laid over to March 27, 2018, at 10 A.M., for continued hearing.

MINUTES

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 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 May 15, 2018, at 10 A.M., for continued hearing.

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

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice Chair Chanda, Commissioner Ottley-Brown and Commissioner Sheta4

Negative:.....0

ACTION OF THE BOARD – Laid over to April 17, 2018, at 10 A.M., for decision, hearing closed.

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 April 17, 2018, at 10 A.M., for continued hearing.

MINUTES

**REGULAR MEETING
TUESDAY AFTERNOON, FEBRUARY 13, 2018
1:00 P.M.**

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

ZONING CALENDAR

89-15-BZ

APPLICANT –Law Office of Jay Goldstein, for G & W
Enterprises Inc., owner.

SUBJECT – Application April 21, 2015 – Variance (§72-
21) to permit the construction of a 4-story, 4-family home
contrary to §42-11. M1-1 zoning district.

PREMISES AFFECTED –92 Walworth Street, Block 1735,
Lot 16, Borough of Brooklyn.

COMMUNITY BOARD #3BK

ACTION OF THE BOARD – Laid over to May 1,
2018, at 10 A.M., for continued hearing.

2017-221-BZ

APPLICANT – Eric Palatnik, P.C., for Spartan Petroleum
Corp., owner.

SUBJECT – Application June 30, 2017 – 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.

PREMISES AFFECTED – 1781 Bay Ridge Parkway, Block
6215, Lot 47, Borough of Brooklyn.

COMMUNITY BOARD #11BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice Chair Chanda,
Commissioner Ottley-Brown and Commissioner Sheta4

Negative:.....0

ACTION OF THE BOARD – Laid over to April 17,
2018, at 10 A.M., for decision, hearing closed.

Carlo Costanza, Executive Director

BULLETIN

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March 9, 2018

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Tuesday, February 27, 2018**

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2017-240-BZ	310 Lenox Avenue, Manhattan
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DOCKETS

New Case Filed Up to February 27, 2018

2018-22-A

255 18th Street, Located between 5th and 6th Avenue, Block 00873, Lot(s) 0069, Borough of **Brooklyn, Community Board: 7**. Request for a revocation, by the New York City Building's Department, of Certificate of Occupancy No. 301016898F issued for a four-story walk-up apartment building. R6B zoning district. R6B district.

2018-23-A

29 Herbert Street, Located at the northeast corner of intersection of Herbert Street and Seguine Avenue, Block 06681, Lot(s) 105, Borough of **Staten Island, Community Board: 3**. Proposed development of a three-story mix-use building not fronting on a mapped street contrary to General City Law 36. C1-1/R3X (SRD) C1-1 (R3X) (SRD) district.

2018-24-A

31 Herbert Street, Located at the northeast corner of intersection of Herbert Street and Seguine Avenue, Block 06681, Lot(s) 104, Borough of **Staten Island, Community Board: 3**. Proposed development of a three-story mix-use building not fronting on a mapped street contrary to General City Law 36. C1-1/R3X (SRD) C1-1 (R3X) (SRD) district.

2018-25-BZ

109 Wortman Avenue, Located on Wortman Avenue between Sheffield Avenue and Granville Payne Avenue, Block 04368, Lot(s) 0033, Borough of **Brooklyn, Community Board: 5**. Special Permit (§73-44) for reduction of required off-street parking spaces for proposed ambulatory diagnostic treatment health care facilities (UG 4A) parking requirement. M1-1 Zoning District. M1-1 district.

2018-26-BZ

79-03 Roosevelt Avenue, located on the north side of Rossevelt Avenue, 22 feet east of the intersection formed by 79th Street and Roosevelt Avenue., Block 01290, Lot(s) 46, Borough of **Queens, Community Board: 3**. Special Permit (§73-244) to allow an eating and drinking establishment without restrictions and no limitation on entertainment and dancing contrary to ZR §32-21. C2-2/R5 zoning district. C2-3/R6 district.

2018-27-BZ

16 Dover Street, located on Dover Street between Shore Boulevard and Hampton Avenue., Block 08729, Lot(s) 12, Borough of **Brooklyn, Community Board: 15**. Special Permit (§73-622) to legalize previous enlargement and further enlarge an existing single-family home contrary to ZR §23-142 (floor area and lot coverage) and ZR §23-47 (rear yard). R3-1 zoning district. R3-1 district.

2018-28-BZ

130-20 Farmers Boulevard, Located at the west of intersection of Farmers Boulevard and Merrick Boulevard, Block 12542, Lot(s) 0003, Borough of **Queens, Community Board: 12**. Special Permit (§73-36) to permit the operation of a physical cultural establishment (Blink Fitness) to operate within a new commercial building to occupy a portion of the first floor and the entire second floor contrary to ZR §32-10. C2-3/R5D zoning district. C2-3 (R5D) R3X district.

2018-29-BZ

1637 Madison Place, Block 07702, Lot(s) 0028, Borough of **Brooklyn, Community Board: 18**. Special Permit (§73-621) to permit the enlargement of an existing single-family home contrary to ZR §23-142 (floor area ratio, lot coverage and open space). R3-2 zoning district. R3-2 district.

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

CALENDAR

REGULAR MEETING MARCH 27, 2018, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, March 27, 2018, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

SPECIAL ORDER CALENDAR

436-53-BZ

APPLICANT – Sheldon Lobel, P.C., for RNA Turnpike Realty LLC, owner.

SUBJECT – Application January 13, 2016 – Extension of Term (§11-411) of a variance permitting the operation of an Automotive Service Station (UG 16B) which expired on February 24, 2014; Amendment (§11-412) to permit the enlargement of the existing building and to permit the conversion of the repair bays to an accessory convenience store; Waiver of the Rules. R3-2 zoning district.

PREMISES AFFECTED – 141-50 Union Turnpike, Block 6634, Lot 34, Borough of Queens.

COMMUNITY BOARD #8Q

393-59-BZ

APPLICANT – Sheldon Lobel, P.C., for Peter Ciardullo, owner; Richard Finkelstein, lessee.

SUBJECT – Application January 5, 2016 – Extension of Term (11-411) for an extension of term of the previously granted variance to a convenience store, pump island and metal canopies for a term of ten years which expired January 15, 2012 and a waiver of the Rules.

PREMISES AFFECTED – 1945 Bartow Avenue aka 2801 Edison Avenue, Block 4800, Lot 29, Borough of Bronx.

COMMUNITY BOARD #12BX

138-87-BZ

APPLICANT – Carl A. Sulfaro, Esq., for Philip Cataldi Trust #2, owner.

SUBJECT – Application August 3, 2017 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of car rental facility (UG 8C) which expired on January 12, 2013; Amendment to permit changes to the interior layout and to the exterior of the building; Waiver of the Rules. C2-2/R2 zoning district.

PREMISES AFFECTED – 218-36 Hillside Avenue, Block 10678, Lot 14, Borough of Queens.

COMMUNITY BOARD #13Q

60-90-BZ

APPLICANT – Michael DeRuvo, R.A., for Nissim Kaley, owner.

SUBJECT – Application June 9, 2016 – Extension of Term of a previously granted Special Permit (§73-211) for the continued use of a Gasoline Service Station (Citgo) and Automotive Repair Shop which expired on February 25, 2016; Waiver of the Rules. C2-1/R3X zoning district.

PREMISES AFFECTED – 525 Forest Avenue, Block 148, Lot 29, Borough of Staten Island.

COMMUNITY BOARD #1SI

40-06-BZ

APPLICANT – MP Design and Construction/Maria Maloney, for UDR 10 Hanover-LLC-Constantine Koukoulis, owner; 10 Hanover Sq Gym, LLC-Alex Reznik-Senior MGM Dir, lessee.

SUBJECT – Application June 9, 2017 – Extension of Term of a previously approved Special Permit (§73-36) which permitted the operation of a Physical Culture Establishment (Goldman-Sachs) on the cellar and sub-cellar levels in a 21-story mixed-use building which expired on August 22, 2016; Amendment to permit the change in operator to (Complete Body) and a change in hours of operation; Waiver of the Rules. C5-5 (LM) zoning district.

PREMISES AFFECTED – 10 Hanover Sq (aka 4-12 Hanover Sq. 110-124 Pearl St, 76-88 Water Street), Block 31, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #1M

APPEALS CALENDAR

102-15-A

APPLICANT – Eric Palatnik, P.C., for Kathleen Spezio, owner.

SUBJECT – Application May 11, 2015 – Proposed enlargement of a building located partially within the bed of mapped unbuilt street, pursuant Article 3 Section 35 of the General City Law and waiver under ZR 72-10-(g) . R3-2/SRD zoning district.

PREMISES AFFECTED – 1088 Rossville Avenue, Block 7067, Lot 1, Borough of Staten Island.

COMMUNITY BOARD #3SI

2017-285-A

APPLICANT – Rosenberg Estis, P.C., for Committee for Environmental Sound Development/ Amsterdam Avenue Redevelopment Associates, LLC, owner.

SUBJECT – Application October 26, 2017 – 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.

CALENDAR

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.

PREMISES AFFECTED – 200 Amsterdam Avenue, Block 1158, Lot 133, Borough of Manhattan.

COMMUNITY BOARD #7M

**REGULAR MEETING
MARCH 27, 2018, 1:00 P.M.**

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, March 27, 2018, 1:00 P.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

ZONING CALENDAR

2017-8-BZ

APPLICANT – Sheldon Lobel, P.C., for Academic Leadership Charter School, owner.

SUBJECT – Application January 9, 2017 – 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.

PREMISES AFFECTED – 356-362 East 139th Street, Block 2301, Lot(s) 12, 13, 14, 15, Borough of Bronx.

COMMUNITY BOARD #1BX

2017-191-BZ

APPLICANT – Sheldon Lobel, P.C., for EMPSRGGREENE, LLC, owner.

SUBJECT – Application May 25, 2017 – 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).

PREMISES AFFECTED – 47 Greene Street, Block 475, Lot 50, Borough of Manhattan.

COMMUNITY BOARD #2M

2017-213-BZ

APPLICANT – Slater & Beckerman, P.C., for Dynamic Youth Community, Inc., owner.

SUBJECT – Application June 14, 2017 – 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).

PREMISES AFFECTED – 1808 Coney Island Avenue, Block 6592, Lot 39, Borough of Brooklyn.

COMMUNITY BOARD #12BK

2017-280-BZ

APPLICANT – Fox Rothschild LLP, for TF Cornerstone, owner; CPFC Op Co LLC, lessee.

SUBJECT – Application October 17, 2017 – Special Permit (§73-36) to permit 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.

PREMISES AFFECTED – 33 Bond Street, Block 166, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #2BK

Carlo Costanza, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, FEBRUARY 27, 2018
10:00 A.M.**

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

SPECIAL ORDER CALENDAR

172-97-BZ

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

SUBJECT – Application August 28, 2017 – Re-Hearing of a previously approved Variance (§72-21) which permitted the conversion of a portion of the subject building from theater use (UG8) to catering hall (UG 9) which was denied on December 9, 2003. Upon request for an Extension of Term; Amendment to legalize the change in use of a portion of the ground floor from catering hall (UG 9) to a supermarket (UG 6). The remainder of the building remains subject to a variance granted pursuant to BSA calendar number: 530-32-BZ. C1-3/R6 & R6 zoning district.

PREMISES AFFECTED – 1029 Brighton Beach Avenue, Block 8709, Lot 60, Borough of Brooklyn.

COMMUNITY BOARD #13BK

ACTION OF THE BOARD – Application for rehearing denied.

THE VOTE –

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 of an application previously denied by the Board and for an amendment to permit, partially in an R6 zoning district and partially in an R6 (C1-3) zoning district, a supermarket in Use Group 6, an enlargement in commercial floor area and an elimination of term; and

WHEREAS, a public hearing was held on this application on February 27, 2018, after due notice by publication in *The City Record*, and then to decision on the same day; and

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

WHEREAS, the Board has exercised jurisdiction over the subject site since December 6, 1932, when, under BSA Calendar Number 530-32-BZ, the Board granted a variance to permit the extension of a proposed commercial building for use as a theater on condition that the portion of the building extending into the residential use district be of similar design to the balance of the building—face brick with panels; that the lot line wall to the north be un-

punctured and also of face brick with panels, that there be no openings from the building in the 10-foot portion extending into the residential use area except windows and that there be no advertising signs of any nature or description within the residence use portion of the site; and

WHEREAS, on January 11, 2000, under the subject calendar number, the Board granted a variance to permit the conversion of the first floor and mezzanine of the existing building from a theater in Use Group 8 to a banquet hall in Use Group 9 for a term of two (2) years, expiring January 11, 2002, on condition that within 120 days from the date of grant the owner provide a traffic study report to the Board and the Board's environmental staff and accordingly provide a plan to the Board for mitigation of any adverse traffic or parking conditions resulting from the findings of said report, that said traffic study be conducted at a high occupancy peak period when all uses at the site are operating concurrently, that any proposed mitigation plan be subject to the Board approval, that a copy of the traffic study report and proposed mitigation plan be provided to the local community board and civic associations for comment, that the lease of the off-site parking facility be in full effect at all times during the term of the variance, that the site remain graffiti free at all times and that the above referenced conditions appear on the new certificate of occupancy; and

WHEREAS, on December 9, 2003, under the subject calendar number, the Board denied an extension of term of the variance, finding that the applicant had been given considerable opportunity to complete this application, that no satisfactory progress had been made, in that the applicant failed to timely submit requested items, namely a detailed signage analysis and detailed operating plans, and that the items submitted were insufficient to warrant granting an extension of term; and

WHEREAS, the extension of term of the variance denied, the applicant now requests rehearing pursuant to the Board's Rules of Practice and Procedure; and

WHEREAS, the applicant states that there has been a material change in plans or circumstances by proposing to change from a banquet hall in Use Group 9 to a supermarket in Use Group 6; and

WHEREAS, the Board questions whether it would be appropriate to grant the requested rehearing regarding a variance that has not existed since 2002 and was thereafter denied—especially in light of the failure to comply with conditions of the previous grant related to the banquet hall in Use Group 9; and

WHEREAS, at hearing, the Board noted that the applicant may file a new application with the requisite application forms and fees.

Therefore it is Resolved, that the Board of Standards and Appeals does hereby *deny* this application.

Adopted by the Board of Standards and Appeals, February 27, 2018.

MINUTES

356-04-BZ

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for R & F 55th Street Commercial Owner LLC, owner.

SUBJECT – Application November 10, 2016 – Extension of Term of a previously approved Special Permit (§73-36) permitting the operation of a Physical Cultural Establishment (*The Core Club*) which expired on June 7, 2015; Waiver of the Rules. C5-2.5 (MID) zoning district.

PREMISES AFFECTED – 60 East 55th Street, Block 1290, Lot(s) 1103 and 1104, 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, an extension of term of a special permit, previously granted by the Board, which expired June 7, 2015, and an amendment to extend the hours of operation and to allow minor interior alterations; and

WHEREAS, a public hearing was held on this application on February 13, 2018, after due notice by publication in *The City Record*, and then to decision on February 27, 2018; 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 East 55th Street, between Madison Avenue and Park Avenue, in a C5-2.5 zoning district and the Special Midtown District, in Manhattan; and

WHEREAS, the Board has exercised jurisdiction over the subject site since June 7, 2005, when, under the subject calendar number, the Board granted a special permit to allow a physical culture establishment (“PCE”) to be located in portions of the cellar and first floor and on the third, fourth and sixth floors of a 41-story mixed-use building for a term of ten (10) years, expiring June 7, 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 Monday through Sunday, 7:00 a.m. to 11:00 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 a waiver of the Board’s Rules of Practice and Procedure to permit the filing of this application more than one year but less than two years after the expiration of term, an extension of term and an amendment to extend the hours of operation and allow minor interior alterations to the PCE space; and

WHEREAS, the applicant states that the PCE continues to operate as Core Club 55th Street, LLC, with a total of 17,409 square feet of floor area as follows: 533 square feet of floor space in the cellar, 3,020 square feet of floor area on the first floor, 5,686 square feet of floor area on the third floor, 5,505 square feet of floor area on the fourth floor and 3,198 square feet of floor area on the sixth floor; and

WHEREAS, at the Board’s request, the applicant submitted evidence that a full sprinkler system and a Class C fire alarm system have been installed throughout the PCE and that massages are performed only by New York State licensed massage therapists; and

WHEREAS, the Board finds that the circumstances warranting the original grant still obtain and that the applicant has complied with the conditions and safeguards during the prior term; and

WHEREAS, the Board finds that the requested waiver, extension of term and amendment are appropriate with certain conditions set forth below.

Therefore it is Resolved, that the Board of Standards and Appeals does hereby *waive* the Rules of Practice and Procedure and *reopen* and *amend* the resolution, dated June 7, 2005, so that as amended this portion of the resolution shall read: “to *permit* an extension of term for ten (10) years, expiring June 7, 2015; *on condition* that all work, site conditions and operations shall substantially conform to drawings filed with this application marked ‘Received November 15, 2017’-Six (6) sheets; and *on further condition*:

THAT this grant shall be limited to a term of ten (10) years, expiring June 7, 2025;

THAT all massages shall be performed only by New York State licensed massage therapists;

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 Sunday, 5:30 a.m. to 11:00 p.m.;

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 27, 2019;

THAT all signage shall comply with signage regulations applicable in a C5-2.5 zoning district in the Special Midtown District;

THAT Local Law 58/87 compliance shall be as reviewed and approved by the Department of Buildings;

THAT a full sprinkler system and a Class C fire alarm system shall be maintained throughout the PCE, as indicated 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 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, February 27, 2018.

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 – Application withdrawn from the compliance calendar.

THE VOTE TO WITHDRAW –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Sheta.....4

Negative:0

THE RESOLUTION –

WHEREAS, the subject premises is subject to a special permit, granted pursuant to ZR § 73-19, on March 16, 2010, under the subject calendar number; and

WHEREAS, on March 8, 2016, under the subject calendar number, the Board granted an application for an extension of time to obtain a certificate of occupancy, allowing the applicant until March 8, 2018, to obtain a certificate of occupancy; and

WHEREAS, a condition of that approval was:

THAT the applicant shall regularly monitor the operation of its SSD system and provide the Board with monitoring reports every six months; and

WHEREAS, accordingly, the monitoring reports were required to be submitted to the Board on or around September 8, 2016, March 8, 2017, and September 8, 2017; and

WHEREAS, a single monitoring report, dated November 10, 2016, was received by Board staff subsequent to the 2016 approval and it was reviewed in consultation with the New York City Office of Environmental Remediation; Board staff provided the applicant with comments on that report and requested that the next scheduled report address those comments; and

WHEREAS, a second report was never received by Board Staff and, on September 21, 2017, Board counsel apprised both the owner of record and the applicant of record of the overdue SSD system reports and requested that a response to the letter and/or the outstanding reports be submitted to the Board by October 1, 2017; and

WHEREAS, no such response was made and on October 16, 2017, the Board made a motion to hold a compliance hearing on the subject application; and

WHEREAS, a public hearing was held on this application on December 5, 2017, after due notice to the owner of record and applicant of record by notice dated October 30, 2017, with a continued hearing on February 27, 2018, and then to decision on that date; and

WHEREAS, Vice-Chair Chanda and Commissioner Ottley-Brown performed visits of the site and the surrounding area; and

WHEREAS, notice of hearing was provided to the subject site’s owner and applicant of record and in advance of the first hearing, the applicant submitted a Field Inspection Report stating that an onsite inspection of the sub-slab depressurization system (the “SSDS”) was performed on October 30, 2017, that the SSDS alarms and ventilation were operating, there were no indoor air exceedances and that the quality of the indoor air matched that of the outdoor air, indicating that there are no indoor air intrusion sources; and

WHEREAS, at hearing, the Board recommended that the owner of record enter into an agreement with a consultant to regularly monitor the SSDS until such time that testing is no longer required; and

WHEREAS, the applicant provided an executed proposal for engineering services to conduct indoor air testing and inspect the SSDS simultaneously at the site every six (6) months, starting March 15, 2018; the proposal states that, if the agreement is canceled, the vendor will notify the Board within 30 days and also that a request for termination of the SSDS will be made to the Board following compliance with applicable New York State Department of Health guidelines for indoor air intrusion prevention; 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 indoor air testing and SSDS inspections shall be conducted simultaneously at the site every six (6) months, starting March 15, 2018, and provide the Board with monitoring reports every six (6) months;

THAT, pursuant to the executed agreement for testing and inspection submitted to the Board, if the agreement is canceled, the vendor shall notify that Board that they are no longer monitoring the site within 30 days;

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,

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February 27, 2018.

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 217th Street (Block 7739, Lot 3); 73-36 Springfield Boulevard (Block 7742, Lot 3); 219-02 74th Avenue (Block 7754, Lot 3); 73-10 220th Street (Block 7755, Lot 3), Borough of Queens.

COMMUNITY BOARD #11Q

ACTION OF THE BOARD – Laid over to June 5, 2018, at 10 A.M., for continued hearing.

31-91-BZ

APPLICANT – Alfonso Duarte, for Frank Mancini, owner.
SUBJECT – Application April 13, 2017 – Extension of term and amendment (§ 1-07.3(3) (ii) of the Board's Rules of Practice and Procedures for a previously granted Variance (§72-21) which permitted a one story enlargement to an existing non-conforming eating and drinking establishment (Use Group 6) which expired on July 28, 2012;. Waiver of the Rules. R6 & R6B zoning districts.

PREMISES AFFECTED – 173 Kingsland Avenue aka 635 Meeker Avenue, Block 2705, Lot 34, Borough of Brooklyn.

COMMUNITY BOARD #1SI

ACTION OF THE BOARD – Laid over to April 17, 2018, at 10 A.M., for continued hearing.

247-08-BZ

APPLICANT – Eric Palatnik, P.C., for 3454 Star Nostrand LLC, owner.

SUBJECT – Application March 25, 2016 – Extension of Term of a previously approved Special Permit (§73-243) to permit the operation of an accessory drive-thru facility to an eating and drinking establishment (Popeye's), which expired on May 12, 2014; Waiver of the Rules. C1-2/R4 zoning district.

PREMISES AFFECTED – 3454 Nostrand Avenue, Block 7362, Lot 10, Borough of Brooklyn.

COMMUNITY BOARD #15BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice Chair Chanda, Commissioner Ottley-Brown and Commissioner Sheta4
Negative:.....0

ACTION OF THE BOARD – Laid over to May 15, 2018, at 10 A.M., for decision, hearing closed.

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 May 1, 2018, at 10 A.M., for deferred decision.

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 May 1, 2018, at 10 A.M., for adjourned hearing.

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 May 1, 2018, at 10 A.M., for adjourned hearing.

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ZONING CALENDAR

2016-3-BZ

CEQR #16-BSA-064R

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 – 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 December 4, 2015, acting on Alteration Application No. 520253092, reads in pertinent part:

“Proposal to continue to occupy premises as a Gasoline Service Station (UG16) ... is not permitted”; and

WHEREAS, this is an application under ZR §§ 73-211 and 73-03 to permit, in an R2 (C2-1) zoning district, the operation of an automotive service station; 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 June 6, 2017, October 31, 2017, and January 9, 2018, and then to decision on February 27, 2018; 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 with certain conditions: removing small curb cut on Seneca Avenue at rear of the subject site, providing planting along the subject building on Seneca Avenue, providing higher curbs along the perimeter of the subject site, requesting that the Department of Transportation (“DOT”) extend the right turn lane from Clove Road along Victory Boulevard to Seneca Avenue, providing adequate distance for the large Seneca Avenue curb cut from accessible corner ramps on Victory Boulevard and reducing the height of the proposed sign from 38 feet to 20 feet; and

WHEREAS, Staten Island Borough President James S. Oddo submitted testimony in opposition to this application, citing concerns related to traffic and pedestrian safety; and

WHEREAS, the subject site is located on the southeast corner of Victory Boulevard and Seneca Avenue, in an R2 (C2-1) zoning district in Staten Island; and

WHEREAS, the subject site has approximately 135 feet of frontage along Victory Boulevard, 94 feet of frontage along Seneca Avenue, 13,347 square feet of lot area and is occupied by a one-story commercial building used as a food store; and

WHEREAS, the Board has exercised jurisdiction over the subject site since March 14, 1961, when, under BSA Calendar Number 826-60-BZ, the Board granted a variance to permit the reconstruction of a present legal gasoline station, including minor auto repairs with hand tools only, non-automatic car wash, service and store rooms, office and parking for more than five motor vehicles awaiting service on condition that there be a 5'-6" high brick wall constructed from the southwest corner of the altered accessory building out to the Seneca Avenue building line, that sidewalks and curb cuts be provided to the satisfaction of the Borough President and that all work be completed a certificate of occupancy obtained; and

WHEREAS, on March 14, 1961, under BSA Calendar Number 827-60-A, the Board granted an appeal under General City Law § 35 to permit the construction of two gasoline pumps on a concrete island, curb cuts and post standard and sign within the bed of a mapped street on condition that all of the requirements cited in the resolution, adopted under BSA Calendar Number 826-60-BZ be complied with and that a certificate of occupancy be obtained; and

WHEREAS, on December 20, 1977, under BSA Calendar Number 826-60-BZ, the Board amended the variance to change the occupancy of bays to food store (Use Group 6) and to install new store front on condition that there be no auto repairs or lubrication of vehicles done at the subject site; and

WHEREAS, on June 19, 1979, under BSA Calendar Number 826-60-BZ, the Board amended the variance to permit interior changes of food store, the closing of the overhead door on the Seneca Avenue side of the building, revised store front and the re-arrangement of pump islands and pumps; and

WHEREAS, the applicant states that operation of the gasoline service station approved under BSA Calendar Number 826-60-BZ was discontinued in 1997; and

WHEREAS, ZR 73-211 provides:

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

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- 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 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 Board finds that the subject site has a minimum area of 7,500 square feet; and

WHEREAS, the applicant states that the subject site is not located on an arterial highway or major street; and

WHEREAS, because the subject site is not located on an arterial highway or a major street, the Board finds that the subject site has a maximum area of 15,000 square feet; and

WHEREAS, the applicant submits that no facilities for lubrication, minor repairs or washing are proposed; that the subject site provides sufficient space to allow for reservoir space for a minimum of five automobiles waiting to use proposed gasoline pumps; that no changes are proposed to the current access to the subject site, which allows for minimum obstruction on streets or sidewalks and that, as a corner lot, vehicles have multiple options to enter the site, minimizing obstruction on streets or sidewalks that could occur due to limited access; that no lot lines of the subject site adjoin a residential district; and that total surface area of signage at the subject site will not exceed 150 square feet; and

WHEREAS, the applicant states that the existing convenience store will be reduced in size and will comply with DOB Technical Policy and Procedure Notice 10/99, rendering the convenience store an accessory use to the proposed automotive service station; and

WHEREAS, in response to community concerns and questions from the Board, the applicant proposes to reduce the number of proposed gasoline pumps from three pumps to two pumps, thereby improving circulation within the subject site, to eliminate diesel gasoline to restrict service to passenger vehicles, to remove a proposed additional curb cut on Seneca Avenue, to reduce the width of the remaining curb cut on Seneca Avenue, to repair of the curb along Seneca Avenue, to provide planting along Seneca Avenue with two additional street trees and screening of the delivery ramp and to reduce the height of signage to be below 25 feet; and

WHEREAS, the applicant provided a car-overflow plan to accommodate reservoir space for a minimum of five automobiles and provided a pedestrian study indicating that pedestrian traffic along Victory Boulevard is low, with most pedestrians traveling near the existing retail, restaurants and bus stops and indicating that existing and anticipated

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pedestrian traffic will remain low; and

WHEREAS, the applicant submitted a light-spread diagram and proposes additional evergreen landscaping with grass and street trees, an acoustical screen for the rooftop HVAC equipment, additional fencing with screening; and

WHEREAS, the applicant further proposes that the fencing be aluminum, rather than chain link, and indicates that the building wall will be stucco; and

WHEREAS, the applicant revised the circulation plan to show a pass-through lane surrounding the two proposed gasoline pumps, thereby allowing internal circulation of vehicles with the existing sidewalk; and

WHEREAS, the applicant revised the plans to include proposed “no left turn” signage for the easternmost curb cut on Victory Boulevard, to remove the center curb cut on Victory Boulevard, to indicate bollards to be installed at the property lone on Victory Boulevard to provide additional safety for pedestrians and to ensure that the Builders Pavement Plan and legality of curb cuts shall be as reviewed and approved by DOB; and

WHEREAS, the Board takes no position as to the location and legality of the curb cuts at the subject site, which shall be subject to review and approval by DOB and DOT; and

WHEREAS, in response to Borough President Oddo’s concerns regarding public safety and traffic, the Board finds that a term of fifteen (15) years will serve as an impetus for the subject site to remain in compliance with the Board’s grant since substantial violation of the Board’s conditions and safeguards will result in the denial of an application for an extension of term; 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 automotive service station 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 automotive service station will not interfere with any pending public improvement project; 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. 16BSA064R, received October 26, 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, 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 finds that the evidence in the record supports the findings required to be made under ZR §§ 73-211 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion.

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 §§ 73-211 and 73-03 to *permit*, in an R2 (C2-1) zoning district, the operation of an automotive service station; *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked “Received February 27, 2018”-Seven (7) sheets; and *on further condition*:

THAT this grant shall be limited to a term of fifteen (15) years, expiring February 27, 2033;

THAT all curb cuts shall be as reviewed and approved by the Department of Transportation and the Department of Buildings for compliance with applicable laws, rules and regulations; however, any change to the location of curb cuts shall void this special permit;

THAT no diesel gasoline shall be provided at the subject site;

THAT there shall be a maximum of two (2) gasoline pumps at the subject site, as illustrated on the Board-approved drawings;

THAT bollards shall be installed along Victory Boulevard to protect pedestrians, as illustrated on the Board-approved plans;

THAT 6’-0” fencing shall be installed to protect adjoining residences, as illustrated on the Board-approved plans;

THAT all lighting shall be directed away from adjoining properties;

THAT as to the accuracy of the site plan in comparison to the Damage and Acquisition Map, the Board defers to the Department of Transportation and 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 February 27, 2022;

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

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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, February 27, 2018.

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 – Application withdrawn.

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, February 27, 2018.

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 – Appeal denied.

THE VOTE TO GRANT –

Affirmative:0

Negative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Sheta.....4

THE RESOLUTION –

WHEREAS, the determination of the Department of Buildings (“DOB”), dated October 7, 2016, acting on Alteration Application No. 220543561 the (“Determination”), reads in pertinent part:

The request to allow the filing of multiple signs on each surface of a monopole advertising sign structure is denied.

BSA 35-15-A adopted May 3, 2016 denied the request to consider a sign surface assembly of multiple LED video screens as multiple signs in large part by concluding that the video screen assembly is held up by a unifying structure. While

the newly proposed ‘grid’ holding the individual video screens differs from the ‘structure’ used for the sign assemblage considered in the BSA case ultimately, the newly proposed ‘grid’ is part of a monopole i.e.: every part of the grid that holds up the individual LED screens is held up by forces that ‘travel’ down to the monopole which holds up the entire grid. Therefore, independent of the particular formation of the ‘grid’ the structure holding up the individual LED screens must be considered one structure and following the BSA opinion each flat surface assembly of video screens is [to] be considered one sign; and

WHEREAS, this is an appeal for interpretation under Section 72-11 of the Zoning Resolution of the City of New York (“ZR”) and Section 666(6)(a) of the New York City Charter, brought on behalf of Baychester Retail III LLC (“Appellant”), alleging errors in the Determination pertaining to two vertical planes, each comprised of 27 illuminated light-emitting diode (“LED”) video screens (the “Subject Displays”), proposed to be placed on structural frames, consisting of vertical and horizontal supports, uprights, cross-arms and rods (the “Structural Frames”), atop a monopole (together with the Subject Displays and the Structural Frames, as a whole, the “Subject Structure”) adjacent to the New England Thruway, a designated arterial highway; and

WHEREAS, on May 3, 2016, the Board denied an appeal regarding the subject site and an identically arranged array of two vertical planes of 27 illuminated LED video screens (the “Original Assembly”) for failing to comply with surface-area restrictions under BSA Calendar Number 35-15-A (the “Original Appeal”); and

WHEREAS, the Supreme Court of the State of New York upheld the Original Appeal in *Baychester Retail III LLC v. Bd. of Standards & Appeals of City of New York*, No. 157091/2016 (N.Y. County 2017); and

WHEREAS, this appeal was filed on November 10, 2016; and

WHEREAS, a public hearing was held on this application on March 21, 2017, after due notice by publication in *The City Record*, with continued hearings on May 23, 2017, October 3, 2017, and December 12, 2017, and then to decision on February 27, 2018; and

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

WHEREAS, the New York City Department of City Planning (“DCP”) submitted testimony recommending denial of this appeal because, based upon DCP’s review of the Zoning Resolution’s sign provisions for commercial districts, the “surface area (of a sign)” definition of ZR § 12-10 and research into the advertising sign regulations adopted in 1961 and subsequently amended, in one instance in 1980, in response to the federal Highway Beautification Act, the Subject Displays exceed the surface area permitted

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near an arterial highway; and

WHEREAS, Community Board 10, Bronx, recommends denial of this appeal, stating that existing illuminated signs at the subject site shine directly into Co-op City apartments, thereby diminishing residents' health and quality of life; the Community Board additionally questions the proximity of the Subject Displays to adjacent highways, their compliance with the federal Highway Beautification Act and requests that the Board review and take into account the effect that the Subject Displays would have on the health and quality of life of the residents of Co-op City; and

WHEREAS, Council Member Andy King submitted testimony stating that residents of Co-op City "do not deserve the nuisance" of illuminated signage that "substantially interferes with the ability of neighboring residents to use and enjoy their own properties" and expressing concerns that the Subject Displays will "expos[e] residents and [the] neighborhood to even more LED light, at all times of day and night, than they already experience from the existing [illuminated] signs"; and

WHEREAS, Congressman Eliot Engel submitted testimony in opposition to this appeal, stating that existing illuminated signs at the subject site "shine brightly during all hours of the day and night, making it difficult to sleep" for residents of Co-op City, and that the existing signs "are a nuisance that should not be permitted"; and

WHEREAS, in connection with concerns about three existing LED signs at the subject site, which, along with a large portion of the monopole intended to support the subject of this appeal, were installed sometime between December 2017 and January 2018, the Board received a 52-page petition signed by approximately 500 area residents opposing the installation of the Subject Displays and requesting removal of the recently-installed existing LED signs; and

WHEREAS, the Board clarified at hearing and explicitly states now that the three existing LED signs are not the subject of this appeal; and

WHEREAS, DOB and Appellant have been represented by counsel throughout this appeal; and

BACKGROUND

WHEREAS, the subject site is located on the northeast corner of Bartow Avenue and Baychester Avenue, in a C7 zoning district, in the Bronx; and

WHEREAS, the site has approximately 140 feet of frontage along Bartow Avenue, 145 feet of frontage along Baychester Avenue, 20,488 square feet of lot area and is improved with a one-story commercial building under construction, a triple-faced LED sign on a monopole, a double-faced LED sign on a monopole and a portion of the monopole intended to support the Structural Frames and the Subject Displays, all of which were constructed or installed in late 2017 or early 2018; and

WHEREAS, Appellant represents that the subject site

is 287 feet from the New England Thruway,¹ an arterial highway designated by the City Planning Commission pursuant to ZR §§ 32-66 and 42-55; and

WHEREAS, Appellant represents that the Subject Displays are 322 feet from the New England Thruway²; and

WHEREAS, the Subject Displays are approximately 500 feet from Co-op City; and

WHEREAS, Co-op City is a residential development designed to house approximately 55,000 residents in approximately 39 buildings in order to "provide an attractive, pleasant, stimulating, and aesthetically satisfying living environment," City Planning Commission, Report No. CP-18831, 339 (May 12, 1965); and

WHEREAS, the Subject Displays include 54 LED video screens for the display of advertisements to be supported by a 195-foot-high monopole, ranging in diameter from 12'-6" to 9'-2"; and

WHEREAS, the Subject Displays' 54 LED video screens are arranged on two vertical planes, back-to-back at an acute, V-shaped angle, each consisting of 27 LED video screens facing north and south, each spaced 12 inches apart, each measuring approximately 9,164 square feet and each with a total width of 97'-6" and a total height of 91'-6"; and

WHEREAS, the Subject Displays are each attached to the monopole by the Structural Frames,³ which consist of vertical and horizontal supports, uprights, cross-arms and rods; and

ZONING RESOLUTION

WHEREAS, in 1940, the City Planning Commission determined that "[b]illboards and signs not only dominate our business streets . . . but they take advantage of every opportunity to crowd in upon public places, established and maintained by public funds, including civic centers, parks, and especially express highways and bridge approaches," *see* Major Reports of the City Planning Commission, 85 (1940); and

WHEREAS, in response to the overcrowding of areas adjacent to public highways with signs and billboards, since 1940, the City has regulated commercial advertising signs

1 The New England Thruway is under the jurisdiction of the New York State Thruway Authority. *See* N.Y. Pub. Auth. Law §§ 356, 361-a. Nothing in the record indicates that Appellant has complied with any relevant advertising-device regulations of the Thruway Authority, though the Board need not determine the extent of their applicability since the Subject Displays contravene the Zoning Resolution, as discussed herein.

2 In this appeal, the Board has not considered the exact distance of the Subject Structure from the New England Thruway beyond approximating the distance as 322 feet, as presented by the Appellant and, in the course of BSA hearings, uncontroverted by DOB, and nothing herein shall be read as a determination as to such distance.

3 The Board notes that the term "structural frame" is undefined in the Zoning Resolution but is a term of art in the field of engineering.

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adjacent to arterial highways in order to promote the City's twin goals of advancing aesthetic values and improving traffic safety. *See Infinity Outdoor, Inc. v. City of New York*, 165 F. Supp. 2d 403, 406–11 (E.D.N.Y. 2001); *see also Clear Channel Outdoor, Inc. v. City of New York*, 594 F.3d 94, 99–100 (2d Cir. 2010); *Mogul Media, Inc. v. City of New York*, No. 16 CIV. 9794 (PAE), 2017 WL 6594223, at *1–2 (S.D.N.Y. Dec. 22, 2017) (appeal pending); and

WHEREAS, in 1980, the Zoning Resolution was amended to incorporate federal and state highway-beautification standards for existing advertising signs “because local zoning controls are more stringent than standards set forth in the federal HBA,” City Planning Commission, Report No. N 790718 ZRY, 1 (Jan. 30, 1980)⁴; and

WHEREAS, in its 1980 report, the City Planning Commission further stated:

“By the term advertising sign the Commission intends to include both the message and the structure. Therefore, the relevant dimensions are those of the entire sign, not just the message area. If a sign structure built between 1968 and 1979 is 60 feet in height and 100 feet in length it is not grandfathered by the zoning text amendment even if the message area measures only 25 feet by 25 feet,” *id.* at 2; and

WHEREAS, under ZR § 12-10, a “sign” is “a structure or any part thereof, or is attached to . . . a *building or other structure*” (emphasis in original indicating defined term); and

WHEREAS, under ZR § 12-10, a commercial “advertising sign” is a “*sign that directs attention to a business, profession, commodity, service or entertainment conducted, sold, or offered elsewhere than upon the same zoning lot and is not accessory to a use located on the zoning lot*” (emphasis in original); and

WHEREAS, ZR § 12-10 defines a sign’s “surface area” as follows:

The “surface area” of a *sign* shall be the entire area within a single continuous perimeter enclosing the extreme limits of writing, representation, emblem, or any figure of similar character, together with any material or color forming an integral part of the display or used to differentiate such *sign* from the background against which it is placed. In any event, the supports or uprights on which such *sign* is

supported shall not be included in determining the *surface area* of a *sign*.

When two *signs* of the same shape and dimensions are mounted or displayed back-to-back and parallel on a single free-standing structural frame, only one of such *signs* shall be included in computing the total *surface area* of the two *signs*.

When a double-faced *sign* projects from the wall of a *building*, and its two sides are located not more than 28 inches apart at the widest point and not more than 18 inches apart at the narrowest point, and display identical writing or other representation, the *surface area* shall include only one of the sides. Any additional side of a multi-faced *sign* shall be considered as a separate *sign* for purposes of computing the total *surface area* of the *sign*; and

WHEREAS, under ZR § 32-63, “*advertising signs* are permitted subject to the applicable provisions of . . . Section 32-64 (Surface Area and Illumination Provisions) [and] Section 32-66 (Additional Regulations for Signs Near Certain Parks and Designated Arterial Highways) . . .”; and

WHEREAS, ZR § 32-64 states in pertinent part: No *illuminated sign* shall have a degree or method of illumination which exceeds standards established by the Department of Buildings by rule pursuant to the City Administrative Procedure Act. Such standards shall ensure that illumination on any *illuminated sign* does not project or reflect on *residences, loft dwellings or joint living-work quarters for artists* so as to interfere with the reasonable use and enjoyment thereof. Nothing herein shall be construed to authorize a *sign with indirect illumination* to arrange an external artificial source of illumination so that direct rays of light are projected from such artificial source into *residences, loft dwellings or joint living-work quarters for artists*; and

WHEREAS, under ZR § 32-644, “*illuminated or flashing signs* with total *surface areas* not exceeding those shown in the following table are permitted: . . . C7 No restrictions as to size”; and

WHEREAS, under ZR § 32-662, “[b]eyond 200 feet from such arterial highway or *public park*, an *advertising sign* shall be located at a distance of at least as many linear feet therefrom as there are square feet of *surface area* on the face of such *sign*”; and

PUBLIC AUTHORITIES LAW

WHEREAS, under N.Y. Public Authorities Law § 361-a,⁵ “the erection or maintenance of any advertising device located within six hundred sixty feet of the nearest

4 Compliance with the federal Highway Beautification Act required the City’s enforcement against the plethora of then-illegal arterial advertising signs—an inordinately costly endeavor—so existing illegal advertising signs were granted lawful non-conforming use status so long as they complied with federal and state highway-beautification standards. *See* City Planning Commission, Report No. N 790718 ZRY, 1 (Jan. 30, 1980).

5 The Board requested at hearing that Appellant and DOB brief the applicability of this Public Authorities Law provision to the Subject Displays.

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edge of the right-of-way of the thruway without a written permit therefor granted by the authority pursuant to this section is prohibited,” “[e]xcept as otherwise provided in this section”; and

PROCEDURAL HISTORY

WHEREAS, in the Original Appeal, Appellant sought redress from a DOB determination that a monopole supporting 54 illuminated LED video screens constituted a single sign and that such sign must comply with the arterial-advertising restrictions of ZR § 32-622; and

WHEREAS, on May 3, 2016, after five public hearings and much deliberation on a voluminous administrative record, the Board denied the Original Appeal finding that, among other things, an assembly made up of 54 illuminated LED video screens mounted on two vertical planes, each comprised of 27 LED video screens, mounted on opposite sides of a monopole (the “Original Assembly”) constituted at least one advertising sign, “the surface area of which greatly exceed[ed] that which is permitted at its location”; and

WHEREAS, on March 13, 2017, in *Baychester Retail III LLC*, the Supreme Court of the State of New York upheld the Board’s resolution in the Original Appeal; and

WHEREAS, Supreme Court concluded that the Board’s determination that 27 LED video screens arranged along a vertical plane on the Original Assembly constituted a single sign that, when measured in the aggregate, exceeded the surface area restrictions of ZR § 32-662 was rational and supported by substantial evidence; and

WHEREAS, Supreme Court referred to the “surface area (of a sign)” definition in ZR § 12-10 and found that one must consider that part of the entire structure which constitutes a “sign” and distinguish such “sign” from the “support”; and

WHEREAS, Supreme Court determined that the 27 LED video screens were “mounted” and “displayed back to back . . . on a single free-standing structural frame” and must be measured as a whole, not individually, based upon only one of the Original Assembly’s two vertical planes; and

WHEREAS, Supreme Court affirmed the Board’s calculation of the Original Assembly’s surface area “in and of itself,” “distinct from the monopole support”; and

WHEREAS, Supreme Court noted that “measurements of the support structure were not included in determining the surface area of the signs atop of the structure”; and

WHEREAS, Supreme Court found the Board’s resolution “buttressed by the fact that there is a single pole that supports the 54 purported individual panels”; and

WHEREAS, on October 7, 2016, DOB issued the Determination, and Appellant commenced this appeal on November 10, 2016, seeking reversal of the Determination; and

ISSUE PRESENTED

WHEREAS, this appeal concerns whether the Subject Displays are located at a distance of at least as many linear

feet from the New England Thruway as there are square feet of surface area on the Subject Displays as required by ZR § 32-662; and

APPELLANT’S POSITION

WHEREAS, Appellant argues that, in the Original Appeal, the Board determined that the configuration of the structural frame onto which 27 LED video screens were to be mounted constituted a single sign, hence the surface area of that sign, at 9,164 square feet, exceeded the maximum permissible surface area of 322 square feet, but that, in this appeal, the design of the Structural Frames renders the 54 LED video screens individual signs of less than 322 square feet each; and

WHEREAS, Appellant asserts that the structural frame rejected by the Board in the Original Appeal, which, it argues, hung all of the LED video screens off of one interconnected structural grid, is in this appeal, an array of supports, uprights, cross-arms and rods, each of which is attached independently to the monopole, creating 54 individual signs and sign structures mounted to a monopole that comply with ZR § 32-662; and

WHEREAS, in the Original Appeal, Appellant submitted a set of alternate drawings (“Exhibit K”) showing that a reconfiguration of the structural frame that placed each LED video screen on a separate structural arm extending horizontally from the monopole would be no different visually from the Original Assembly, which DOB, and later the Board, had rejected; and

WHEREAS, in the Original Appeal, comparing Exhibit K to the Original Assembly, Appellant entitled Exhibit K “A Distinction without a Difference” and stated that Exhibit K offered no visual difference in the appearance of the Original Assembly’s 27 LED video screens when seen from the front; and

WHEREAS, in response to questions posed by the Board, Appellant concedes that the Subject Displays are configured in a virtually identical manner to Exhibit K, which was presented to the Board in the Original Appeal; and

WHEREAS, in this appeal, Appellant states that DOB’s application of the Board’s determination in the Original Appeal to the Subject Displays contradicts the Board’s interpretation of the applicable zoning provisions; and

WHEREAS, Appellant states that this appeal concerns multiple structures affixed to a monopole, which design is similar to other sign structures that DOB has determined to be comprised of multiple signs because separate armatures support individual signs on a monopole; and

WHEREAS, Appellant states that DOB requires separate construction applications and separate sign permits⁶ where there are gaps between signage and where signs are supported on separate structures attached to a

⁶ The Board notes that the New York City Construction Codes, not the Zoning Resolution, govern applications for construction. *See* Admin. Code §§ 28-104.1, 28-105.4.5.

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common monopole; and

WHEREAS, Appellant states that the screens on the Subject Displays are neither parallel nor back-to-back; and

WHEREAS, Appellant states that each horizontal tubular steel arm does not ever touch or support any other screen, similar to the multi-faced signs located at 352 West 13th Street and 620 Eleventh Avenue; and

WHEREAS, accordingly, Appellant argues that each of the 54 LED video screens is a separate sign with less than 322 square feet of surface area that complies with ZR § 32-662; and

DOB'S POSITION

WHEREAS, having reviewed the Subject Displays under the standards set forth in BSA Calendar Number 35-15-A, DOB issued the Determination, finding that the proposed 'grid' is part of a monopole i.e.: every part of the grid that holds up the individual LED screens is held up by forces that 'travel' down to the monopole which holds up the entire grid. Therefore, independent of the particular formation of the 'grid' the structure holding up the individual LED screens must be considered one structure and following the BSA opinion each flat surface assembly of video screens is [to] be considered one sign; and

WHEREAS, DOB states that, as with the Original Assembly, the Subject Displays' LED video screens will be placed on armatures that extend out from the monopole, making up a single grid-like structure, and that the placement of multiple LED video screens on series of horizontal armature supports connected to—and supported by—a monopole, but not connected to more than one screen or to each other, is an immaterial deviation from the Original Assembly's structural grids; and

WHEREAS, DOB states that this appeal does not concern LED video screens supported by separate ground-supported monopoles and disputes Appellant's characterization of the Subject Displays' arms as separate structures when they are all supported by a monopole and connected by vertical supports; and

WHEREAS, DOB states that, similar to the Original Assembly, the design and arrangement of LED video screens along vertical planes indicate that the Subject Displays' vertical planes are to be perceived as a whole and are meant to be considered as such; and

WHEREAS, DOB states that the similarity, if not identicalness, of the Subject Displays to the Original Assembly was demonstrated by Appellant's own visual representations of the two proposed sign structures in the Original Appeal; and

WHEREAS, DOB states that the LED video screens on the Subject Displays will display pictorial representations or other figures of similar character and will be attached to a structure, be used to advertise and will be visible from outside a building, thereby meeting the sign definition of ZR § 12-10; and

WHEREAS, DOB states that the "extreme limits" of

representation takes into account the totality of representation by multiple LED video screens on the Subject Displays; and

WHEREAS, DOB states that, unlike multi-faced signs at 352 West 13th Street and 620 Eleventh Avenue in Manhattan, the Subject Displays have a smaller degree of separation between panels, is not surrounded by open sky on three sides and is supported by a single grid connected to and supported by a monopole; and

WHEREAS, accordingly, DOB argues that the Subject Displays do not comply with ZR § 32-662 as it is located nearer the New England Thruway than its surface area of 9,164 square feet allows; and

DISCUSSION

WHEREAS, comparing the Subject Displays to the Original Assembly, the Board finds that the manner by which the LED video screens are attached is ultimately "a distinction without a difference," as Appellant noted in the Original Appeal; and

WHEREAS, the Board notes at the outset that, although Appellant states that the Subject Displays now comply with the Zoning Resolution, Appellant has not rearranged the Original Assembly and has instead slightly modified the design of the structural frames onto which the Original Assembly would be mounted—modifications which Appellant described in the Original Appeal as "a distinction without a difference" when comparing the modified frame to the frame to which the Original Assembly was mounted; and

WHEREAS, in the Original Appeal, the Board found that the Original Assembly was attached to a single freestanding pole "structure," and the Board finds that the Subject Displays are attached to a single freestanding pole "structure," ZR § 12-10 (defining "sign"); and

WHEREAS, in the Original Appeal, the Board found that connected to the Original Appeal's monopole were gridded structural frames made up of vertical and horizontal supports, uprights, cross-arms and rods, and the Board finds that connected to this appeal's monopole are the Structural Frames, which are gridded and made up of vertical and horizontal supports, uprights, cross-arms and rods; and

WHEREAS, in the Original Appeal, the Board found that connected to the Original Appeal's gridded structural frames were 54 LED video screens, which made up the Original Assembly, and the Board finds that connected to this appeal's Structural Frames are 54 LED video screens, which make up the Subject Displays; and

WHEREAS, in the Original Appeal, the Board found that the Original Assembly's 54 LED video screens were arranged along two vertical planes, each measuring approximately 97'-6" in width and 91'-6" in height, and the Board finds that the Subject Displays' 54 LED video screens are arranged along two vertical planes, each measuring approximately 97'-6" in width and 91'-6" in height; and

WHEREAS, in the Original Appeal, the Board found that the Original Assembly constituted at least one sign, and

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the Board finds that the Subject Displays constitute two signs⁷; and

WHEREAS, in the Original Appeal, the Board found that 27 of the Original Assembly's LED video screens were "mounted" and "displayed . . . on a single free-standing structural frame," and the Board finds that 27 of the Subject Displays' LED video screens are "mounted" and "displayed . . . on a single free-standing structural frame," ZR § 12-10 (defining "surface area (of a sign)"); and

WHEREAS, in the Original Appeal, the Board found that the Original Assembly's 27 LED video screens were designed to display "writing, representation, emblem, or any figure of similar character," and the Board finds that the Subject Displays' 27 LED video screens are designed to display "writing, representation, emblem, or any figure of similar character," *id.*; and

WHEREAS, in the Original Appeal, the Board found that the "extreme limits of . . . representation" on the Original Assembly took into account all 27 of the LED video screens mounted and displayed along each vertical plane,⁸ and the Board finds that the "extreme limits of . . . representation" on the Subject Displays take into account all 27 of the LED video screens mounted and displayed along each vertical plane, *id.*; and

WHEREAS, in the Original Appeal, the Board found no indication that "single continuous perimeter" referred to a continuous physical perimeter in examining the Original Assembly's vertical planes—that is, the perimeter of each individual LED video screen—and the Board finds no indication that "single continuous perimeter" refers to a continuous physical perimeter in examining the Subject Displays, *id.*; and

WHEREAS, in the Original Appeal, the Board found that the "single continuous perimeter enclosing the extreme limits of . . . representation" on the Original Assembly was a continuous line drawn around all 27 of the LED video screens located on a vertical plane, and the Board finds that the "single continuous perimeter enclosing the extreme limits of . . . representation" on the Subject Displays is a continuous line drawn around all 27 of the LED video

screens located on each vertical plane of the Subject Displays, *id.*; and

WHEREAS, in the Original Appeal, the Board found that the "entire area within" the continuous line drawn around the Original Assembly's 27 LED video screens exceeded 322 square feet, and the Board finds that the "entire area within" the continuous line drawn around the Subject Displays' 27 LED video screens exceeds 322 square feet, *id.*; and

WHEREAS, in the Original Appeal, the Board found that said area constituted the "surface area" of the Original Assembly, and the Board finds that such area constitutes the "surface area" of the Subject Displays, *id.*; and

WHEREAS, in the Original Appeal, the Board did not include "the supports or uprights" in calculating the surface area of the vertical planes on the Original Assembly, and the Board does not include "the supports or uprights" in calculating the surface area of the Subject Displays; and

WHEREAS, in the Original Appeal, the Board found that, contrary to ZR § 32-662, the Original Assembly was not located at a distance of at least as many linear feet from the New England Thruway as there were square feet of surface area on either of the Original Assembly's vertical planes, and the Board finds that, contrary to ZR § 32-662, the Subject Displays are not located at a distance of at least as many linear feet from the New England Thruway as there are square feet of surface area on either of the Subject Displays' vertical planes; and

WHEREAS, in response to questions raised at hearing, Appellant states that, consistent with N.Y. Public Authorities Law § 361-a (restriction and regulation of advertising devices), no permit from the New York State Thruway Authority is necessary to construct or maintain an advertising device adjacent to the New England Thruway, citing a letter from the Thruway Authority's records access officer; and

WHEREAS, DOB states that it has not required the approval of a state agency as a prerequisite for the issuance of a sign permit in proximity to an arterial highway and presented a letter from the Thruway Authority's general counsel stating that "the Thruway Authority will continue to defer to the City of New York for permitting of advertising devices within City limits"; and

WHEREAS, the Board need not determine the applicability of N.Y. Public Authorities Law § 361-a in this appeal or of the Thruway Authority's advertising-device regulations promulgated thereunder; and

WHEREAS, the Board further notes that, in the Original Appeal, a minority of the Commissioners expressed a concern about whether it would be permissible to reconfigure the Original Assembly by mounting each LED video screen to an individual structure; however, the Board explicitly stated in the Original Appeal that it was not reaching a determination as to any signage assembly other than the Original Assembly; and

WHEREAS, the Board reiterates that the Subject Displays' LED video screens are not mounted to individual

⁷ The Subject Displays are "attached to . . . a *building or other structure*," are "used to . . . advertise" and are "visible from outside a *building*." ZR § 12-10 (defining "sign"). Hence, both of the Subject Displays' vertical planes are signs. Were the Subject Displays arranged "back to back and parallel," "only one" of the Subject Displays would "be included in computing the total *surface area* of the two signs." ZR § 12-10 (defining "surface area (of a sign)").

⁸ In the resolution for the Original Appeal, under BSA Calendar Number 35-15-A, the Board incorrectly stated that the LED video screens were arranged on back-to-back and parallel vertical planes. The planes of the Original Assembly were actually arranged back-to-back at an acute angle, just like the Subject Displays; however, this distinction was immaterial to the Original Assembly's non-compliance with ZR § 32-662.

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structures as Appellant alleges; rather, the Board finds that they are mounted to the Structural Frames, which are part of the Subject Structure—an individual structure; and

WHEREAS, the Board again finds that it would not be appropriate in this appeal for the Board to render a determination as to other signage assemblies, including those located at 352 West 13th Street and 620 Eleventh Avenue in Manhattan, and that this appeal only pertains to the Subject Displays; and

WHEREAS, consistent with the Board’s resolution in the Original Appeal, the Board finds that the Subject Displays would be a clear hazard to motorists on the New England Thruway and, by virtue of its size, degree of illumination and, due to its close proximity to Co-op City, a potentially significant nuisance to area residents; and

WHEREAS, the Board notes that ZR § 32-64 specifically prohibits signage illumination from projecting or reflecting on residences “so as to interfere with the reasonable use and enjoyment thereof”; and

WHEREAS, the Board credits the testimony in the record from residents of Co-op City, elected officials and other stakeholders that the Subject Displays would interfere with residents’ quality of life in Co-op City—supporting the Board’s concern about the negative land-use impacts posed by the Subject Displays; and

CONCLUSION

WHEREAS, the Board has considered all of Appellant’s arguments on appeal but finds them ultimately unpersuasive; and

WHEREAS, for the foregoing reasons, the Board finds that DOB appropriately determined that, contrary to ZR § 32-662, the Subject Displays are not located at a distance of at least as many linear feet from the New England Thruway as there are square feet of surface area on the Subject Displays.

Therefore it is Resolved, that the determination of the Department of Buildings, dated October 7, 2016, acting on Alteration Application No. 220543561, shall be and hereby is *upheld* and that this appeal shall be and hereby is *denied*.

Adopted by the Board of Standards and Appeals, February 27, 2018.

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 – 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, February 27, 2018.

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 182nd Street aka 2165-75 Southern Boulevard, Block 3111, Lot 59, Borough of Bronx.

COMMUNITY BOARD #2BX

ACTION OF THE BOARD – Laid over to May 1, 2018, at 10 A.M., for continued hearing.

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 5th Street, Block 15609, Lot Tentative 40, Borough of Queens.

COMMUNITY BOARD #14Q

ACTION OF THE BOARD – Laid over to May 1, 2018, at 10 A.M., for adjourned hearing.

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 1, 2018, 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 May 1, 2018, at 10 A.M., for adjourned hearing.

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 June 5, 2018, at 10 A.M., for adjourned hearing.

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 April 17, 2018, at 10 A.M., for continued hearing.

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 67th Street, Block 5760, Lot 70, Borough of Brooklyn.

COMMUNITY BOARD #10BK

ACTION OF THE BOARD – Laid over to May 15, 2018, at 10 A.M., for continued hearing.

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 62nd Street, Block 5734, Lot 35, Borough of Brooklyn.

COMMUNITY BOARD #11BK

ACTION OF THE BOARD – Laid over to April 17, 2018, at 10 A.M., for continued hearing.

2016-4127-BZ

APPLICANT – Dennis D. Dell'Angelo, for 1547 East 26th 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 26th Street, Block 6773, Lot 77, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to June 19, 2018, at 10 A.M., for continued hearing.

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 62nd Street, Block 5734, Lot 45, Borough of Brooklyn.

COMMUNITY BOARD #11BK

ACTION OF THE BOARD – Laid over to April 17, 2018, at 10 A.M., for continued hearing.

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

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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

ACTION OF THE BOARD – Laid over to April 10, 2018, at 10 A.M., for continued hearing.

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

ACTION OF THE BOARD – Laid over to April 10, 2018, at 10 A.M., for continued hearing.

REGULAR MEETING

TUESDAY AFTERNOON, FEBRUARY 27, 2018

1:00 P.M.

Present: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta.

ZONING CALENDAR

2017-56-BZ

APPLICANT – Rampulla Associates Architects, LLP, for Block 853, LLC, owner.

SUBJECT – Application February 24, 2017 – 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. R1-2 zoning district.

R1-2 Lower Density Growth Management Area.

PREMISES AFFECTED – 1321 Richmond Road, Block 853, Lot(s) 91 & 93, Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Laid over to May 15, 2018, at 10 A.M., for continued hearing.

2017-240-BZ

APPLICANT – Troutman Sanders LLP, for Red Rooster Harlem LLC, owner.

SUBJECT – Application August 15, 2017 – 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).

PREMISES AFFECTED – 310 Lenox Avenue, Block 1723, Lot 69, Borough of Manhattan.

COMMUNITY BOARD #10M

ACTION OF THE BOARD – Laid over to March 27, 2018, at 10 A.M., for continued hearing.

2017-245-BZ

APPLICANT – Akerman, LLP for Capital One Financial Corporation, owner.

SUBJECT – Application August 17, 2017 – 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.

PREMISES AFFECTED – 32-02 Francis Lewis Boulevard, Block 4940, Lot 1, Borough of Queens.

COMMUNITY BOARD #11Q

ACTION OF THE BOARD – Laid over to May 6, 2018, at 10 A.M., for continued hearing.

Carlo Costanza, Executive Director

BULLETIN

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March 16, 2018

DIRECTORY

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2018-30-A

40 Flatbush Avenue, Block 00118, Lot(s) 0006, Borough of **Brooklyn, Community Board: 2**. Appeal from Department of Buildings determination rejecting sign from registration based on alleged proximity to public park and conclusion that sign is not entitled to non-conforming use status. C6-2 district.

2018-31-BZ

38 West 38th street, Located at 38th Street between Fifth and Sixth Avenues, Block 00839, Lot(s) 0068, Borough of **00839, Community Board: 5**. Special Permit (§73-36) to permit the operation of a physical culture establishment (EPIC Hybrid Training) to be located on the second floor of an existing building contrary ZR §42-10. M1-6 zoning district. M1-6 district.

2018-32-BZ

4 Dutch Street, Located on Dutch Street between John Street and Fulton Street, Block 00078, Lot(s) 0004, Borough of **Manhattan, Community Board: 1**. Special Permit (§73-36) to permit the operation of a physical culture establishment (I love Kickboxing) to be located on the first-floor level of an existing building contrary ZR §32-10. C6-4 (LM) zoning district. C6-4 district.

2018-33-BZ

31-41 97th Street, Vacant lot 20' wide x 95' deep beginning on east side of 97th street distant 190' north of 32nd Avenue, Block 01409, Lot(s) 0048, Borough of **Queens, Community Board: 3**. Variance (§72-21) to permit the construction of a two-family home contrary to ZR §22-00 (building with no side yards); ZR §23-32 (required minimum lot area or width for residences); ZR §23-461(a) (side yards); ZR §23-142 (open space and FAR) and ZR §25-22(a) (parking). R4-1 zoning district. R4-1 district.

2018-34-BZ

102-02 Metropolitan Avenue, Located on the southeast corner of intersection of Metropolitan Avenue and 71st Avenue, Block 03900, Lot(s) 1 & 5, Borough of **Queens, Community Board: 6**. Special Permit (§73-36) to permit the operation of physical cultural establishment (Sedona Fitness) to be located on portions of the cellar, first floor and the entirety of the second floor of an existing building contrary ZR §32-10. C2-3/R3A zoning district. C2-3 (R3-2) & R3A district.

2018-35-A

22 Van Street, Located on the west side of Van Street, 185.86 south of intersection with Richmond Terrace, Block 00187, Lot(s) 0152, Borough of **Staten Island, Community Board: 1**. Variance of the 2014 Building Code to permit the change in use and corresponding alteration of an existing building contrary to §28-101.4.1 to §28-101.4.4 of the building code. M-1 zoning district. M1-1 district.

2018-36-BZ

1482 East 26th Street, Located on the west side of East 26th Street between Avenue N and Avenue O, Block 07679, Lot(s) 0087, Borough of **Brooklyn, Community Board: 14**. Special Permit (§73-622) to permit the enlargement of a one family home contrary to ZR §23-141 (FAR and Open Space); ZR §23-461 (a) (side yard) and ZR §23-47 (rear yard). R2 zoning district. R2 district.

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

CALENDAR

REGULAR MEETING APRIL 10, 2018, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, April 10, 2018, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

SPECIAL ORDER CALENDAR

170-47-BZ

APPLICANT – Eric Palatnik, P.C., for Dasueram LLC, owner.

SUBJECT – Application November 28, 2017 – Extension of Term (§11-411) of a previously approved variance permitting the operation of a (UG 16B) storage warehouse in the cellar, used in conjunction with a (UG 17B) factory on the first floor which expired on November 25, 2017. R7-1 zoning district.

PREMISES AFFECTED – 1982 Crotona Parkway, Block 3121, Lot 11, Borough of Bronx.

COMMUNITY BOARD #6BX

154-13-BZ

APPLICANT – Sheldon Lobel, P.C., for Sandy Bergen, LLC, owner.

SUBJECT – Application February 22, 2018 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) permitting the construction of a retail building (UG 6), contrary to use regulations (§22-10) which expired on February 4, 2018. R5 zoning district.

PREMISES AFFECTED – 1054-1064 Bergen Avenue, Block 8341, Lot(s) 118 & 121, Borough of Brooklyn.

COMMUNITY BOARD #18BK

292-13-BZ

APPLICANT – Sheldon Lobel, P.C., for The Edmond J. Safra Synagogue Inc., owner.

SUBJECT – Application February 14, 2018 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) permitting the development of a Use Group 4A house of worship (*Congregation Bet Yaakob*), contrary to floor area, open space ratio, front, rear and side yards, lot coverage, height and setback, planting, landscaping and parking regulations which expired January 28, 2018. R5, R6A and R5 Special Ocean Parkway Sub-District.

PREMISES AFFECTED – 2085 Ocean Parkway, Block 7109, Lot 50, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEALS CALENDAR

2017-68-A thru 2017-96-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Joline Estates, LLC, owner.

SUBJECT – Applications March 27, 2017 – Proposed construction of twenty-nine (29) two-family residences, not fronting on a legally mapped street, contrary to General City Law 36. R3-X (SRD) zoning district.

PREMISES AFFECTED – 7 to 49 Torrice Loop and 11 to 16 Frosinone Lane, Block 7577, Various Lots, Borough of Staten Island.

COMMUNITY BOARD #3SI

2017-320-BZY

APPLICANT – Kramer Levin Naftalis & Frankel LLP by Gary Tarnoff, for Sutton 58 Holding Company, LLC, owner.

SUBJECT – Application December 19, 2017 – Proposed extension of time to complete construction for a minor development pursuant to ZR §11-331 to renew building permits lawfully issued before November 30, 2017, the date of the modified tower-on-a-base regulation, to complete the required foundation of a proposed 64-story residential apartment building. R10 zoning district.

PREMISES AFFECTED – 428-432 East 58th Street, Block 1369, Lot 34, Borough of Manhattan.

COMMUNITY BOARD #6M

REGULAR MEETING APRIL 10, 2018, 1:00 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, April 10, 2018, 1:00 P.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

ZONING CALENDAR

77-15-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Arasu Jambukeswaran, owner.

SUBJECT – Application April 9, 2015 – Variance (§72-21) to allow the alteration of an existing two-family dwelling on the second floor and an enlargement, located within an R2A zoning district.

PREMISES AFFECTED – 244-36 85th Avenue, Block 8609, Lot 22, Borough of Queens.

COMMUNITY BOARD #13Q

CALENDAR

2016-4472-BZ

APPLICANT – Sheldon Lobel, P.C., for Marino Plaza 63-12, LLC, owner; Body By Fitness Health Club 1 Inc., lessee.
SUBJECT – Application December 28, 2016 – 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 zoning district.

PREMISES AFFECTED – 245-01–245-13 Jamaica Avenue aka 245-13 Jericho Turnpike, Block 8659, Lot 1, Borough of Queens.

COMMUNITY BOARD #13Q
-----**2017-31-BZ**

APPLICANT – Akerman, LLP for ROCK 34, Inc., owner.
SUBJECT – Application January 27, 2017 – Variance (§72-21) to permit the development of a three-story, three-family residential building on a narrow corner lot contrary to ZR §23-45 (front yard) and ZR §23-462 (a) (required side yards). R5 zoning district.

PREMISES AFFECTED – 107-17 34th Avenue, Block 1722, Lot 27, Borough of Queens.

COMMUNITY BOARD #3Q
-----**2017-256-BZ**

APPLICANT – Sahn Ward Coschignano, PLLC, for Archives L.L.C. c/o Rockrose Development L.L.C., owner; Peloton Interactive, Inc., lessee.

SUBJECT – Application August 30, 2017– 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).

PREMISES AFFECTED – 666 Greenwich Street, Block 604, Lot 33, Borough of Manhattan.

COMMUNITY BOARD #2M
-----**2017-259-BZ**

APPLICANT – Eric Palatnik, P.C., for Yisrael Grafstein, owner.

SUBJECT – Application September 1, 2017 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area, open space and lot coverage (ZR §23-142); 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.

PREMISES AFFECTED – 1760 East 28th Street, Block 6810, Lot 29, Borough of Brooklyn.

COMMUNITY BOARD #15BK
-----**2017-299-BZ**

APPLICANT – Duane Morris LLP by Jon Popin, for Douglaston Shopping Center Owner LLC, owner.

SUBJECT – Application November 14, 2017– 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.

PREMISES AFFECTED – 242-02 61st Avenue, Block 8286, Lot 185, Borough of Queens.

COMMUNITY BOARD #11Q
-----**2017-308-BZ**

APPLICANT – Greenberg Traurig by Jay A. Segal, for East Side Homestead LLC, owner.

SUBJECT – Application November 29, 2017 – 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.

PREMISES AFFECTED – 50 East 69th Street, an interior lot located on the south side of East 69th Street, on the block bounded by East 69th Street, Park Avenue, East 68th Street and Madison Avenue. Block 1383, Lot 40. Borough of Manhattan.

COMMUNITY BOARD #8M

Carlo Costanza, Executive Director

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**REGULAR MEETING
TUESDAY MORNING, MARCH 6, 2018
10:00 A.M.**

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

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

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 and an extension of term of a variance, previously granted by the Board; and

WHEREAS, a public hearing was held on this application on August 15, 2017, after due notice by publication in *The City Record*, with continued hearings on November 14, 2017 and January 23, 2018, and then to decision on March 6, 2018; and

WHEREAS, Commissioner Ottley-Brown performed an inspection of the site and surrounding neighborhood; and

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

WHEREAS, the Board has exercised jurisdiction over the subject site since November 26, 1968, when, under the subject calendar number, the Board granted a variance to permit, at an existing coal and oil establishment, structural alterations to the silos to provide storage rooms at grade for a term of five (5) years, expiring November 26, 1976; and

WHEREAS, on February 26, 1974, under the subject calendar number, the Board granted an extension of term of five (5) years, expiring February 26, 1979, on condition that a new certificate of occupancy be obtained; and

WHEREAS, on June 26, 1979, under the subject calendar number, the Board granted an extension of term of

five (5) years, expiring June 26, 1984, and amended the variance to permit a one-story masonry extension to be used for truck garages and the removal of silos on condition that a new certificate of occupancy be obtained within one (1) year, by June 26, 1980; and

WHEREAS, on February 13, 1985, under the subject calendar number, the Board granted an extension of term of five (5) years, expiring June 26, 1989, on condition that all conditions enumerated in the affidavit from the owner marked “Received February 5, 1985,” be complied with, that the hours of operation be from 8:00 a.m. to 6:00 p.m. Monday through Friday only, with no business operations on weekends or holidays, except for the ingress and egress of the owner’s trucks and that a new certificate of occupancy be obtained within one (1) year, by February 13, 1986; and

WHEREAS, on October 24, 1989, under the subject calendar number, the Board granted an extension of term of four (4) years, expiring June 26, 1992, on condition that there be no parking and storage of trucks in the open area at any time, that there be no storage of any materials in the open area at any time and that the hours of operation be from 8:00 a.m. to 6:00 p.m. Monday through Friday only, with no business operations on weekends or holidays, except for the ingress and egress of the owner’s trucks and that a new certificate of occupancy be obtained within one (1) year, by October 24, 1990; and

WHEREAS, on October 18, 1994, under the subject calendar number, the Board granted an extension of term of five (5) years, expiring June 26, 1997, on condition that a new certificate of occupancy be obtained within one (1) year, by October 18, 1995; and

WHEREAS, on March 3, 1998, under the subject calendar number, the Board granted an extension of term of 68 months, expiring June 26, 2003, on condition that a new certificate of occupancy be obtained within one (1) year, by March 3, 1999; and

WHEREAS, the term of the variance having expired, the applicant now seeks an extension of term, an amendment and a waiver of the Board’s Rules of Practice and Procedure to allow the late filing of this application; and

WHEREAS, the applicant proposes to amend the variance to allow the storage of agricultural materials in an open area adjacent to the railroad; and

WHEREAS, at hearing, the Board requested additional information regarding the boundaries of the subject site with regard to potential residences nearby, clarification as to the proposed site plan, the potential effect of agricultural materials and the appropriateness of additional landscaping and screening; and

WHEREAS, in response, the applicant updated the site plan and provided evidence of new perimeter landscaping to buffer the subject site from nearby residences; and

WHEREAS, the applicant represents that the open area proposed to be used for the storage of agricultural materials is as far as feasible from adjacent residences and that the landscaping and distance will prevent potential adverse effects on residences; and

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WHEREAS, based upon its review of the record, the Board has determined that the requested extension of term, amendment and waiver are appropriate with certain conditions as set forth below.

Therefore it is Resolved, that the Board of Standards and Appeals does hereby *waive* the Rules of Practice and Procedure and *reopen* and *amend* the resolution, dated November 26, 1968, as amended through March 3, 1998, so that as amended this portion of the resolution shall read: “to *permit* an amendment to the variance to permit open storage of agricultural materials on a portion of the subject site adjacent to the railroad tracks and an extension of term of ten (10) years, expiring March 6, 2028; *on condition* that all work and site conditions shall conform to drawings filed with this application marked “Received February 14, 2018”- Three (3) sheets; and *on further condition*:

THAT the term of this grant shall be for ten (10) years, expiring March 6, 2028;

THAT there shall be no parking or storage of trucks in the open area at any time;

THAT there shall be no storage of any materials in the open area at any time, except that there may be storage of agricultural materials, which shall be limited to the area within 50 feet of the western lot line, adjacent to the railroad tracks;

THAT the hours of operation shall be limited to 8:00 a.m. to 6:00 p.m., Monday through Friday only, with no business operations on weekends or holidays, except for the ingress and egress of the owner’s trucks;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy shall be obtained within one (1) year, by March 6, 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, March 6, 2018.

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 9th Street, Block 450, Lot 28, 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 January 20, 2017, acting on Alteration Application No. 122813278, reads in pertinent part:

“Proposed Veterinarian’s Office in R8B zoning district is not permitted pursuant to ZR 22-10”; and

WHEREAS, this is an application for a waiver of the Board’s Rules of Practice and Procedure, an extension of time to obtain a certificate of occupancy, an amendment and an extension of term of a variance, previously granted by the Board, which expired November 12, 2007; and

WHEREAS, a public hearing was held on this application on March 6, 2018, after due notice by publication in *The City Record*, and then to decision on March 6, 2018 same date; and

WHEREAS, Community Board 3, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is located on the south side of East 9th Street, between Second Avenue and First Avenue, in an R8B zoning district, in Manhattan; and

WHEREAS, the site has approximately 25 feet of frontage along East 9th Street, 94 feet of depth, 2,348 square feet of lot area and is occupied by a six-story, with cellar and sub-cellar, mixed-use commercial and residential building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since November 12, 2002, when, under the subject calendar number, the Board granted a variance to permit the operation of a veterinary office in Use Group 6B located at the cellar level on condition that the first floor of the subject site revert to a conforming use within one (1) year, by November 12, 2003, that there be no boarding of animals at the subject site, that the term of the grant be for five (5) years, expiring November 12, 2007, that the above

MINUTES

conditions appear on the certificate of occupancy and that a certificate of occupancy be obtained within one (1) year, by November 12, 2003; and

WHEREAS, the time to obtain a certificate of occupancy and term of the variance having expired, the applicant now seeks an extension of time to obtain a certificate of occupancy and an extension of term of the variance as well an waiver of the Board's Rules of Practice and Procedure to allow the late filing of this application; and

WHEREAS, in addition, the applicant proposes an amendment of the variance to permit a portion of the first floor to be used as a veterinary office in Use Group 6B; and

WHEREAS, in response, the Board directed the applicant to demonstrate that the proposed amendment does not implicate the findings of ZR § 72-21; and

WHEREAS, the applicant states that there are unique physical conditions—the unusually low ceiling height in the cellar, history of use as a veterinary hospital and interior layout of the existing building—at the subject site that create practical difficulties or unnecessary hardship; and

WHEREAS, the applicant also submitted a financial feasibility study demonstrating that there is no reasonable possibility that as-of-right development of the cellar and first floor would bring a reasonable return; and

WHEREAS, the applicant states that the proposed amendment will not alter the essential character of the neighborhood or district, noting that prevalence of ground-floor commercial uses in the vicinity and the historic use of the subject site, fully enclosed within the building, for medical-related uses; and

WHEREAS, the applicant states that the size of the cellar and arrangement of space within the building have not been created by the owner or a predecessor in title; and

WHEREAS, the applicant states that the financial feasibility study further demonstrates that the proposed amendment represents the minimum variance necessary to afford relief; and

WHEREAS, at hearing, the applicant provided evidence that residential tenants in the building support this application and have not been adversely affected by the operation of a veterinary office within the subject building; and

WHEREAS, based upon its review of the record, the Board has determined that the requested waiver of the Board's Rules of Practice and Procedure, extension of time to obtain a certificate of occupancy, amendment and extension of term of a variance are appropriate with certain conditions as set forth below; and

WHEREAS, the Board notes that the term of this grant has been reduced to reflect the period of time that the veterinary office has operated without a variance.

Therefore it is Resolved, that the Board of Standards and Appeals does hereby *wave* the Rules of Practice and Procedure and *reopen* and *amend* the resolution, dated November 12, 2002, so that as amended this portion of the resolution shall read: “to *permit* an extension of time to obtain a certificate of occupancy, an amendment and an

extension of term of fifteen (15) years, expiring November 12, 2022; *on condition* that all work and site conditions shall conform to the Board-approved plans; and *on further condition*:

THAT the term of this grant shall be limited to fifteen (15) years, expiring November 12, 2022;

THAT the use permitted by this grant shall be limited to a veterinary office in Use Group 6B;

THAT there shall be no boarding of animals at the subject site;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy shall be obtained within one (1) year, by March 6, 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, March 6, 2018.

197-08-BZ

APPLICANT – Law Office of Jay Goldstein, for Carroll Gardens Realty, LLC, owner.

SUBJECT – Application March 6, 2018 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) to permit a four-story and penthouse residential building. The proposal was contrary to ZR Sections 23-141 (Floor Area, FAR & Open Space Ratio), 23-22 (Number of Dwelling Units), 23-45 (Front Yard), 23-462 (Side Yard), and 23-631 (Wall Height) which expired on March 16, 2014; Waiver of the Rules. R4 district.

PREMISES AFFECTED – 341 Troy Avenue, Block 1407, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #9BK

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; and

WHEREAS, a public hearing was held on this application on March 6, 2018, after due notice by

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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 northeast corner of Troy Avenue and Carroll Street, in an R4 zoning district, in Brooklyn; and

WHEREAS, the Board has exercised jurisdiction over the subject site since March 16, 2010, when, under the subject calendar number, the Board granted a variance to permit a five-story, with penthouse, residential building with 34 dwelling units and 35 accessory parking spaces on condition that the bulk parameters of the building be a maximum of five (5) stories, including penthouse, a maximum of 34 dwelling units, a total height of 54'-6", a street-wall height of 44'-6", a floor area of 48,342 square feet (3.0 FAR), one front yard with a depth of 6'-0", one side yard with a width of 6'-0", a lot coverage of 72 percent, a minimum of 35 parking spaces, all as illustrated on the Board-approved plans; that the parking layout be as approved by the Department of Buildings; and that no temporary or permanent certificate of occupancy be issued by the Department of Buildings or accepted by the applicant or successor until the Department of Environmental Protection issues a Notice of Satisfaction; and

WHEREAS, on June 18, 2013, under the subject calendar number, the Board amended the variance to allow for the reduction in the number of dwelling units from 34 to 26 and the number of parking spaces from 35 to 32 and the associated redesign; and

WHEREAS, by letter dated July 14, 2016, under the subject calendar number, the Board permitted minor changes to the Board-approved plans to allow for better vehicle maneuvering and ease maintenance of the building's mechanicals; and

WHEREAS, by letter dated July 14, 2016, under the subject calendar number, the Board states that it has no objection to the portrayal of yards on the Board-approved plans or to the use of Quality Housing deductions to achieve deductions shown on the Board-approved plans; and

WHEREAS, the time to complete construction having expired, the applicant now seeks an extension and a waiver of the Board's Rules of Practice and Procedure to allow the late filing of this application; and

WHEREAS, based upon its review of the record, the Board has determined that the requested extension of time to complete construction and waiver of the Board's Rules of Practice and Procedure are appropriate with certain conditions as set forth below.

Therefore it is Resolved, that the Board of Standards and Appeals does hereby *waive* the Rules of Practice and Procedure and *reopen* and *amend* the resolution, dated March 16, 2010, as amended through, on June 18, 2013, so that as amended this portion of the resolution shall read: "to *permit* a waiver of the Board's Rules of Practice and Procedure and an extension of time to complete construction by four (4) years, expiring June 18, 2021; *on condition* that

all work and site conditions shall conform to the Board-approved plans; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: a maximum of five (5) stories, including penthouse, a maximum of 26 dwelling units, a total height of 54'-6", a street-wall height of 44'-6", a floor area of 48,342 square feet (3.0 FAR), one front yard with a depth of 6'-0", one side yard with a width of 6'-0", a lot coverage of 72 percent, a minimum of 32 parking spaces, all as illustrated on the Board-approved plans;

THAT the parking layout shall be 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 June 18, 2021;

THAT no temporary or permanent certificate of occupancy be issued by the Department of Buildings or accepted by the applicant or successor until the Department of Environmental Protection issues a Notice of Satisfaction;

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, March 6, 2018.

31-12-BZ

APPLICANT – Sheldon Lobel, P.C., for Cactus of Harlem, LLC, owner.

SUBJECT – Application August 16, 2016 – Extension of Time to Complete Construction of a previously approved Special Permit (§73-50) permitting a waiver of rear yard requirements (§33-292) to permit the construction of commercial building which expired on August 17, 2016. C8-3 zoning district.

PREMISES AFFECTED – 280 West 155th Street, Block 2040, Lot(s) 48, 61, 62, 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 and Commissioner Sheta.....4

Negative:0

THE RESOLUTION –

WHEREAS, this is an application for an extension of

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time to complete construction; and

WHEREAS, a public hearing was held on this application on March 6, 2018, 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 southeast corner of West 155th Street and Frederick Douglass Boulevard, in a C8-3 zoning district, in Manhattan; and

WHEREAS, the Board has exercised jurisdiction over the subject site since July 17, 2012, when, under the subject calendar number, the Board granted a special permit to allow the construction of a three-story commercial building, in which one story will encroach within the 30-foot open area required by ZR § 33-292 on condition that the height of the building within the open area be limited to 23'-0" and that no mechanical equipment be located on the roof of the building within the 30'-0" open area; and

WHEREAS, the time to complete construction having expired, the applicant now seeks an extension; and

WHEREAS, based upon its review of the record, the Board has determined 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 July 17, 2012, so that as amended this portion of the resolution shall read: "to *permit* an extension of time to complete construction by four (4) years, expiring July 17, 2020; *on condition* that all work and site conditions shall conform to the Board-approved plans; and *on further condition*:

THAT the height of the building within the open area shall be limited to 23'-0";

THAT no mechanical equipment shall be located on the roof of the building within the 30'-0" open area;

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 17, 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, March 6, 2018.

55-13-BZ

APPLICANT – Law Office of Jay Goldstein, for Yeshivas Novominsk, owner.

SUBJECT – Application March 6, 2018 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) to permit the enlargement of an existing yeshiva and dormitory (*Yeshiva Novominsk*), contrary to floor area (§24-11), wall height and sky exposure plane (§24-521), and side yard setback (§24-551) which expired on December 10, 2017. R5 zoning district.

PREMISES AFFECTED – 1690 60th Street (6002-6024 17th Avenue, 1680-1694 60th Street, 1695 61st Street), Block 5517, 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 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; and

WHEREAS, a public hearing was held on this application on March 6, 2018, 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 17th Avenue, between 61st Street and 60th Street, in an R5 zoning district, in Brooklyn; and

WHEREAS, the Board has exercised jurisdiction over the subject site since December 10, 2013, when, under the subject calendar number, the Board granted a variance to permit a two-story enlargement of a three-story, with mezzanine, community-facility building occupied as a school in Use Group 3 that does not comply with district regulations for floor area, wall height, sky-exposure plane and side-yard setback on condition that the building parameters be a floor area of 65,799 square feet (2.27 FAR), a maximum wall height of 58'-6" and five stories, that any change in control or ownership of the building will require prior approval of the Board and that the above conditions be listed on the certificate of occupancy; and

WHEREAS, the time to complete construction having expired, the applicant now seeks an extension; and

WHEREAS, based upon its review of the record, the Board has determined 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 10, 2013, so that as amended this portion of the resolution shall read: "to *permit* an extension of time to complete construction by four (4) years, expiring December 10, 2021; *on condition* that all work and site conditions shall

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conform to the Board-approved plans; and *on further condition*:

THAT the building parameters shall be as follows: a floor area of 65,799 square feet (2.27 FAR), a maximum wall height of 58'-6" and five stories;

THAT any change in control or ownership of the building will require prior approval of 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 December 10, 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, March 6, 2018.

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 March 20, 2018, 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 91st 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 May 1, 2018, 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 March 6, 2018, at 10 A.M., for continued hearing.

180-05-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for TCAM Core Property Fund Operating LP, owner; Equinox 85th 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 85th Street) Block 1531, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #8M

ACTION OF THE BOARD – Laid over to May 15, 2018, at 10 A.M., for adjourned hearing.

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

ACTION OF THE BOARD – Laid over to May 1, 2018, at 10 A.M., for adjourned hearing.

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65-13-BZ

APPLICANT – Eric Palatnik, P.C., for Israel Rosenberg, owner.

SUBJECT – Application October 27, 2017 – Amendment of a previously approved Variance (§72-21) which permitted the construction of a three-story multiple dwelling (Use Group 2), contrary to ZR §42-00. The amendment seeks to permit an on-site parking space at the cellar level contrary to the previous Board approval. M1-1 & M1-2/R6A Special Mixed MX-4 district.

PREMISES AFFECTED – 123 Franklin Avenue, Block 1899, Lot 9, Borough of Brooklyn.

COMMUNITY BOARD #3BK

ACTION OF THE BOARD – Laid over to May 15, 2018, at 10 A.M., for continued hearing.

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 – 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 and an extension of term of a variance, previously granted by the Board; and

WHEREAS, a public hearing was held on this application on August 15, 2017, after due notice by publication in *The City Record*, with continued hearings on November 14, 2017 and January 23, 2018, and then to decision on March 6, 2018; and

WHEREAS, Commissioner Ottley-Brown performed an inspection of the site and surrounding neighborhood; and

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

WHEREAS, the Board has exercised jurisdiction over the subject site since November 26, 1968, when, under the subject calendar number, the Board granted a variance to permit, at an existing coal and oil establishment, structural alterations to the silos to provide storage rooms at grade for a term of five (5) years, expiring November 26, 1976; and

WHEREAS, on February 26, 1974, under the subject calendar number, the Board granted an extension of term of five (5) years, expiring February 26, 1979, on condition that a new certificate of occupancy be obtained; and

WHEREAS, on June 26, 1979, under the subject calendar number, the Board granted an extension of term of five (5) years, expiring June 26, 1984, and amended the variance to permit a one-story masonry extension to be used for truck garages and the removal of silos on condition that a new certificate of occupancy be obtained within one (1) year, by June 26, 1980; and

WHEREAS, on February 13, 1985, under the subject calendar number, the Board granted an extension of term of five (5) years, expiring June 26, 1989, on condition that all conditions enumerated in the affidavit from the owner marked “Received February 5, 1985,” be complied with, that the hours of operation be from 8:00 a.m. to 6:00 p.m. Monday through Friday only, with no business operations on weekends or holidays, except for the ingress and egress of the owner’s trucks and that a new certificate of occupancy be obtained within one (1) year, by February 13, 1986; and

WHEREAS, on October 24, 1989, under the subject calendar number, the Board granted an extension of term of four (4) years, expiring June 26, 1992, on condition that there be no parking and storage of trucks in the open area at any time, that there be no storage of any materials in the open area at any time and that the hours of operation be from 8:00 a.m. to 6:00 p.m. Monday through Friday only, with no business operations on weekends or holidays, except for the ingress and egress of the owner’s trucks and that a new certificate of occupancy be obtained within one (1) year, by October 24, 1990; and

WHEREAS, on October 18, 1994, under the subject calendar number, the Board granted an extension of term of five (5) years, expiring June 26, 1997, on condition that a new certificate of occupancy be obtained within one (1) year, by October 18, 1995; and

WHEREAS, on March 3, 1998, under the subject calendar number, the Board granted an extension of term of 68 months, expiring June 26, 2003, on condition that a new certificate of occupancy be obtained within one (1) year, by March 3, 1999; and

WHEREAS, the term of the variance having expired, the applicant now seeks an extension of term, an amendment and a waiver of the Board’s Rules of Practice and Procedure to allow the late filing of this application; and

WHEREAS, the applicant proposes to amend the variance to allow the storage of agricultural materials in an open area adjacent to the railroad; and

WHEREAS, at hearing, the Board requested additional information regarding the boundaries of the subject site with regard to potential residences nearby, clarification as to the proposed site plan, the potential effect of agricultural materials and the appropriateness of additional landscaping and screening; and

WHEREAS, in response, the applicant updated the site plan and provided evidence of new perimeter landscaping to

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buffer the subject site from nearby residences; and

WHEREAS, the applicant represents that the open area proposed to be used for the storage of agricultural materials is as far as feasible from adjacent residences and that the landscaping and distance will prevent potential adverse effects on residences; and

WHEREAS, based upon its review of the record, the Board has determined that the requested extension of term, amendment and waiver are appropriate with certain conditions as set forth below.

Therefore it is Resolved, that the Board of Standards and Appeals does hereby *waive* the Rules of Practice and Procedure and *reopen* and *amend* the resolution, dated November 26, 1968, as amended through March 3, 1998, so that as amended this portion of the resolution shall read: “to *permit* an amendment to the variance to permit open storage of agricultural materials on a portion of the subject site adjacent to the railroad tracks and an extension of term of ten (10) years, expiring March 6, 2028; *on condition* that all work and site conditions shall conform to drawings filed with this application marked “Received February 14, 2018”- Three (3) sheets; and *on further condition*:

THAT the term of this grant shall be for ten (10) years, expiring March 6, 2028;

THAT there shall be no parking or storage of trucks in the open area at any time;

THAT there shall be no storage of any materials in the open area at any time, except that there may be storage of agricultural materials, which shall be limited to the area within 50 feet of the western lot line, adjacent to the railroad tracks;

THAT the hours of operation shall be limited to 8:00 a.m. to 6:00 p.m., Monday through Friday only, with no business operations on weekends or holidays, except for the ingress and egress of the owner’s trucks;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy shall be obtained within one (1) year, by March 6, 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, March 6, 2018.

2017-254-A & 2017-255-A

APPLICANT – Eric Palatnik, P.C., for Ottavio Savo, owner.
SUBJECT – Application August 28, 2017 – Proposed construction of a one-family home not fronting a legally mapped street contrary to General City Law 36. R3X/SRD zoning district.

PREMISES AFFECTED – 115 and 117 Arbutus Avenue, Block 6523, Lot(s) 24, 27, Borough of Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Laid over to May 1, 2018, at 10 A.M., for continued hearing.

ZONING CALENDAR

2017-245-BZ

APPLICANT – Akerman, LLP for Capital One Financial Corporation, owner.

SUBJECT – Application August 17, 2017 – 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.

PREMISES AFFECTED – 32-02 Francis Lewis Boulevard, Block 4940, Lot 1, 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 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 variance, previously granted by the Board; and

WHEREAS, a public hearing was held on this application on February 27, 2018, after due notice by publication in *The City Record*, and then to decision on March 6, 2018; and

WHEREAS, Commissioner Ottley-Brown performed an inspection of the site and surrounding neighborhood; and

WHEREAS, Community Board 11, Queens, recommends approval of this application on condition that the parking-lot lights be directed away from residential uses and that the parking-lot gate be locked at night; and

WHEREAS, Queens Borough President Melinda Katz recommends approval of this application on condition that lighting be directed away from nearby residences and that the gates to the parking lot be locked when the bank is closed; and

WHEREAS, Auburndale Improvement Association, Inc. submitted testimony in support of this application, stating that there are no serious complaints about the subject site; and

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WHEREAS, the subject site is located on the southwest corner of Francis Lewis Boulevard and 32nd Avenue, in an R2A zoning district, in Queens; and

WHEREAS, the Board has exercised jurisdiction over the subject site since November 10, 1959, when, under BSA Calendar Number 81-54-BZ, the Board granted a variance to permit the extension of the accessory parking of the bank patrons' and employees' cars for a term of twenty (20) years, expiring November 10, 1979, on condition that there be a hedge planted on the Utopia Parkway front between the building line and the inner edge of the sidewalk and that a certificate of occupancy be obtained; and

WHEREAS, on June 2, 1981, under BSA Calendar Number 81-54-BZ, the Board granted an extension of term of the variance of ten (10) years, expiring November 10, 1989, on condition that the lot comply with the Building Department rules and regulations for parking lots and that a new certificate of occupancy be obtained within one (1) year, by June 2, 1982; and

WHEREAS, on January 29, 1991, under BSA Calendar Number 81-54-BZ, the Board granted an extension of term of the variance of ten (10) years, expiring November 10, 1999, on condition that a new certificate of occupancy be obtained; and

WHEREAS, the term of the variance having expired, the applicant now seeks an extension; and

WHEREAS, additionally, because this application was filed more than 10 years after the expiration of term, the applicant requests a waiver of the Board's Rules of Practice and Procedure and submitted evidence that the commercial accessory parking use has been continuous since the expiration of term, that substantial prejudice would result without such a waiver and that the use does not substantially impair the appropriate use and development of adjacent properties; and

WHEREAS, at hearing, in response to concerns raised by a nearby resident, the Board questioned whether there would be a drive-through window at the subject site; and

WHEREAS, in response, the applicant clarified that no drive-through window was proposed but that there is a walk-up ATM on the Francis Lewis Boulevard side of the subject building; and

WHEREAS, the applicant also revised the drawings to indicate the number of parking spaces, clarified lighting of the subject site, indicated signage on the site plan, submitted landscaping plans with a plant schedule and provided further information documenting continuity; and

WHEREAS, the applicant further clarified that no lighting was proposed for the parking lot and notes the presence of barrier gates controlling access to the parking lot; and

WHEREAS, the applicant states that the ATM is available for use 24 hours per day, seven days per week but that there will be no overnight parking permitted; and

WHEREAS, based upon its review of the record, the Board has determined 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 *waive* the Rules of Practice and Procedure and *reopen* and *amend* the resolution, dated November 10, 1959, as amended through January 29, 1991, so that as amended this portion of the resolution shall read: "to *permit* an extension of term of ten (10) years, expiring March 6, 2028; *on condition* that all work and site conditions shall conform to drawings filed with this application marked "Received February 27, 2018"-Eight (8) sheets; and *on further condition*:

THAT the term of this grant shall be limited to ten (10) years, expiring March 6, 2028;

THAT there shall be a hedge planted on the Utopia Parkway front between the building line and the inner edge of the sidewalk;

THAT the lot shall comply with the Building Department rules and regulations for parking lots;

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 6, 2022;

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, March 6, 2018.

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 3rd and 4th 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 27, 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 27, 2018, at 10 A.M., for continued hearing.

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 June 5, 2018, at 10 A.M., for adjourned hearing.

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 June 19, 2018, at 10 A.M., for adjourned hearing.

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

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice Chair Chanda,

Commissioner Ottley-Brown and Commissioner Sheta4
Negative:.....0

ACTION OF THE BOARD – Laid over to April 17, 2018, at 10 A.M., for decision, hearing closed.

2016-4468-BZ

APPLICANT – Bryan Cave LLP, for 27 East 61st 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 61st Street, Block 1376, Lot 24, Borough of Manhattan.

COMMUNITY BOARD #8M

ACTION OF THE BOARD – Laid over to April 17, 2018, at 10 A.M., for adjourned hearing.

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 90th Street, Block 1569, Lot 35, Borough of Manhattan.

COMMUNITY BOARD #8M

ACTION OF THE BOARD – Laid over to April 10, 2018, at 10 A.M., for continued hearing.

MINUTES

**REGULAR MEETING
TUESDAY AFTERNOON, MARCH 6, 2018
1:00 P.M.**

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

ZONING CALENDAR

2017-283-BZ

CEQR #18-BSA-045K

APPLICANT – Law Office of Jay Goldstein, for 289 Grand Street Unit LLC, owner; Functional Fitness Studio 1, LLC, lessee.

SUBJECT – Application October 26, 2017 – 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.

PREMISES AFFECTED – 289 Grand Street, Block 2383, Block 7502, 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 and Commissioner Sheta...4
Negative.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated October 11, 2017, acting on Alteration Application No. 321621189, reads in pertinent part:

“A physical culture use is not permitted, as of right, . . . as per Section 32-10 and 73-36 of the Zoning Resolution”; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to permit, in an R6B (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 March 6, 2018, after due notice by publication in *The City Record*, and then to decision on March 6, 2018; and

WHEREAS, Community Board 1, Brooklyn, recommends approval of this application;

WHEREAS, the subject site is located on Grand Street, between Roebling Street and Havemeyer Street, in an R6B (C2-4) zoning district, in Brooklyn; and

WHEREAS, the subject site has approximately 25 feet of frontage along Grand Street, 100 feet of depth, 2,500 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 §

MINUTES

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 3,722 square feet of floor space as follows: 2,500 square feet of floor area on the first floor, including a juice bar, exercise room and restrooms, and 1,222 square feet of floor space in the cellar, used for storage; and

WHEREAS, the PCE will operate as F45 with the following hours of operation: Monday through Friday, 5:30 a.m. to 9:00 p.m., and Saturday and Sunday, 8:00 a.m. to 6:00 p.m.; and

WHEREAS, the applicant represents that the PCE use is consistent with the vibrant mixed-use area in which it is located, that the PCE use is fully contained within the envelope of an existing building and that the surrounding area is characterized by ground-floor commercial uses, including retail stores and restaurants, along with compatible residential uses; 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 or adjacent buildings; and

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

WHEREAS, the applicant states that the PCE will operate as a high-intensity training-circuit fitness studio with classes that include a comprehensive body-enhancing workout in a small-class environment; 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 exist, local audible and visual alarms and connection to an FDNY-approved central station—will be installed in the entire PCE space; and

WHEREAS, in response to the Board's comments at hearing, the applicant provided additional information

regarding the programming of the PCE's circuit-based workouts and further represents that signage will comply with the applicable zoning regulations; 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 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. 18BSA045K dated October 26, 2017; and

WHEREAS, the Board finds that the evidence in the record supports the findings required to be made under ZR §§ 73-36 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion.

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 §§ 73-36 and 73-03 to *permit*, in an R6B (C2-4) zoning district, the operation of a physical culture establishment ("PCE"), contrary to ZR § 32-10; *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked "Received October 26, 2017"-One (1) sheet and "March 6, 2018"-Three (3) sheets; and *on further condition*:

THAT this grant shall be limited to a term of ten (10) years, expiring March 6, 2028;

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

MINUTES

with four (4) years, by March 6, 2022;

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, March 6, 2018.

2017-192-BZ

APPLICANT – Greenberg Traurig, LLP, for Fort Hamilton, LLC, owner.

SUBJECT – Application May 26, 2017 – 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.

PREMISES AFFECTED – 5402-5414 Fort Hamilton Parkway/1002-1006 54th Street, Block 5673, Lot(s) 42 & 50, Borough of Brooklyn.

COMMUNITY BOARD #12BK

ACTION OF THE BOARD – Laid over to May 15, 2018, at 10 A.M., for continued hearing.

2017-204-BZ

APPLICANT – Paul F. Bonfilio, for Sergio Fernandez Vette Works, owner.

SUBJECT – Application June 7, 2017– Variance (§72-21) to permit the enlargement of a non-conforming Automotive Repair Facility (UG 16B) contrary to ZR §52-22. R4A zoning district.

PREMISES AFFECTED – 124-14 20th Avenue, Block 4169, Lot 21, Borough of Queens.

COMMUNITY BOARD #7Q

ACTION OF THE BOARD – Laid over to March 27, 2018, at 10 A.M., for continued hearing.

2017-228-BZ

APPLICANT – Fox Rothschild LLP, for Charles B. Wang Community Health Center, Inc., owner.

SUBJECT – Application July 17, 2017 – 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.

PREMISES AFFECTED – 131-66 40th Road, 131-68 40th Road, 40-46 College Point Boulevard, Block 5060, Lot(s) 37, 42, Borough of Queens.

COMMUNITY BOARD #7Q

ACTION OF THE BOARD – Laid over to April 17, 2018, at 10 A.M., for continued hearing.

2017-237-BZ

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

SUBJECT – Application August 11, 2017 – 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.

PREMISES AFFECTED – 134-37 35th Avenue, Block 4949, Lot 31, Borough of Queens.

COMMUNITY BOARD #7Q

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice Chair Chanda, Commissioner Ottley-Brown and Commissioner Sheta4
Negative:.....0

ACTION OF THE BOARD – Laid over to March 20, 2018, at 10 A.M., for decision, hearing closed.

2017-238-BZ

APPLICANT – Eric Palatnik, P.C., for C & G Empire Realty, LLC, owner.

SUBJECT – Application August 11, 2017 – 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.

PREMISES AFFECTED – 134-03 35th Avenue, Block 4949, Lot 46, Borough of Queens.

COMMUNITY BOARD #7Q

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice Chair Chanda, Commissioner Ottley-Brown and Commissioner Sheta4
Negative:.....0

ACTION OF THE BOARD – Laid over to March 20, 2018, at 10 A.M., for decision, hearing closed.

Carlo Costanza, Executive Director

MINUTES

*CORRECTION

This resolution adopted on November 21, 2017, under Calendar No. 2017-38-BZ and printed in Volume 102, Bulletin No. 48, is hereby corrected to read as follows:

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 28th 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 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*

MINUTES

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 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

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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 53, 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.

***The resolution has been amended to correct part of the condition which read:...a minimum open space ratio of 56,... now reads:...a minimum open space ratio of 53,.... Corrected in Bulletin No. 11, Vol. 103, dated March 16, 2018.**

BULLETIN

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March 30, 2018

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2018-37-BZ

560 W. 33rd Street, Located at the southeast corner of intersection of 11th Avenue and West 33rd Street, Block 00702, Lot(s) 0150, Borough of **Manhattan, Community Board: 4**. Special Permit (§73-36) to permit the operation of a physical culture establishment (Equinox Hotel Spa) to be located on the fifth floor of a 72-story mixed-use building contrary to ZR §32-10. C6-4 Hudson Yards Special District. C6-4(HY) district.

2018-38-BZ

1717 Richmond Road, located on Richmond Road located between Dongan Hills and Seaver Avenue., Block 00887, Lot(s) 7, Borough of **Staten Island, Community Board: 2**. Special Permit (§73-243) to allow for an eating and drinking establishment (UG 6) (Starbucks) with an accessory drive-through facility contrary to ZR §32-15. C1-2/R1-2 zoning district. C1-2/R1-2 district.

2018-39-BZ

1249 East 23rd Street, Located on the east side of East 23rd Street between Avenue L and Avenue M, Block 07641, Lot(s) 0023, Borough of **Brooklyn, Community Board: 14**. Special Permit (§73-622) to permit the enlargement of a one family home contrary to ZR §23-141 (FAR and Open Space); ZR §23-461 (a) (side yard) and ZR §23-47 (rear yard). R2 zoning district. R2 district.

2018-40-A

18 Tuttle Street, Located parallel to Home Place between Lyon Place and Willowbrook Road, Block 01481, Lot(s) 0092, Borough of **Staten Island, Community Board: 1**. Appeal of a determination of the New York City Building's Department that the premises, has frontage on a legally mapped street and is not contrary to General City Law §36. R3X district.

2018-41-BZ

1238 East 29th Street, Located on the West Side of East 29th Street between Avenue L and Avenue M, Block 07646, Lot(s) 0060, Borough of **Brooklyn, Community Board: 14**. + R2 district.

2018-42-BZ

1360 36th Street, Located at 38th Street, Old New Utrecht Road, Church Avenue, 37th Avenue, 13th Avenue, Block 05301, Lot(s) 0020, Borough of **Brooklyn, Community Board: 12**. Special Permit (§73-19) to allow for a Use Group 3 school use (Bobover Yeshiva Bnei Zion) contrary to ZR §32-31 (Use Regulations); Variance (§72-21) to permit the development of the building contrary to ZR §33-283 (rear yard equivalent) and ZR §33-432 (height and setback regulations). C8-2 zoning district. C8-2 district.

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

CALENDAR

REGULAR MEETING APRIL 17, 2018, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, April 17, 2018, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

SPECIAL ORDER CALENDAR

789-45-BZ

APPLICANT – Vassalotti Associates Architects, LLP, for Woodside 56, LLC, owner; Leemilt's Petroleum, Inc., lessee.

SUBJECT – Application June 22, 2016 – Extension of Term of a previously granted Variance (§11-411) for the continued operation of a (UG16) gasoline service station (Getty) which expired on July 13, 2016; Waiver of the Rules. M1-1/R5 zoning district.

PREMISES AFFECTED – 56-02/20 Broadway, Block 1195, Lot 44, Borough of Queens.

COMMUNITY BOARD #2Q

450-46-BZ

APPLICANT – Friedman & Gotbaum LLP by Shelly S. Friedman, Esq., for 41 East LLC, owner.

SUBJECT – Application October 28, 2016 – Extension of Term (§ 11-411) of a previously approved variance permitting commercial (UG 6B) contrary to residential use regulations which expired on November 1, 2014; Waiver of the Rules. R8B/LH-1A (Upper East Side Historic District) zoning district.

PREMISES AFFECTED – 41 East 62nd Street, Block 1377, Lot 27, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEALS CALENDAR

2017-48-A

APPLICANT – Akeeb Shekoni, for Nigerian Muslim Community of Staten Island, owner; Hamzat Kabiawu, lessee.

SUBJECT – Application February 17, 2017 – Proposed construction located within the bed of a mapped street, contrary to General City Law 35. R3A Zoning District.

PREMISES AFFECTED – 36 Hardy Street, Block 638, Lot(s) 44,46,47,49, Borough of Staten Island.

COMMUNITY BOARD #1SI

REGULAR MEETING APRIL 17, 2018, 1:00 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, April 17, 2018, 1:00 P.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

ZONING CALENDAR

280-13-BZ

APPLICANT – Sheldon Lobel, P.C., for CA Plaza, LLC, owner.

SUBJECT – Application July 19, 2013 – Special Permit (§73-44) to permit the reduction of required parking for ambulatory diagnostic or treatment facility (Use Group 4) contrary to ZR §36-21. Special Permit (§73-36) to permit a physical culture establishment (PCE) within a portion of the proposed building. C4-2 & C4-3 zoning districts.

PREMISES AFFECTED – 36-18 Main Street, Block 4971, Lot 16, Borough of Queens.

COMMUNITY BOARD #7Q

2017-235-BZ

APPLICANT – Snyder & Snyder LLP on behalf of T-Mobile Northeast LLC, for 111th Avenue LLC, owner; T-Mobile Northeast LLC, lessee.

SUBJECT – Application August 9, 2017 – 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.

PREMISES AFFECTED – 111-02 Sutphin Boulevard, Block 11965, Lot 188, Borough of Queens.

COMMUNITY BOARD #12Q

2017-319-BZ

APPLICANT – Akerman, LLP, for Kingsway Realty LLC, owner; 1601 Kings Highway Fitness Group, LLC, lessee.

SUBJECT – Application December 15, 2017 – Special Permit (§73-36) to permit the operation of a Physical Cultural Establishment (*Planet Fitness*) on portions of the ground, second and third floors of a new mixed-use building contrary to ZR §32-10. C4-4A zoning district.

PREMISES AFFECTED – 1601 Kings Highway, Block 6779, Lot 22, Borough of Brooklyn.

COMMUNITY BOARD #15BK

CALENDAR

2018-43-BZ

APPLICANT – NYC Mayor's Office of Housing Recovery Operations (HRO)

SUBJECT – Application March 26, 2018 – 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-A zoning district.

PREMISES AFFECTED – 47 West 14th Road, Block 15318, Lot 66. Borough of Queens.

COMMUNITY BOARD #14Q

2018-44-BZ

APPLICANT – NYC Mayor's Office of Housing Recovery Operations (HRO)

SUBJECT – Application March 26, 2018 – 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 – 643 Beach 66th Street, Block 16027, Lot 25. Borough of Queens.

COMMUNITY BOARD #14Q

2018-45-BZ

APPLICANT – NYC Mayor's Office of Housing Recovery Operations (HRO)

SUBJECT – Application March 26, 2018 – 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 – 318 Colony Avenue, Block 03889, Lot 17. Borough of Staten Island.

COMMUNITY BOARD #2SI

Carlo Costanza, Executive Director

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**REGULAR MEETING
TUESDAY MORNING, MARCH 20, 2018
10:00 A.M.**

Present: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.

SPECIAL ORDER CALENDAR

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 – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta4

Negative:0

Abstain: Commissioner Scibetta.....1

THE RESOLUTION –

WHEREAS, this is an application for an extension of term of a variance, previously granted by the Board; 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, January 24, 2017, September 26, 2017, and January 30, 2018, and then to decision on March 20, 2018; 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 8, Queens, recommends approval of this application; and

WHEREAS, the subject site is located on the southeast corner of Jewel Avenue and Main Street, in an R4B zoning district, in Queens; and

WHEREAS, the site has approximately 20 feet of frontage along Jewel Avenue, 100 feet of frontage along Main Street, 2,000 square feet of lot area and is occupied by a two-story, with cellar, mixed-use community-facility and commercial building; and

WHEREAS, the Board has exercised jurisdiction over

the subject site since March 5, 1996, when, under the subject calendar number, the Board granted a variance to permit the change in use to a community facility (Use Group 4) on the ground floor and cellar with professional offices (Use Group 6B) on the second floor and an enlargement of the building to connect a proposed office (Use Group 6B) in the garage for a term of twenty (20) years, expiring March 5, 2016, on condition that emergency lighting be provided in the cellar in accordance with the Board-approved plans, that signs be limited to those specified on the Board-approved plans, that the second floor and garage be used solely for a Use Group 6B use and that the above conditions appear on the certificate of occupancy; and

WHEREAS, the term having expired, the applicant now seeks an extension; and

WHEREAS, in response to questions from the Board at hearing, the applicant clarified that use of the subject building is ambulatory diagnostic or treatment health care facility (Use Group 4) at the cellar and first floor and professional offices (Use Group 6B) at the second floor, as illustrated on the Board-approved plans; and

WHEREAS, the applicant represents that, contrary to the certificate of occupancy, there is no retail use at the subject site and that signage complies with the Board-approved plans; and

WHEREAS, the applicant represents that all medical samples awaiting pickup are stored within the property line of the subject site; and

WHEREAS, the applicant submitted evidence that the site has been maintained, including painting of the façade, that the waste enclosure located on public property has been removed and that the restroom on the first floor is accessible; and

WHEREAS, based upon its review of the record, the Board has determined 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 March 5, 1996, so that as amended this portion of the resolution shall read: “to *permit* an extension of term of twelve (12) years, expiring March 5, 2028; *on condition* that all work and site conditions shall conform to drawings filed with this application marked “Received February 28, 2018”- Eight (8) sheets; and *on further condition*:

THAT the term of this grant shall be for twelve (12) years, expiring March 5, 2028;

THAT use of the building shall be as follows: ambulatory diagnostic or treatment health care facility (Use Group 4) at the cellar and first floor and professional offices (Use Group 6B) at the second floor, as illustrated on the Board-approved plans;

THAT there shall be no retail use permitted at the subject site;

THAT hours of operation shall be limited to the following: 8:00 a.m. to 6:00 p.m., Monday through Friday, and 8:00 a.m. to 3:00 p.m., Saturday or Sunday;

THAT emergency lighting shall be provided in the

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cellar in accordance with the Board-approved plans;
THAT signs shall be limited to those specified on the Board-approved plans;

THAT the above conditions shall appear on the certificate of occupancy;

THAT an amended certificate of occupancy shall be obtained within four (4) years, by March 20, 2022;

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, March 20, 2018.

175-95-BZ

APPLICANT – Alan J. Sigman, for Twi-light Roller Skating Rink, Inc., owner.

SUBJECT – Application April 17, 2017 – Extension of Term of a previously approved Variance (§72-21) which permitted the use of banquet hall (catering establishment) (UG9) which expired on December 10, 2016; Waiver of the Rules. C1-3/R5B & R3A zoning districts.

PREMISES AFFECTED – 205-35 Linden Boulevard, Block 11078, Lot 1, 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, Commissioner Sheta and Commissioner Scibetta5

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; and

WHEREAS, a public hearing was held on this application on March 20, 2018, 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 12, Queens, recommends approval of this application; and

WHEREAS, Council Member I. Daneek Miller submitted testimony in support of this application, stating that the subject establishment is an important civic resource

in the neighborhood; and

WHEREAS, State Senator Leroy G. Comrie submitted testimony in support of this application, stating that the subject establishment has proven itself a valued part of the community and a vital commodity for residents; and

WHEREAS, Assistant Principal Teresa Davis-Wilkinson of P.S. 136, Queens, submitted testimony in support of this application, stating that the subject establishment is spotless and a wonderful resource for the community; and

WHEREAS, Hollis Local Development Corporation submitted testimony in support of this application, stating that the subject establishment is not only a physical enhancement to the commercial corridor but also an economic one; and

WHEREAS, the subject site is located on the northeast corner of Linden Boulevard and 205th Street, partially in an R5B (C1-3) zoning district and partially in an R3A zoning district, in Queens; 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 variance to permit the change in use from stores (Use Group 6) and supermarket (Use Group 6) to stores (Use Group 6) and catering establishment (Use Group 9) for a term of ten (10) years, expiring December 10, 2006, on condition that the subject site be maintained free of graffiti, that landscaping and fencing at the parking area in the rear be maintained in accordance with the Board-approved plans, that the catering establishment comply with the New York City Noise Code, that the hours of operation be limited to 12:00 p.m. to 3:00 p.m. and 8:00 p.m. to 1:30 a.m., Monday through Friday, and 9:00 a.m. to 1:30 a.m., Saturday and Sunday, and that the above conditions appear on the certificate of occupancy; and

WHEREAS, on December 11, 2007, the Board amended the variance to permit the enlargement of the banquet hall (Use Group 9) and granted an extension of term of ten (10) years, expiring December 10, 2016, on condition that attended parking be provided during hours of operation and when functions are scheduled, from 5:00 p.m. Friday until the close of business Sunday 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 and a waiver of the Board’s Rules of Practice and Procedure to allow the late filing of this application; and

WHEREAS, the applicant proposes to change the hours of operation from 9:00 a.m. to 1:30 a.m. daily to 8:30 a.m. to 1:30 a.m. daily; and

WHEREAS, by letter dated March 19, 2018, the Fire Department states that, based upon its review of this application and its records, it has no objection to this application; and

WHEREAS, by letter dated September 5, 2018, the New York City Department of Environmental Protection issued a Letter of No Objection; and

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WHEREAS, based upon its review of the record, the Board has determined 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 *waive* the Rules of Practice and Procedure and *reopen* and *amend* the resolution, dated December 10, 1996 as amended through December 11, 2007, so that as amended this portion of the resolution shall read: “to *permit* an extension of term of ten (10) years, expiring December 10, 2026; *on condition* that all work and site conditions shall conform to drawings filed with this application marked “Received December 18, 2017”-Six (6) sheets; and *on further condition*:

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

THAT the hours of operation shall be limited to 8:30 a.m. to 1:30 a.m. daily;

THAT the subject site shall be maintained free of graffiti;

THAT landscaping and fencing at the parking area in the rear shall be maintained in accordance with the Board-approved plans;

THAT the banquet hall (Use Group 9) shall comply with the New York City Noise 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 March 20, 2022;

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, March 20, 2018.

216-07-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 1429 Second Avenue Associated LLC, owner; Equinox 74th Street, Inc., lessee.

SUBJECT – Application November 14, 2017 – Extension of Term of a previously approved Special Permit (§73-36) permitting the operation of physical culture establishment (Equinox) on all five levels of a mixed-use building which expires on January 8, 2018. C1-9 district.

PREMISES AFFECTED – 255 East 74th Street, Block 1429, Lot 7502, Borough of Manhattan.

COMMUNITY BOARD #8M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta5

Negative:0

THE RESOLUTION –

WHEREAS, this is an application for an extension of term of a special permit, previously granted by the Board; and

WHEREAS, a public hearing was held on this application on March 20, 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 8, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is located on the northwest corner of East 74th Street and Second Avenue, in a C1-9 zoning district, in Manhattan; 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 to allow the operation of a physical culture establishment (“PCE”) on portions of the first and second floors of the subject building for a term of ten (10) years, expiring January 8, 2018, 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 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 having expired, the applicant now seeks an extension; and

WHEREAS, the applicant represents that there have been no changes to the floor plan or operator of the facility, Equinox, as previously approved by the Board; and

WHEREAS, in response to questions from the Board at hearing, the applicant submits that signage complies with applicable zoning regulations; and

WHEREAS, by letter dated March 20, 2018, the Fire Department states that it has no objection to this application; 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, based upon its review of the record, the Board has determined 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 January 8, 2008, so that as amended this portion of the resolution shall read: “to *permit* an extension of term of ten (10) years, expiring January 8, 2028; *on condition* that all

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work and site conditions shall conform to drawings filed with this application marked “Received November 14, 2017”-Six (6) sheets; and *on further condition:*

THAT the term of this grant shall be for ten (10) years, expiring January 8, 2028;

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 a certificate of occupancy shall be obtained within four (4) years, by March 20, 2022;

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

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 prior to the issuance of any permits, DOB shall review the floor area and location of the PCE for compliance with all relevant commercial use regulations;

THAT sound attenuation measures shall be installed and maintained in accordance with the Board-approved plans;

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 20, 2018.

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

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Sheta4

Negative:0

Abstain: Commissioner Scibetta.....1

THE RESOLUTION –

WHEREAS, this is an application for an extension of time to complete construction and an amendment to a variance, previously granted by the Board; and

WHEREAS, a public hearing was held on this application on January 23, 2018, after due notice by publication in *The City Record*, and then to decision on March 20, 2018; 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 east side of Tenth Avenue, between West 13th Street and West 14th Street, in an M1-5 zoning district, in Manhattan; and

WHEREAS, the Board has exercised jurisdiction over the subject site since May 13, 2014, when, under the subject calendar number, the Board granted a variance to permit the construction of a ten-story commercial building that does not comply with zoning regulations for rear yards, height and setback on condition that the bulk parameters of the building be a maximum height of 175 feet to the roof of the tenth floor, a maximum total height of 199 feet, including rooftop mechanicals and a maximum total floor area of 117,705 square feet (5.0 FAR), that, prior to the issuance by the Department of Buildings of permits for demolition of the buildings on the site, the New York City Landmarks Preservation Commission will have reviewed and approved a scope of work for Historic American Building Survey (“HABS”) documentation and reviewed the design of the proposed building, that an (E) designation (E-334) is placed on the subject site to ensure proper hazardous materials remediation and that, prior to the issuance by the Department of Buildings of permits that involve any soil disturbance, the applicant will receive approvals from the Office of Environmental Remediation (“OER”) for the hazardous materials remediation plan and construction-related health and safety plan; and

WHEREAS, by letter dated August 12, 2016, the Board permitted minor changes to the Board-approved plans; and

WHEREAS, the time to complete construction having expired, the applicant now seeks an extension of time to complete construction and an amendment; and

WHEREAS, the applicant proposes to change the Board’s condition requiring approval of the HABS scope and design review by LPC from prior to demolition to prior to issuance of a certificate of occupancy and proposes modifications to the Board-approved plans; and

WHEREAS, on October 15, 2015, OER issued a Notice to Proceed, which states that the applicant has filed a Hazardous Materials remedial action work plan that is acceptable to OER and has prepared a Construction Health

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and Safety Plan for implementation on the subject project; and

WHEREAS, by letter dated March 16, 2018, the New York City Landmarks Preservation Commission states that it has reviewed the revised design and finds that it is largely consistent with the design previously reviewed by LPC with only minor changes and that LPC does not object to the HABS sign-off or the revised building review's occurring prior to the issuance of a temporary certificate of occupancy; and

WHEREAS, based upon its review of the record, the Board has determined that the requested extension of time to complete construction and amendment 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 13, 2014, so that as amended this portion of the resolution shall read: "to *permit* an extension of time to complete construction by four (4) years, expiring May 13, 2022, and an amendment to the variance to allow modification of a condition and changes to the Board-approved plans; *on condition* that all work and site conditions shall conform to drawings filed with this application marked 'Received February 2, 2018'-Twenty-Two (22) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: a maximum height of 175 feet to the roof of the tenth floor, a maximum total height of 199 feet, including rooftop mechanicals and a maximum total floor area of 117,705 square feet (5.0 FAR);

THAT prior to the issuance by the Department of Buildings of a temporary certificate of occupancy, the New York City Landmarks Preservation Commission will have reviewed and approved a scope of work for Historic American Building Survey ("HABS") documentation and reviewed the design of the proposed building;

THAT an (E) designation (E-334) is placed on the subject site to ensure proper hazardous materials remediation;

THAT prior to the issuance by the Department of Buildings of permits that involve any soil disturbance, the applicant will receive approvals from the Office of Environmental Remediation ("OER") for the hazardous materials remediation plan and construction-related health and safety plan;

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 13, 2022;

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, March 20, 2018.

28-15-BZ

APPLICANT – Law Offices of Marvin B. Mitzner, LLC, for 33 Bre Inc., owner; Spa 88 LLC, lessee.

SUBJECT – Application November 16, 2017 – Extension of Time to Obtain a Certificate of Occupancy for a previously approved Special Permit (§73-36) which permitted the operation of a physical culture establishment (*Spa 88*) on the first, cellar and sub-cellar floors of the existing building which expired on October 14, 2017; Amendment of the previous Board approval to permit that a Temporary Certificate of Occupancy be obtain. C6-4 zoning district. PREMISES AFFECTED – 88 Fulton Street, Block 77, Lot 24, 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 Sheta and Commissioner Scibetta5

Negative:0

THE RESOLUTION –

WHEREAS, this is an application for an extension of time to obtain a certificate of occupancy and an amendment to a special permit, previously granted by the Board; 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 September 27, 2016, and then to decision on March 20, 2018; and

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

WHEREAS, the subject site is located on the southwest corner of Fulton Street and Gold Street, in a C6-4 zoning district and the Special Lower Manhattan District, in Manhattan; and

WHEREAS, the Board has exercised jurisdiction over the subject site since November 27, 1979, when, under BSA Calendar Number 998-79-BZ, the Board granted a special permit to permit, in conjunction with the rehabilitation of a seven-story commercial building into a mixed-use building, the use of the sub-cellar mezzanine level as a physical culture establishment ("PCE") for a term of five (5) years, expiring November 27, 1984, on condition that the hours of operation be limited to 7:00 a.m. to 11:00 p.m. seven days per week; and

WHEREAS, on February 9, 1988, under BSA Calendar Number 998-79-BZ, the Board amended the

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special permit to allow the extension of the existing PCE on the sub-cellar, cellar and roof levels for a term of seven (7) years, expiring November 27, 1984, on condition that a monthly log be instituted and maintained for the monthly inspections of the standpipe system, that the person responsible for the standpipe system have a Certificate of Fitness and that a new certificate of occupancy be obtained within one (1) year, by February 9, 1988; and

WHEREAS, on October 14, 2016, under the subject calendar number, the Board granted a special permit to allow the operation of a PCE on the first, cellar and sub-cellar levels of the subject building for a term of ten (10) years, expiring October 14, 2026, 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 massages be performed only by New York State-licensed massage therapists only, that the hours of operation be limited to 11:00 a.m. to 11:00 p.m., seven days per week, that accessibility compliance under Local Law 58/87 be as reviewed and approved by the Department of Buildings, that minimum 3'-0" wide exit pathways be provided leading to the required exits and such pathways always be maintained unobstructed, that the above conditions appear on the certificate of occupancy and that a certificate of occupancy be obtained within one (1) year, by October 14, 2017; and

WHEREAS, the time to obtain a certificate of occupancy having expired, the applicant now seeks an extension and an amendment to the Board's condition requiring that a certificate of occupancy be obtained; and

WHEREAS, based upon its review of the record, the Board has determined that the requested extension of time to obtain a certificate of occupancy and amendment 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 October 14, 2016, so that as amended this portion of the resolution shall read: "to *permit* an extension of time to obtain a certificate of occupancy by two (2) years, expiring March 20, 2020, and an amendment to the Board's condition requiring that a temporary certificate of occupancy be obtained; *on condition* that all work and site conditions shall conform to drawings filed with this application marked "Received November 14, 2017"-Five (5) sheets; and *on further condition*:

THAT the term of the special permit shall be for ten (10) years, expiring October 14, 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 all massages shall be performed only by New York State-licensed massage therapists only;

THAT the hours of operation shall be limited to 11:00 a.m. to 11:00 p.m. seven days per week;

THAT accessibility compliance under Local Law 58/87 shall be as reviewed and approved by the Department of Buildings;

THAT minimum 3'-0" wide exit pathways shall be

provided leading to the required exits and such pathways always be maintained unobstructed;

THAT the above conditions shall appear on the temporary certificate of occupancy;

THAT a temporary certificate of occupancy shall be obtained within two (2) years, by March 20, 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, March 20, 2018.

551-37-BZ

APPLICANT – Eric Palatnik, P.C., for 91-23 LLC, owner.
SUBJECT – Application March 11, 2016 – Amendment (§11-413) to permit a change in use from an Automotive Repair Facility (UG 16B) to Automobile Sales (UG 16B). R1-2 zoning district.

PREMISES AFFECTED – 233-02 Northern Boulevard, Block 8166, Lot 20, Borough of Queens.

COMMUNITY BOARD #11Q

ACTION OF THE BOARD – Laid over to May 22, 2018, at 10 A.M., for continued hearing.

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 47th Avenue, Block 5559, Lot 75, Borough of Queens.

COMMUNITY BOARD #11Q

ACTION OF THE BOARD – Laid over to May 15, 2018, at 10 A.M., for adjourned hearing.

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

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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 April 17, 2018, at 10 A.M., for continued hearing.

334-78-BZ

APPLICANT – Eric Palatnik, P.C., for 9123 LLC, owner.
SUBJECT – Application March 18, 2016 – Extension of Term of a previously approved Variance (§72-21) which permitted the operation of an Automotive Repair Facility (UG 16B) which expired on October 4, 2008; Amendment to permit changes to interior partitions and signage; Waiver of the Rules. R1-2 zoning district.

PREMISES AFFECTED – 233-20 Northern Boulevard, Block 8166, Lot 25, Borough of Queens.

COMMUNITY BOARD #11Q

ACTION OF THE BOARD – Laid over to May 22, 2018, at 10 A.M., for continued hearing.

540-84-BZ

APPLICANT – Eric Palatnik, P.C., for 341 Soundview Corp., owner.

SUBJECT – Application June 20, 2016 – Extension of Term of a previously approved Variance (§72-21) which permitted the operation of an Automotive Service Station (UG 16B) which expired on Jun 20, 2016. R3-2 zoning district.

PREMISES AFFECTED – 341 Soundview Avenue, Block 3473, Lot 43, Borough of Bronx.

COMMUNITY BOARD #9BX

ACTION OF THE BOARD – Laid over to June 5, 2018, at 10 A.M., for continued hearing.

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 May 15, 2018, at 10 A.M., for adjourned hearing.

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

ACTION OF THE BOARD – Laid over to May 15, 2018, at 10 A.M., for continued hearing.

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 38th Street, Block 5295, Lot(s) 52 & 109, Borough of Brooklyn.

COMMUNITY BOARD #12BK

ACTION OF THE BOARD – Laid over to May 15, 2018, at 10 A.M., for continued hearing.

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 unbuild 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 June 5, 2018, at 10 A.M., for continued 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 June 5, 2018, 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 May 22, 2018, at 10 A.M., for continued 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 June 26, 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 June 26, 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 June 26, 2018, at 10 A.M., for continued hearing.

ZONING CALENDAR

2017-237-BZ

CEQR #18-BSA-013Q

APPLICANT – Eric Palatnik, P.C., for Farrington Realty, LLC, owner.
SUBJECT – Application August 11, 2017 – 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.
PREMISES AFFECTED – 134-37 35th Avenue, Block 4949, Lot 31, Borough of Queens.

COMMUNITY BOARD #7Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Sheta4
Negative:0
Abstain: Commissioner Scibetta.....1

THE RESOLUTION –

WHEREAS, the decision on behalf of the Queens Borough Commissioner, dated July 11, 2017, acting on Department of Buildings (“DOB”) Application No. 420892323 reads in pertinent part:

ZR. 61-21 The proposed height for subject new building includes:

- 154’-2” Building Height
- 177’-2” Building Height with Bulkhead
- 211’-0” Above Mean Curb Sea Level (Based on Datum of 1988, NAVD 88)

That exceeds the maximum allowable height as per Section 61-21 of the NYC Zoning Resolution and requires a special permit from the BSA, pursuant to Section 73-66; and

WHEREAS, this is an application under ZR § 73-66 to permit, on a site located in an R6 (C2-2) zoning district, the construction of a building that exceeds the maximum height

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permitted in the vicinity of major airports, contrary to ZR § 61-21; and

WHEREAS, a public hearing was held on this application on March 6, 2018, after due notice by publication in *The City Record*, and then to decision on March 20, 2018; and

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

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

WHEREAS, the subject site is located on the northwest corner of 35th Avenue and Farrington Street, in an R6 (C2-2) zoning district, in Queens; and

WHEREAS, the site has approximately 165 feet of frontage along 35th Avenue, 235 feet of frontage along Farrington Street, 38,775 square feet of lot area and is currently vacant; and

WHEREAS, the applicant proposes to develop the site, which is located within the LaGuardia Airport Circling Approach Area, with a fifteen-story plus cellar and two sub-cellars mixed-use residential, community facility and commercial building (the "Development") whose height would penetrate the surface of the airport approach district of the flight obstruction area of LaGuardia Airport, contrary to ZR § 61-21 and requests a special permit pursuant to ZR § 73-66; and

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 plans of the proposed Development

with elevations and indicating the maximum height limits, plane of the approach surface and the maximum 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 proximate to airports and, thus, the Board defers to the FAA's determination regarding any potential hazards posed by the subject proposed building; and

WHEREAS, the application was referred to the FAA, which issued a Determination of No Hazard to Air Navigation, issued April 2, 2015, under Aeronautical Study No. 2014-AEA-6294-OE, stating that the FAA's aeronautical study of the Development, 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 211 feet above mean sea level ("AMSL"), the Development would have no substantial adverse effect on the safe and efficient utilization of the navigable airspace by aircraft or on the operation of air navigation facilities and would not be a hazard to air navigation provided that (1) the structure is marked/lighted in accordance with FAA Advisory circular 70/7460-1 K Change 2, Obstruction Marking and Lighting, red lights – Chapters 4,5(Red),&12; (2) FAA Form 7460-2, Notice of Actual Construction or Alteration, be e-filed any time the project is abandoned or within 5 days after the construction reaches its greatest height; (3) any changes in coordinates, heights, and frequencies or use of greater power will void the determination; (4) any future construction or alteration, including increase to heights, power, or the addition of other transmitters requires separate notice to the FAA; and (5) any failure or malfunction that lasts more than thirty (30) minutes and affects a top light or flashing obstruction light, regardless of its position, be reported immediately so a Notice to Airmen ("NOTAM") can be issued and reported again as soon as normal operation is restored (the "FAA Determination"); and

WHEREAS, accordingly, the maximum height of the Development approved by the FAA is 211 feet AMSL or 178 feet above ground level ("AGL"); and

WHEREAS, the Board notes that the elevations, as represented on the Development plans, demonstrate that the tallest point of the Development—the machine room roof—is located at 209.20 AMSL, less than 211 feet AMSL; and

WHEREAS, the Board notes that the obstruction standards referenced in the FAA Determination are similar, but not identical, to those found in the Zoning Resolution and that the maximum building height of 211 feet AMSL includes temporary construction equipment such as cranes, derricks, etc., which may be used during actual construction of the Development, but notes that such equipment shall not exceed 211 feet AMSL or 178 feet AGL and equipment that has a height greater than that would require separate notice to the FAA; and

WHEREAS, the FAA Determination states that it

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expires on October 2, 2016 unless, *inter alia*, construction is started (not necessarily completed) and FAA Form 7460-2, Notice of Actual Construction or Alteration, is received by the FAA's Southwest Regional Office Obstruction Evaluation Group; and

WHEREAS, construction of the Development began on October 15, 2015, and FAA Form 7460-2 was, Notice of Actual Construction, was filed with the FAA; and

WHEREAS, all conditions contained in the FAA Determinations 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 July 31, 2017, the Port Authority of New York and New Jersey, which operates LaGuardia Airport, states that it agrees with the FAA Determination, requests that all conditions stated in the determination be followed and reiterates that separate studies must be submitted to the FAA for any equipment (i.e. cranes) that exceed 211 feet AMSL or 178 AGL and such studies should be filed at least 90-120 days prior to the start of operations; 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, 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. 18BSA013Q dated August 15, 2017; and

WHEREAS, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-66 and 73-03; 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 the required findings under ZR §§ 73-66 and 73-03, to permit, on a site located in an R6 (C2-2) zoning district, the construction of a building that exceeds the maximum height permitted in the vicinity of major airports, contrary to ZR § 61-21; *on condition* that all work shall substantially conform to the drawings filed with this application and marked "Received March 9, 2018"-Ten (10) sheets; and *on further condition*:

THAT the maximum height of the building, including all appurtenances, shall be as follows: 211 feet above mean seal level ("AMSL") or 178 above ground level ("AGL");

THAT the structure is marked/lighted in accordance with FAA Advisory circular 70/7460-1 K Change 2, Obstruction Marking and Lighting, red lights – Chapters 4,5(Red),&12;

THAT FAA Form 7460-2, Notice of Actual Construction or Alteration, be e-filed any time the project is abandoned or within 5 days after the construction reaches its greatest height;

THAT any changes in coordinates, heights, and frequencies or use of greater power will void this special permit;

THAT any future construction or alteration, including increase to heights, power, or the addition of other transmitters requires separate notice to the FAA;

THAT any failure or malfunction that lasts more than thirty (30) minutes and affects a top light or flashing obstruction light, regardless of its position, be reported immediately so a Notice to Airmen ("NOTAM") can be issued and reported again as soon as normal operation is restored;

THAT temporary construction equipment shall not exceed the overall maximum permitted height of 211 feet AMSL or 178 AGL;

THAT any temporary construction equipment greater than 211 feet AMSL or 178 AGL shall require separate notice to the FAA;

THAT separate studies must be submitted to the FAA for any equipment (i.e. cranes) that exceed 211 feet AMSL or 178 AGL and such studies should be filed at least 90-120 days prior to the start of operations;

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, March 20, 2018.

2017-238-BZ

CEQR #18-BSA-014Q

APPLICANT – Eric Palatnik, P.C., for C & G Empire Realty, LLC, owner.

SUBJECT – Application August 11, 2017 – 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.

PREMISES AFFECTED – 134-03 35th Avenue, Block 4949, Lot 46, 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 Chanda,
Commissioner Ottley-Brown and Commissioner Sheta4
Negative:0
Abstain: Commissioner Scibetta.....1

THE RESOLUTION –

WHEREAS, the decision on behalf of the Queens Borough Commissioner, dated August 2, 2017, acting on Department of Buildings (“DOB”) Application No. 421025982 reads in pertinent part:

The proposed height of the building exceeds the maximum allowable height as per section 61-21 of the NYC Zoning Resolution and requires a special permit from the BSA, pursuant to section 73-66; and

WHEREAS, this is an application under ZR § 73-66 to permit, on a site located in an R6 (C2-2) 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 March 6, 2018, after due notice by publication in *The City Record*, and then to decision on March 20, 2018; and

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

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

WHEREAS, the subject site is located on the northeast corner of 35th Avenue and Prince Street, in an R6 (C2-2) zoning district, in Queens; and

WHEREAS, the site has approximately 208 feet of frontage along 35th Avenue, 260 feet of frontage along Prince Street, 43,147 square feet of lot area and is currently vacant; and

WHEREAS, the applicant proposes to develop the site, which is located within the inner section of the approach surface for a runway located at LaGuardia Airport, with a 16-story mixed use residential, community facility and commercial building (the “Development”) whose height will penetrate the surface of the airport approach district of the flight obstruction area of LaGuardia Airport, contrary to ZR § 61-21, and requests a special permit pursuant to ZR § 73-66; and

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 plans of the proposed Development with elevations and indicating the maximum height limits and maximum 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 proximate to airports and, thus, the Board defers to the FAA’s determination regarding any potential hazards posed by the subject proposed building; and

WHEREAS, the application was referred to the FAA, which issued five (5) Determinations of No Hazard to Air Navigation, three on issued February 9, 2016, under Aeronautical Study Nos. 2015-AEA-6328-OE, 2015-AEA-6330-OE and 2015-AEA-6331-OE (the “2016 Determinations”), and two issued on June 19, 2017, under Aeronautical Study Nos. 2017-AEA-5842-OE and 2017-AEA-5843-OE (the “2017 Determinations,” and, collectively, the “FAA Determinations”), stating that the FAA’s aeronautical study of the Development, 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 maximum heights of 211 feet above mean sea level (“AMSL”) at its highest point, 201 feet AMSL at the southeastern corner of the roof, 196 feet AMSL at the northeastern corner of the roof, and 191 feet AMSL at each of the northwestern and southwestern corners of the roof, the Development would have no substantial adverse effect on the safe and efficient utilization of the navigable airspace by aircraft or on the operation of air navigation facilities and not be a hazard to air navigation provided that (1) the Development is marked/lighted in accordance with FAA Advisory circular 70/7460-1 L, Obstruction Marking and Lighting, red lights – Chapters 4,5(Red),&12; (2) any failure or malfunction that lasts more than thirty (30) minutes and affects a top light or flashing obstruction light, regardless of its position, should be reported immediately so a Notice to Airmen (“NOTAM”) can be issued and reported again as soon as normal operation is restored; (3) FAA Form 7460-2, Notice of Actual Construction or Alteration, be e-filed any time the

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project is abandoned or (a) at least ten (10) days prior to start of construction (7460-2, Part 1) and (b) within five (5) days after the construction reaches its greatest height (7460-2, Part 2); (4) any changes in coordinates, heights and frequencies or use of greater power voids the determination; and (5) any future construction or alteration, including increase to heights, power, or the addition of other transmitters, requires separate notice to the FAA; and

WHEREAS, accordingly, the maximum height of the Development approved by the FAA is 211 feet AMSL or 179 feet above ground level (“AGL”) at its highest point, 201 feet AMSL or 169 feet AGL at the southeastern corner of the roof, 196 feet AMSL or 164 feet AGL at the northeastern corner of the roof and 191 feet AMSL or 159 feet AGL at the northwestern and southwestern corners of the roof; and

WHEREAS, the Board notes that, according to the plans of the Development provided by the applicant, the highest point of the Development is located at 205.87 feet AMSL at its highest point, 195.87 feet AMSL at the southeastern corner of the roof, 195.87 feet at the northeastern corner of the roof and 189.54 feet at the northwestern and southwestern corners of the roof, which are all lower than the applicable maximum heights approved by the FAA; and

WHEREAS, the Board notes that the obstruction standards referenced in the FAA Determinations are similar, but not identical, to those found in the Zoning Resolution and that the maximum building heights approved include temporary construction equipment such as cranes, derricks, etc., which may be used during actual construction of the Development, but notes that such equipment shall not exceed the applicable maximum heights approved by the FAA and any equipment that has any greater height would require separate notice to the FAA; and

WHEREAS, the 2016 Determinations state that they expire on August 9, 2017, unless, *inter alia*, it is extended, revised or terminated by the issuing office; and

WHEREAS, the FAA extended the effective period of the 2016 Determinations to February 2, 2019, unless otherwise extended, revised or terminated by the issuing office; and

WHEREAS, the 2017 Determinations state that they expire on December 19, 2018, unless (a) construction is started (not necessarily completed) and FAA Form 7460-2, Notice of Actual Construction or Alteration, is received by the FAA; (b) extended, revised or terminated by the issuing office; (c) the construction is subject to the licensing authority of the Federal Communications Commission (“FCC”) and an application for a construction permit has been filed; and

WHEREAS, all conditions contained in the FAA Determinations have been adopted and incorporated into the Board’s grant herein, therefore any act constituting a violation of the FAA Determinations will necessarily violate the subject Resolution; and

WHEREAS, by letter dated July 31, 2017, the Port

Authority of New York and New Jersey, which operates LaGuardia Airport, states that it agrees with the FAA determinations, requests that all conditions in the determinations be followed and reiterates that separate studies must be submitted to the FAA for any equipment (i.e. cranes) that exceed the overall heights described in the determinations prior to any construction and such studies should be filed at least 90-120 days prior to the start of operations; 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, 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. 18BSA014Q, dated August 15, 2017; and

WHEREAS, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR § 73-66 and 73-03; 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 the required findings under under ZR §§ 73-66 and 73-03, to permit, on a site located in an R6 (C2-2) zoning district, the construction of a building that exceeds the maximum height permitted in the vicinity of major airports, contrary to ZR § 61-21; *on condition* that all work shall substantially conform to the drawings filed with this application and marked “Received March 9, 2018”-Five (5) sheets; and *on further condition*:

THAT the maximum height of the building, including all appurtenances, shall be as follows: 211 feet above mean seal level (“AMSL”) or 179 feet above ground level (“AGL”) at its highest point, 201 feet AMSL or 169 feet AGL at the southeastern corner of the roof, 196 feet AMSL or 164 feet AGL at the northeastern corner of the roof and 191 feet AMSL or 159 feet AGL at the northwestern and southwestern corners of the roof;

THAT the structure is marked/lighted in accordance with FAA Advisory circular 70/7460-1 L, Obstruction Marking and Lighting, red lights – Chapters 4,5(Red),&12;

THAT any failure or malfunction that lasts more than thirty (30) minutes and affects a top light or flashing obstruction light, regardless of its position, should be reported immediately so a Notice to Airmen (“NOTAM”) can be issued and reported again as soon as normal operation is restored

THAT FAA Form 7460-2, Notice of Actual Construction or Alteration, be e-filed any time the project is abandoned or (a) at least ten (10) days prior to start of

MINUTES

construction (7460-2, Part 1) and (b) within five (5) days after the construction reaches its greatest height (7460-2, Part 2);

THAT any changes in coordinates, heights and frequencies or use of greater power voids the determination;

THAT any future construction or alteration, including increase to heights, power, or the addition of other transmitters, requires separate notice to the FAA;

THAT temporary construction equipment shall not exceed the applicable maximum heights approved by the FAA and set forth herein;

THAT any temporary construction equipment that exceeds the applicable maximum heights approved shall require separate notice to the FAA;

THAT separate studies must be submitted to the FAA for any equipment (i.e. cranes) that exceed the applicable maximum heights approved prior to any construction and such studies should be filed at least 90-120 days prior to the start of operations;

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, March 20, 2018.

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 93rd Street, Block 1521, Lot 40, Borough of Manhattan.

COMMUNITY BOARD #8M

ACTION OF THE BOARD – Laid over to May 22, 2018, at 10 A.M., for continued hearing.

214-14-A & 215-14-BZ

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 103rd Street, 103-10 & 103-16 Alstyn Avenue, Block 1930, Lot 50, Borough of Queens.

COMMUNITY BOARD #4Q

ACTION OF THE BOARD – Laid over to June 19, 2018, at 10 A.M., for adjourned hearing.

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 April 17, 2018, at 10 A.M., for continued hearing.

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 39th Avenue, Block 5347, Lot(s) 13 & 71, Borough of Brooklyn.

COMMUNITY BOARD #2BK

ACTION OF THE BOARD – Laid over to June 19, 2018, at 10 A.M., for continued hearing.

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 14th Avenue, Block 5649, Lot(s) 44, 46, Borough of Brooklyn.

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COMMUNITY BOARD #12BK

ACTION OF THE BOARD – Laid over to June 19, 2018, at 10 A.M., for continued hearing.

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 31st Road, Block 569, Lot 17, Borough of Queens.

COMMUNITY BOARD #1Q

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice Chair Chanda, Commissioner Ottley-Brown and Commissioner Sheta4

Negative:.....0

Abstain: Commissioner Scibetta.....1

ACTION OF THE BOARD – Laid over to April 10, 2018, at 10 A.M., for decision, hearing closed.

REGULAR MEETING

TUESDAY AFTERNOON, MARCH 20, 2018
1:00 P.M.

Present: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.

ZONING CALENDAR

2017-54-BZ

APPLICANT – Law Office of Lyra J. Altman, for Hadasa Mendelsohn & Marcus Mendelsohn, owners.

SUBJECT – Application February 23, 2017 – 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.

PREMISES AFFECTED – 1215-1217 East 28th Street, Block 7646, Lot 39, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Laid over to May 15, 2018, at 10 A.M., for continued hearing.

2017-187-BZ

APPLICANT – John M. Marmora, Esq. c/o K & L Gates LLP, for 3680 Tremont Realty, owner; McDonald's USA, LLC, lessee.

SUBJECT – Application May 22, 2017 – 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/R4-1 zoning district.

PREMISES AFFECTED – 3660 East Tremont Avenue, Block 5543, Lot 86, Borough of Bronx.

COMMUNITY BOARD #10BX

ACTION OF THE BOARD – Laid over to May 22, 2018, at 10 A.M., for continued hearing.

2017-214-BZ

APPLICANT – Eric Palatnik, P.C., for Mark Strimber, owner.

SUBJECT – Application June 16, 2017 – 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.

PREMISES AFFECTED – 1459 East 24th Street, Block 7678, Lot 25, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Laid over to May 22, 2018, at 10 A.M., for continued hearing.

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2017-216-BZ

APPLICANT – Sheldon Lobel, P.C., for Safeguard Chemical Corp., owner; Civic Builders, Inc., lessee.

SUBJECT – Application July 16, 2017 – 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.

PREMISES AFFECTED – 411 Wales Avenue, Block 2574, Lot 82, Borough of Bronx.

COMMUNITY BOARD #1BX

ACTION OF THE BOARD – Laid over to April 17, 2018, at 10 A.M., for continued hearing.

2017-217-BZ

APPLICANT – Akerman, LLP, for Hylan Properties, LLC, owner.

SUBJECT – Application June 20, 2017 – 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).

PREMISES AFFECTED – 4855 Hylan Boulevard, Block 6401, Lot(s) 1, 3, 5 & 6, Borough of Staten Island.

COMMUNITY BOARD #3 SI

ACTION OF THE BOARD – Laid over to May 22, 2018, at 10 A.M., for continued hearing.

Carlo Costanza, Executive Director

BULLETIN

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April 6, 2018

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2018-43-BZ

47 West 14 Road, Located 580.00' westerly of the corner formed by the intersection of Cross Bay Blvd, and West 14 Road., Block 15318, Lot(s) 0066, 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-A zoning district. R3-A district.

2018-44-BZ

643 Beach 66 Street, Located on the corner of Beach 66th Street and DeCosta Avenue, Block 16027, Lot(s) 25, 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. R4-1 zoning district. R4-1 district.

2018-45-BZ

318 Colony Avenue, Located 67.00' southwest of the corner formed by the intersection of Lincoln Avenue and Colony Avenue., Block 03889, Lot(s) 0017, 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.

2018-46-BZ

2205 East 2nd Street, Located on the east side of East 2nd Street between Avenue U and Avenue V, Block 07129, Lot(s) 0052, 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(c)) and creates non-compliance with respect to the wall height (§23-631(b)). R4 (Special Ocean Parkway Sub-District). R4 district.

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

CALENDAR

REGULAR MEETING MAY 1, 2018, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, May 1, 2018, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

SPECIAL ORDER CALENDAR

677-53-BZ

APPLICANT – Akerman LLP, for James Marchetti, owner.
SUBJECT – Application November 17, 2016 – Extension of Term (§11-411) of a previously granted Variance permitting the operation of a UG16 Auto Body Repair Shop (*Carriage House*) with incidental painting and spraying which expired on October 18, 2016; Extension of Time to Obtain a Certificate of Occupancy which expired on October 18, 2012. Waiver of the Rules.C2-2/R4 zoning district.
PREMISES AFFECTED – 61-28 Fresh Meadow Lane, Block 6901, Lot 48, Borough of Queens.

COMMUNITY BOARD #8Q

233-07-BZ

APPLICANT – Rothkrug Rohkrug & Spector, LLP, for T-C The Colorado, LLC, owner; Pure 86th Street, Inc., lessee.
SUBJECT – Application November 14, 2017 – Extension of Term of a previously approved Special Permit (§73-36) permitting the operation physical culture establishment (Pure yoga studio) on the first floor, cellar, sub-cellar 1 and sub-cellar 2 in an existing 35-story mixed-use building. Which expires on February 12, 2018. C2-8A zoning district.
PREMISES AFFECTED – 203 East 86th Street, Block 1532, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #8M

APPEALS CALENDAR

2017-232-A

APPLICANT – Land Planning & Engineering, for Neil Simon SHS Richmond Terrace, LLC, owner.
SUBJECT – Application August 4, 2017 – 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
PREMISES AFFECTED – 1632 Richmond Terrace, Block 187, Lot 42, Borough of Staten Island.

COMMUNITY BOARD #1SI

2017-276-A

APPLICANT – Eric Palatnik, P.C., for Frank McErlean, owner.

SUBJECT – Application October 4, 2017 – Proposed construction of a commercial building not fronting on a legally mapped street, contrary to General City Law 36. M3-1 zoning district.

PREMISES AFFECTED –96 Industrial Loop, Block 7206, Lot 176, Staten Island.

COMMUNITY BOARD #3SI

REGULAR MEETING MAY 1, 2018, 1:00 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, May 1, 2018, 1:00 P.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

ZONING CALENDAR

268-14-BZ

APPLICANT – Warshaw Burstein, LLP, for Kenfa Madison, LLC; Two Deer Group, LLC, owner.

SUBJECT – Application October 31, 2014 – Variance (§72-21) proposed enlargement of the existing Use Group 6, eating and drinking establishment at the subject site. Located within and R1-2 zoning district.

PREMISES AFFECTED – 231-06/10 Northern Boulevard, Block 8164, Lot(s) 22, 122, 30, 130, 43, 15, 230, Borough of Queens.

COMMUNITY BOARD #11Q

2017-9-BZ

APPLICANT – Law Office of Jay Goldstein, for SL Utica LLC, owner; All My Children Daycare, Lessee.

SUBJECT – Application January 12, 2017 – 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.

PREMISES AFFECTED – 561-565 Utica Avenue, Block 4604, Lot 69, Borough of Brooklyn.

COMMUNITY BOARD #17BK

CALENDAR

2017-291-BZ

APPLICANT – Law Office of Jay Goldstein for Yosef Rabinowitz, owner.

SUBJECT – Application November 2, 2017 – 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.

PREMISES AFFECTED – 1367 East 26th Street, Block 7662, Lot 17, Borough of Brooklyn.

COMMUNITY BOARD #14BK

2017-292-BZ

APPLICANT –Law Office of Jay Goldstein, for Baruch Wieder, owner.

SUBJECT – Application November 2, 2017 – 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.

PREMISES AFFECTED – 1363 East 26th Street, Block 7662, Lot 19, Borough of Brooklyn.

COMMUNITY BOARD #14BK

Carlo Costanza, Executive Director

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**REGULAR MEETING
TUESDAY MORNING, MARCH 27, 2018
10:00 A.M.**

Present: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.

SPECIAL ORDER CALENDAR

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

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta5

Negative:0

THE RESOLUTION –

WHEREAS, this is an application for waivers of the Board’s Rules of Practice and Procedure, an extension of term of a previously granted special permit for a physical culture establishment (“PCE”), which expired on February 4, 2017, and an extension of time to obtain a certificate of occupancy, which expired on February 23, 2011; 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 March 27, 2018; and

WHEREAS, Commissioner Ottley-Brown performed an inspection of the site and surrounding neighborhood; and

WHEREAS, the subject site is bound by Madison Avenue to the east, East 36th Street to the north and East 35th Street to the south, in a C5-2 zoning district, in Manhattan; and

WHEREAS, the site has approximately 198 feet of frontage along Madison Avenue, 220 feet of frontage along East 36th Street, 195 feet of frontage along East 35th Street, 41,000 square feet of lot area and is occupied 25-story plus cellar commercial building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since February 4, 1997, when, under the subject calendar number, the Board granted a special permit,

pursuant to ZR § 73-36, legalizing an existing physical culture establishment located in a portion of the cellar, first floor and mezzanine of the existing commercial building for a term of ten (10) years, expiring February 4, 2007, on condition that there be no change in ownership or operating control of the PCE without prior application to and approval from the Board; and

WHEREAS, on January 10, 2006, under the subject calendar number, the Board waived its Rules of Practice and Procedure and amended the resolution to reflect an enlargement of the PCE space on the first floor and a change in ownership and operating control of the PCE on condition that a new certificate of occupancy be obtained within one (1) year, by January 10, 2007, and all conditions from prior resolutions not specifically waived by the Board remain in effect; and

WHEREAS, on February 23, 2010, under the subject calendar number, the Board again waives its Rules of Practice and Procedure and amended the resolution to extend the term of the special permit for ten (10) years, expiring February 4, 2017, on condition that a certificate be obtained by February 23, 2011; there be no change in ownership or operating control of the PCE without prior application to and approval from the Board and all conditions from prior resolutions not specifically waived by the Board remain in effect; and

WHEREAS, the previous term of the special permit having expired, the applicant requests the subject relief; and

WHEREAS, additionally, the applicant requests 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 of this application less than two (2) years after the expiration of the term and Rule § 1-07.3(d)(2) to permit this filing more than (30) days after the expiration of the time to obtain a new certificate of occupancy; and

WHEREAS, in satisfaction of Rule § 1-07.3(b)(2), the applicant represents that the PCE use has been continuous since the expiration of the term and substantial prejudice would result without the requested waiver; and

WHEREAS, the applicant states that there has been no change in ownership or operator since the 2006 amended resolution, that New York Sports Club continues to operate the subject PCE and that the PCE continues to occupy 16,175 square feet of floor space in the cellar, 8,924 square feet of floor area on the first floor and 1,365 square feet of floor area on the mezzanine of the subject building; and

WHEREAS, however, massage services are no longer being offered at the facility; and

WHEREAS, the applicant represents that the hours of operation of the PCE are Monday through Thursday, 5:30 a.m. to 10:00 p.m., Friday, 5:30 a.m. to 9:00 p.m., and Saturday through Sunday, 8:00 a.m. to 8:00 p.m.; and

WHEREAS, the applicant states that the PCE is fully sprinklered and that a fire alarm system has been installed and is operational within the PCE space; and

WHEREAS, the applicant has satisfactorily demonstrated compliance with the conditions of the previous

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term, with the exception of obtaining a certificate of occupancy, which this application seeks to cure, 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 February 4, 1997, as amended through February 23, 2010, 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 4, 2027, on condition that all work and site conditions shall conform to drawings filed with this application marked "Received March 19, 2018"- Five (5) sheets; and on further condition:

THAT the term of this grant shall expire on February 4, 2027;

THAT a new certificate of occupancy shall be obtained within one year;

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 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 objection(s);

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 27, 2018.

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 – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta5
Negative:0

THE RESOLUTION –

WHEREAS, this is an application for an extension of time to complete construction and an amendment; and

WHEREAS, a public hearing was held on this application on December 5, 2017, after due notice by publication in *The City Record*, with continued a hearing on February 13, 2018, and then to decision on March 27, 2018; and

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

WHEREAS, Community Board 18, Brooklyn, recommends denial of this application, stating without providing evidence that there will be negative land-use effects in the neighborhood from traffic and noise and noting that there are several other houses of worship and schools in the vicinity; and

WHEREAS, the subject site is located on the southeast corner of Strickland Avenue and East 64th Street, in an R2 zoning district, in Brooklyn; and

WHEREAS, the Board has exercised jurisdiction over the subject site since July 22, 2008, when, under the subject calendar number, the Board granted a variance to permit the construction of a three-story, with cellar, house of worship with accessory school (Use Group 4), which does not comply with the requirements for side yards, floor area and floor area ratio, front wall height, sky exposure plane and parking on condition that the proposed house of worship have floor area of 9,197 square feet, an FAR of 1.53, a front wall height of 39'-0" on Strickland Avenue and 30'-0" on East 64th Street, front yards of 15'-0" on Strickland Avenue and 6'-0" on East 64th Street, a side yard of 3'-0" on the eastern lot line and one parking space, that any change in ownership or use of the building shall be as reviewed and approved by the Board and that the aforementioned condition be noted on the approved plans and on the certificate of occupancy; and

WHEREAS, on December 4, 2012, under the subject calendar number, the Board granted an extension of time to complete construction of four (4) years, expiring December 4, 2016, on condition that substantial construction be completed by December 4, 2016; and

WHEREAS, the time to complete construction having expired, the applicant now seeks an extension and an amendment to permit the construction of a three-story, without cellar, house of worship with a lower height; and

WHEREAS, in response to community concerns and questions from the Board, the applicant provided additional information indicating that entry to the building has been designed to minimize potential traffic effects, that the roof is not intended for use as a play area, and that windows will feature sound attenuation; and

WHEREAS, the applicant further altered the plans to demonstrate that bulkheads have been lowered to minimize visual impact, to remove elevator to the roof, replace chain-link fencing with metal fencing and indicate that the subject building will comply with regulations applicable in flood

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zones; and

WHEREAS, based upon its review of the record and inspections of the site and surrounding area, the Board has determined that the requested extension of time to complete construction and amendment 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 July 22, 2008, as amended through December 4, 2012, so that as amended this portion of the resolution shall read: “to *permit* an extension of time to complete construction of four (4) years, expiring March 27, 2022, and an amendment permit the construction of a three-story, without cellar, house of worship with a lower height; *on condition* that all work and site conditions shall conform to drawings filed with this application marked “Received March 28, 2018”-Fourteen (14) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be limited to the following: a maximum floor area of 9,197 square feet, a maximum FAR of 1.53, a maximum front wall height of 39’-0” on Strickland Avenue and 30’-0” on East 64th Street, minimum front yards of 15’-0” on Strickland Avenue and 6’-0” on East 64th Street, a minimum side yard of 3’-0” on the eastern lot line and one parking space;

THAT any change in ownership or use of the building shall be as reviewed and approved by the Board;

THAT the above conditions shall appear on the approved plans and the certificate of occupancy;

THAT a certificate of occupancy shall be obtained within four (4) years, by March 27, 2022;

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, March 27, 2018.

436-53-BZ

APPLICANT – Sheldon Lobel, P.C., for RNA Turnpike Realty LLC, owner.

SUBJECT – Application January 13, 2016 – Extension of Term (§11-411) of a variance permitting the operation of an Automotive Service Station (UG 16B) which expired on February 24, 2014; Amendment (§11-412) to permit the enlargement of the existing building and to permit the conversion of the repair bays to an accessory convenience store; Waiver of the Rules. R3-2 zoning district.

PREMISES AFFECTED – 141-50 Union Turnpike, Block 6634, Lot 34, Borough of Queens.

COMMUNITY BOARD #8Q

ACTION OF THE BOARD – Laid over to May 22, 2018, at 10 A.M., for continued hearing.

393-59-BZ

APPLICANT – Sheldon Lobel, P.C., for Peter Ciardullo, owner; Richard Finkelstein, lessee.

SUBJECT – Application January 5, 2016 – Extension of Term (11-411) for an extension of term of the previously granted variance to a convenience store, pump island and metal canopies for a term of ten years which expired January 15, 2012 and a waiver of the Rules.

PREMISES AFFECTED – 1945 Bartow Avenue aka 2801 Edison Avenue, Block 4800, Lot 29, Borough of Bronx.

COMMUNITY BOARD #12BX

ACTION OF THE BOARD – Laid over to May 22, 2018, at 10 A.M., for continued hearing.

138-87-BZ

APPLICANT – Carl A. Sulfaro, Esq., for Philip Cataldi Trust #2, owner.

SUBJECT – Application August 3, 2017 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of car rental facility (UG 8C) which expired on January 12, 2013; Amendment to permit changes to the interior layout and to the exterior of the building; Waiver of the Rules. C2-2/R2 zoning district.

PREMISES AFFECTED – 218-36 Hillside Avenue, Block 10678, Lot 14, Borough of Queens.

COMMUNITY BOARD #13Q

ACTION OF THE BOARD – Laid over to May 22, 2018, at 10 A.M., for continued hearing.

60-90-BZ

APPLICANT – Michael DeRuvo, R.A., for Nissim Kalev, owner.

SUBJECT – Application June 9, 2016 – Extension of Term of a previously granted Special Permit (§73-211) for the continued use of a Gasoline Service Station (Citgo) and Automotive Repair Shop which expired on February 25, 2016; Waiver of the Rules. C2-1/R3X zoning district.

PREMISES AFFECTED – 525 Forest Avenue, Block 148, Lot 29, Borough of Staten Island.

COMMUNITY BOARD #1SI

ACTION OF THE BOARD – Laid over to May 22, 2018, 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

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta5

Negative:.....0

ACTION OF THE BOARD – Laid over to June 26, 2018, at 10 A.M., for decision, hearing closed.

40-06-BZ

APPLICANT – MP Design and Construction/Maria Maloney, for UDR 10 Hanover-LLC-Constantine Koukoulis, owner; 10 Hanover Sq Gym, LLC-Alex Reznik-Senior MGM Dir, lessee.

SUBJECT – Application June 9, 2017 – Extension of Term of a previously approved Special Permit (§73-36) which permitted the operation of a Physical Culture Establishment (Goldman-Sachs) on the cellar and sub-cellar levels in a 21-story mixed-use building which expired on August 22, 2016; Amendment to permit the change in operator to (Complete Body) and a change in hours of operation; Waiver of the Rules. C5-5 (LM) zoning district

PREMISES AFFECTED – 10 Hanover Sq (aka 4-12 Hanover Sq, 110-124 Pearl St, 76-88 Water Street), Block 31, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #1M

ACTION OF THE BOARD – Laid over to May 15, 2018, at 10 A.M., for postponed hearing.

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

ACTION OF THE BOARD – Appeal denied.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter.....1

Negative: Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Sheta.....3

Abstain: and Commissioner Scibetta.....1

THE RESOLUTION –

WHEREAS, the determination of the First Deputy Commissioner dated January 10, 2017, acting on Department Buildings Job No. 200852050 (Zoning Resolution Determination Reference Number 29292) (the “Final Determination”), reads in pertinent part:

The request to allow within each adjoining waterfront zoning lot two buildings with each building abutting the rear lot line and abutting one other building in the adjoining zoning lot is hereby denied.

As shown in the submitted plans, two adjoining waterfront lots, located within the R3-1 District, have common rear lot lines segmented into three parts which separate the two zoning lots with one segment, starting from the shoreline, running parallel between Casler Place and Dare Place (‘Segment No. 1’), connecting with the second segment (‘Segment No. 2’) . . . connecting with the third segment (‘Segment No. 3’) which runs parallel between Casler Place and Dare Place, and terminating at the side lot lines of the two adjoining zoning lots. Located within the northern zoning lot (‘Zoning Lot A’) is an existing single-family residence converted to a two-family residence (‘Building No. 1’), located on the easterly portion of Zoning Lot A within lot no. 489, and a second building, a new building consisting of a two-family residence (‘Building No. 2’), located on the westerly portion of Zoning Lot A within lot no. 487; located within the southern zoning lot (‘Zoning Lot B’) are two new buildings consisting of a two-family residence (the new building located on the westerly portion of Zoning Lot B in lot no. 500 is identified as ‘Building No. 3’ and the new building located on the easterly portion of Zoning Lot B in lot no. 488 is identified as ‘Building No. 4’). Within Zoning Lot A, Building No. 1 abuts the rear lot line at Segment No. 1 and abuts Building No. 4 located in the adjoining Zoning Lot B and Building No. 2, located within Zoning Lot A, abuts the rear lot line at Segment No. 3 and abuts Building No. [3], located in the adjoining Zoning Lot B.

[. . .]

Each of the three common lot line segments separating the two adjoining zoning lots are ‘rear lot lines,’ as defined in ZR 12-10, which states that ‘[a] ‘rear lot line is any lot line of a zoning lot except a front lot line, which is parallel or within 45 degrees of being parallel to, and does not intersect, any street line bounding such zoning

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lot.’ In addition, the two adjoining zoning lots, located within the waterfront area, which have a boundary at grade coincident with the shoreline are located within ‘waterfront blocks,’ as defined in ZR 62-11, and are subject to the bulk regulations under ZR 62-30. . . . The applicant claims that the three rear lot line segments form a single continuous rear lot line that intersects the shoreline and that, pursuant to ZR 62-11, such continuous rear lot line would be deemed a side lot line. With the common lot line segments forming a continuous side lot line, the applicant claims that all four buildings, located within Zoning Lots A and B, abutting such continuous side lot line, are ‘semi-detached’ buildings meeting the definition under ZR 12-10 and that all such two-family semi-detached residences would be permitted uses within the R3-1 District, pursuant to ZR 22-00. . . .

However, a more significant issue requires the compliance with the provisions under ZR 23-891 pertaining to zoning lots with two or more buildings. The two adjoining zoning lots, each having a boundary at grade coincident with the shoreline, meets the definition for ‘waterfront zoning lot,’ pursuant to ZR 62-11 within Article VI, Chapter 2 (Special Regulations Applying in the Waterfront Area). ZR 62-13 states that ‘[t]he regulations of all other Chapters of this Resolution are applicable, except as superseded, supplemented or modified by the provisions of this Chapter.’ One applicable section in the ZR not superseded, supplemented or modified by the provisions of Article VI, Chapter 2 is ZR 23-891 from Article II, Chapter 3. ZR 23-891 shall apply for both adjoining Zoning Lots A and B each containing at least two buildings which states that ‘[a]n open area shall be provided adjacent to the rear wall of each such building or building segment.’ For the purposes of ZR 23-891, the section states that ‘...the ‘rear wall’ shall be the wall opposite the wall of each building or building segment that faces a street or private road.’ The two buildings, located within Zoning Lot A, and the two buildings, located within Zoning Lot B, require the provision of an open area adjacent to the rear wall of each building or building segment such that the width of each open area shall be equal to the width of each building or building segment, the depth of each open area shall be at least 30 ft., measured perpendicular to each rear wall, and no such open area shall serve more than one building or building segment, pursuant to ZR 23-891(a). As shown in the submitted plans, each building within Zoning Lots A and B with the rear exterior walls abutting the lot line is not provided with the required open

areas and is not in compliance with ZR 23-891; and

WHEREAS, this is an appeal for interpretation under ZR § 72-11 and New York City Charter § 666(6)(a) that (1) particular lot line segments at the subject site constitute a “side lot line,” rather than a “rear lot line,” and the buildings abutting at that lot line each meet the Zoning Resolution definition of a “semi-detached building” and (2) ZR § 23-891 is inapplicable because the buildings are located on “waterfront zoning lots” subject to the provisions of ZR § 62-00, *et seq.* (Special Regulations Applying in the Waterfront Area); and

WHEREAS, a public hearing was held on this appeal on November 14, 2017, after due notice by publication in *The City Record*, with a continued hearing on February 13, 2018, and then to decision on March 27, 2018; and

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

WHEREAS, the subject site is comprised of six (6) adjacent tax lots located west of Pennyfield Avenue—two fronting Dare Place (Lots 487 and 489), three fronting Casler Place (Lots 500, 488 and 491) and one with frontage on both Dare Place and Casler Place (Lot 492)—bound by Dare Place to the north, Casler Place to the south and Eastchester Bay to the west, in an R3-1 zoning district and a Lower Density Growth Management Zone, in the Bronx; and

WHEREAS, this appeal is brought on behalf of the owners in fee of the subject site (the “Appellant”); and

WHEREAS, the Department of Buildings (the “Department” or “DOB”) was represented by counsel seeking affirmance of the Final Determination and denial of this appeal; and

WHEREAS, the Board was in receipt of testimony and seven letters in opposition to this appeal raising concerns regarding, *inter alia*, the location of the high water mark at the site, the applicability of FEMA regulations, illegal construction, the narrowness of the Casler Place roadbed and the lack of on-street parking space; and

WHEREAS, the Board notes that these concerns are not pertinent to the issues on appeal, are more suitably pursued with by seeking action by other New York City Agencies and/or by filing a court action and that at the February 13 hearing, an attorney for the Appellant testified that these concerns are, indeed, the subject of a proceeding pending in the New York Supreme Court; and

PROCEDURAL HISTORY

WHEREAS, the BSA has exercised jurisdiction over Lot 487 (3094 Dare Place) and Lot 488 (3093 Casler Place) on Block 5529 in the Bronx since September 27, 2005, when, under BSA Cal. No. 235-04-A and 236-04-A, the Board granted waivers of General City Law § 35 to permit construction of two-story dwellings on those lots within the bed of a mapped, but unimproved street (Whitehead Place) on condition that the development comply with all applicable provisions of the Zoning Resolution,

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Administrative Code and any other relevant laws under DOB jurisdiction and there be no construction of any type within the right of way of Dare Place; and

WHEREAS, DOB New Building (“NB”) Permit No. 200852032-01-NB for the construction of a two-family residence on Lot 487 was first issued on October 25, 2006 (referred to as “Building No. 2” in the Final Determination); and

WHEREAS, Building No. 2, which fronts Dare Place, abuts a two-family residence located on Lot 500, a lot located immediately to the south and fronting Casler Place (referred to as “Building No. 3” in the Final Determination”), which was constructed pursuant to DOB NB Permit No. 200852041-01-NB, first issued on October 25, 2006; and

WHEREAS, on February 4, 2010, a Zoning Lot Description and Ownership Statement was recorded in the Office of the City Register of the City of New York (City Register File No. 2010000040181) describing Lots 487 and 500 as a single zoning lot (“Zoning Lot X”); and

WHEREAS, DOB NB Permit No. 200852050-01-NB for the construction of a two-family residence on Lot 488 was first issued on December 12, 2006 (referred to as “Building No. 4” in the Final Determination); and

WHEREAS, Building No. 4, which fronts Casler Place, abuts a two-family residence located on Lot 489, a lot located immediately to the north and fronting Dare Place (referred to as “Building No. 1” in the Final Determination); and

WHEREAS, in or around October 2010, the Appellant states that the DOB applications for construction of Building No. 2, Building No. 3 and Building No. 4 were audited by DOB Technical Affairs, at which time DOB noted that Building No. 2 and Building No. 3 did not qualify as “semi-detached buildings” because they were both located on the same zoning lot, Zoning Lot X, and, by definition, “semi-detached buildings” must be located on adjoining zoning lots and abut along a side lot line; and

WHEREAS, no formal objection was issued by DOB, but in an attempt to resolve the issue, the Appellant proposed a reconfiguration of Zoning Lot X: one zoning lot consisting of Lots 489, 487 and the northern half of Lot 492 on which Building No. 1 and Building No. 2 sit (referred to as “Zoning Lot A” in the Final Determination), and a second zoning lot consisting of Lots 500, 488, 491 and the southern half of Lot 492 on which Building No. 3 and Building No. 4 sit (referred to as “Zoning Lot B” in the Final Determination); and

WHEREAS, on October 10, 2013, the Appellant submitted an internal appeal to DOB of a denial of a Zoning Resolution Determination issued on August 2, 2013 (ZRD1 Control No. 29292, the “ZRD1”), requesting a determination that the zoning lot line separating Zoning Lot A from Zoning Lot B is a “side lot line” and Building No. 2 and Building No. 3 and Building No. 1 and Building No. 4, respectively, each meet the Zoning Resolution definition of “semi-detached buildings”; and

WHEREAS, on March 20, 2014, DOB First Deputy Commissioner Thomas J. Fariello, RA, denied the appeal (the “2014 Denial”); and

WHEREAS, applications to appeal an agency final determination must be filed at the Board within thirty (30) days from the date of the determination, pursuant to § 1-06.3(a) of the Board’s Rules of Practice and Procedure (the “Rules”); and

WHEREAS, an appeal of the 2014 Denial was not timely filed and on or around December 20, 2016, the Appellant resubmitted the ZRD1 to DOB Technical Affairs to obtain a renewed determination for purposes of appealing the decision to the Board; and

WHEREAS, on January 10, 2017, DOB First Deputy Commissioner Fariello reissued the 2014 Denial and this appeal application was timely filed, pursuant to § 1-06.3(a), on January 26, 2017; and

ISSUES PRESENTED

WHEREAS, the two issues in this appeal are whether (1) the lot line segments separating Zoning Lot A and Zoning Lot B are “side lot lines” or “rear lot lines” and, thus, Building Nos. 1, 2, 3 and 4 meet the Zoning Resolution definition of “semi-detached buildings” and (2) an open area with a depth of at least 30 feet perpendicular to the rear wall of each of the four buildings is required at this site pursuant to ZR § 23-891 where Zoning Lots A and B are waterfront zoning lots; and

WHEREAS, at the subject site, residential uses are limited to single- or two-family detached or semi-detached residences, pursuant to ZR § 22-12, thus, if the four buildings do not qualify as “semi-detached buildings,” they are contrary to applicable use regulations; and

WHEREAS, similarly, if ZR § 23-891 is applicable at the site, Building Nos. 1, 2, 3 and 4 do not comply with applicable bulk regulations; and

DISCUSSION

(1) WHETHER BUILDING NOS. 1, 2, 3 AND 4 ARE “SEMI-DETACHED BUILDINGS”

WHEREAS, pursuant to ZR § 12-10:

A “front lot line” is a *street line* 1;

[. . .]

A “rear lot line” is any *lot line* of a *zoning lot* except a *front lot line*, which is parallel to or within 45 degrees of being parallel to, and does not intersect, any *street line* bounding such *zoning lot*;

[. . .]

A “side lot line” is any *lot line* which is not a *front lot line* or a *rear lot line*;

[. . .]

A “street line” is a *lot line* separating a *street* from other land; and

WHEREAS, “semi-detached building” is defined in ZR § 12-10 as “a *building* that *abuts* only one other

1 Words in italics are terms defined in Section 12-10 of the New York City Zoning Resolution.

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building, other than an *attached building*, on an adjoining *zoning lot* along only one *side lot line* and which is surrounded on all other sides by *yards*, other open areas or *street lines*"; and

WHEREAS, a "waterfront block" or "waterfront zoning lot" is defined in ZR § 62-11, in relevant part, as "a *block* or *zoning lot* in the *waterfront area* having a boundary at grade coincident with or seaward of the *shoreline*"; and

WHEREAS, with regards to rear lot lines of waterfront zoning lots, ZR § 62-331(a) states, "Any *rear lot line* of a *waterfront zoning lot* that intersects the *shoreline* shall be deemed to be a *side lot line* and be subject to *side yard* regulations"; and

WHEREAS, the Appellant asserts that because the lot line segments separating Zoning Lots A and B intersect the shoreline, they constitute a "side lot line" pursuant to ZR § 62-331(a) and, thus, all four buildings meet the Zoning Resolution definition of "semi-detached buildings"; and

WHEREAS, the Department reasserts the Final Determination's conclusion that the common lot line segments separating Zoning Lot A and B are "rear lot lines," and, therefore, the buildings constructed thereon do not meeting the ZR § 12-10 definition of "semi-detached building" because they do not abut "along only one *side lot line*"; and

WHEREAS, pursuant to § 1-12.1 of the Board's Rules of Practice and Procedure, an application must receive three (3) affirmative votes to be granted; and

WHEREAS, fewer than three (3) members of the Board agree with the Appellant's assertion that these lot line segments are "side lot lines" and that the four buildings are "semi-detached"; and

WHEREAS, two Board Commissioners find that the four buildings meet the ZR § 12-10 definition of "semi-detached building," though one member acknowledges that if the common lot line segments separating Zoning Lots A and B constituted a "rear lot line," the four buildings would not qualify as "semi-detached buildings"; and

WHEREAS, one Board Commissioner finds that the common lot line segments are a single side lot line, but that the buildings, nevertheless, do not qualify as "semi-detached buildings" because graphics associated with semi-detached buildings in the Zoning Resolution always show such buildings fronting on the same street, whereas Building Nos. 2 and 3 and Building Nos. 1 and 4 front different streets; and

WHEREAS, one Board Commissioner finds that the answer to the second question on appeal renders this question immaterial because the applicability of the requirement for an open area pursuant to ZR § 23-891 makes "semi-detached buildings" in the configuration presented by Building Nos. 2 and 3 and Building Nos. 1 and 4 at the subject site physically impossible; and

WHEREAS, accordingly, Appellant's appeal of the determination that these common lot line segments are "rear lot lines" and that the four buildings at the subject site do not meet the Zoning Resolution's definition of "semi-detached building" is denied and the Board finds that Building Nos. 1,

2, 3 and 4 are contrary to the use regulations set forth in ZR § 22-12; and

(2) APPLICABILITY OF ZR § 23-891 TO ZONING LOTS A AND B

WHEREAS, the "waterfront area" is defined in ZR § 12-10 as "the geographical area comprising all *blocks* between the pierhead line and a line 800 feet landward from the *shoreline*"; and

WHEREAS, a "rear yard" is defined in ZR § 12-10 as "a *yard* extending for the full length of a *rear lot line*"; and

WHEREAS, with regards to rear yards, ZR § 62-332 states in relevant part:

62-332

Rear yards and waterfront yards

Rear yard regulations shall be inapplicable on *waterfront zoning lots*. In lieu thereof, a *waterfront yard* shall be provided along the entire length of the *shoreline*, bulkhead or stabilized natural shore, whichever is furthest landward . . . ; and

WHEREAS, with regards to the open area requirements for residences, ZR § 23-891 reads, in pertinent part, as follows:

23-891

In R1 through R5 Districts

R1 R2 R3 R4 R5

In the districts indicated, except R4B and R5B Districts, the provisions of this Section shall apply to all *zoning lots* with two or more *buildings* or *building segments* containing *residences*. All such *buildings* or *building segments* shall provide open areas in accordance with this Section. Only those obstructions set forth in Section 23-44 (Permitted Obstructions in Required Yards or Rear Yard Equivalents) shall be allowed, except that parking spaces, whether enclosed or unenclosed, and driveways, shall not be permitted within such open areas.

(a) An open area shall be provided adjacent to the rear wall of each such *building* or *building segment*. For the purposes of this Section, the "rear wall" shall be the wall opposite the wall of each *building* or *building segment* that faces a *street* or *private road*. The width of such open area shall be equal to the width of each *building* or *building segment*, and the depth of such open area shall be at least 30 feet when measured perpendicular to each rear wall. No such open areas shall serve more than one *building* or *building segment*. . . ; and

WHEREAS, a "waterfront yard" is defined in ZR § 62-11 as "that portion of a *waterfront zoning lot* extending open and unobstructed from the lowest level to the sky along the entire length of the *shoreline*, stabilized natural shore, bulkhead or water edge of a *platform*, as applicable, for a depth or width as set forth in this Chapter"; and

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WHEREAS, the Appellant contends that because Zoning Lots A and B are waterfront lots consistent with the provisions of Article VI, Chapter 2 of the Zoning Resolution (Special Regulations Applying the Waterfront Area), neither zoning lot is required to provide a rear yard pursuant to ZR § 62-332; and

WHEREAS, accordingly, the Appellant concludes that ZR § 23-891 conflicts with ZR § 62-332 because ZR § 23-891 requires an open area at least 30 feet deep adjacent to the rear wall of each building or building segment on each of Zoning Lots A and B, while ZR § 62-332 renders rear yard regulations inapplicable on Zoning Lots A and B and, “in lieu thereof,” requires a waterfront yard; applying both provisions at the subject site, therefore, results in the required provision of both a waterfront yard and an open area where ZR § 62-33 is clear that a waterfront yard is to be provided instead of a rear yard; and

WHEREAS, because of that alleged conflict, the Appellant contends that ZR § 62-332 controls and ZR § 23-891 is inapplicable to Zoning Lots A and B because of ZR § 62-13, which reads, in pertinent part, as follows:

62-13

Applicability of District Regulations

The regulations of all other Chapters of this Resolution are applicable, except as superseded, supplemented or modified by the provisions of this Chapter. In the event of a conflict between the provisions of this Chapter and other regulations of this Resolution, the provisions of this Chapter shall control. . . .; and

WHEREAS, the Appellant contends further that ZR § 23-891 conflicts with the intent of open area regulations applicable to waterfront zoning lots set forth in ZR § 62-50 (General Requirements for Visual Corridors and Waterfront Public Access Areas), which, as the Appellant contends, requires visual corridors in lieu of open areas, though the Appellant concedes that ZR § 62-50 is not applicable to developments comprised of single- or two-family residences within detached, semi-detached or zero lot line buildings on zoning lots less than 10,000 square feet in any district, such as the subject site; and

WHEREAS, accordingly, Appellant asserts that no open areas between Building Nos. 2 and 3 or Building Nos. 1 and 4 are required pursuant to ZR § 23-891 because the open area requirement set forth therein conflicts with ZR § 62-332, and, according to ZR § 62-13, in the event of a conflict, provisions in Article VI, Chapter 2 control (i.e. ZR § 62-332), therefore, no rear yard is required on Zoning Lots A and B and, thus, the buildings may legally abut at the common lot line segments separating Zoning Lots A and B, which the Appellant states is a side lot line pursuant to ZR § 62-331; and

WHEREAS, the Department asserts that ZR § 23-891 is, indeed, applicable at the subject site and, thus, Building Nos. 2 and 3 and Building Nos. 1 and 4 cannot abut as the Appellant proposes and must each have separate open area of at least 30 feet adjacent to their respective rear walls; and

WHEREAS, the Department states that the Appellant appears to interpret ZR § 23-891 as a rear yard requirement that, therefore, directly conflicts with ZR § 62-332, but the Department asserts that each provision deals with different defined terms—ZR § 23-891 relates to open areas adjacent to “rear walls,” a term that is defined specifically for the purposes of interpreting ZR § 23-891, and is concerned with the orientation of a building in relation to the street, while ZR § 62-332 relates to “rear yards” (defined in ZR § 12-10 in terms of a “lot line” and “zoning lot”) and is concerned with the orientation of the zoning lot in relation to the street—and, thus, are not in conflict; specifically, the Department contests that it is possible for waterfront zoning lots, on which rear yards are not required pursuant to ZR § 62-332, to nevertheless provide open areas of at least 30 feet in depth adjacent to the rear walls of buildings or building segments located thereon and notes that the text of ZR § 23-891 purposefully utilizes the phrase “rear wall” and omits references to “rear yard” or “rear lot line” in order to highlight that the open area requirement set forth therein exists regardless of whether a rear yard is otherwise required on the a zoning lot; and

WHEREAS, additionally, the Department contends that the Appellant’s argument that ZR § 23-891 is inconsistent with the spirit of Article VI, Chapter 2 and a preference therein for visual corridors is misplaced—specifically, where the plain language of the provisions is clear and unambiguous, as the Department asserts the language of ZR §§ 23-891 and 62-332 area here, there is no need to look elsewhere to divine intent; and

WHEREAS, at the first public hearing, the Board requested that the parties address the threshold question of whether Zoning Lots A and B are, indeed, “waterfront zoning lots” pursuant to ZR § 62-11 and requested that the Appellant provide information regarding the orientation of other buildings in the surrounding area to determine whether the subject development is consistent with existing developments in the subject waterfront area and shed light on the applicability of ZR § 23-891 to waterfront zoning lots; and

WHEREAS, in response, the Appellant provided a waterfront site plan and cross-section of Zoning Lots A and B illustrating their relationship to the shoreline and a study of the Throgs Neck area waterfront illustrating that the majority of residences in the area, built prior to the currently applicable zoning regulations, are detached with little space between their rear walls; that most buildings on waterfront zoning lots in the area have rear walls facing the shoreline and open areas fronting the water, but notes that, with the exception of Dare Place, Casler Place and Wissman Avenue, the remaining streets in the area run parallel to the shoreline, surmises that the waterfront zoning regulations of Article VI, Chapter 2 were based on an assumption that all waterfront zoning lots would front streets running parallel to the shorelines, thus, waterfront zoning lots fronting streets running perpendicular to the shoreline (as Zoning Lots A and B do) were never anticipated and, thus, it is not

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inconceivable that ZR §§ 23-891 and 62-332 would conflict under limited circumstances, as the Appellant suggests they do here; and

WHEREAS, the Department states that the Appellant's study of the area was of no probative value as to the applicability of ZR § 23-891 on waterfront zoning lots because none of the developments illustrated therein contain buildings in the same configuration as those on the subject development; the Department additionally draws attention to Appellant's concession that many of the residential developments studied were constructed prior to the applicability of current zoning regulations and further states that the zoning lots included in the study do, in fact, comply with ZR § 23-891 because a complying open area is provided adjacent to the rear walls of the buildings constructed thereon, and such open areas are naturally oriented towards the shoreline because of the buildings' configurations on their respective lots; and

WHEREAS, in further submissions, the Appellant argued that the open area requirements of the Zoning Resolution were introduced to ensure adequate open areas on zoning lots that were not required to provide rear yards, such as corner lots, thus, the requirement of a waterfront yard under ZR § 62-332 is intended to operate in the same fashion as an open area requirement—that is, as a replacement for a rear yard—and, further, that the waterfront wall of a building on a waterfront zoning lot is intended to be treated as the building's "rear wall"; and

WHEREAS, the Appellant continues that this interpretation is consistent with other provisions in the Zoning Resolution, including ZR § 23-49(a), which reads in relevant part as follows:

23-49

Special Provisions for Side Lot Line Walls

R3-1 R3-2 R4 R5

In the districts indicated, except R4A and R5A Districts, a *building* containing *residences* may:

(a) *abut an existing building* located along a *side lot line* . . . provided that the walls of the *building* containing *residences* and walls of the existing *building* shall *abut* for a length equal to or greater than one half of the distance between the *street wall line* and *rear wall line* of the existing *building*.

(b) [. . .]

For such *buildings* containing *residences*, the *side yard* requirements shall be waived along the *side lot line* of the *zoning lot* coincident with the *abutting buildings* and one *side yard* shall be provided along any *side lot line* of the *zoning lot* without an *abutting building* with a width of at least eight feet in R3-1, R3-2, R4 or R5 districts, and four feet in R4-1, R4B or R5B Districts.; and

WHEREAS, the Appellant asserts that ZR § 23-49(a) implies that the front and rear walls are perpendicular to the walls abutting the side lot lines and, since the lot lines of Zoning Lots A and B that intersect the shoreline are

considered "side lot lines" pursuant to ZR § 62-331(a), ZR § 23-49(a) implies that the "rear wall" is the wall of the building that fronts the water and is perpendicular to the street, not parallel to the street as "rear wall" is defined in ZR § 23-891's; and

WHEREAS, in response to this argument, the Department asserts that ZR § 23-49, unlike ZR § 23-891, does not define "rear wall" and, instead, uses the term "rear wall line," which is defined in ZR § 12-10 as follows:

A "rear wall line" is that portion of a line drawn parallel to a *front wall line* at a distance equal to the greatest depth between the rear wall of a *building* and the *front lot line*, from which, when viewed directly from above, lines perpendicular to a *street wall line* may be drawn; and

WHEREAS, the Department suggests that it is evident from the definition of "rear wall line," which references "front lot line" and "street wall line," that ZR § 23-49(a), like ZR § 62-332, is related to the orientation of the zoning lot in relation to the street and therefore cannot conflict with ZR § 23-891, which is related to the orientation of buildings with regards to the street; further, the Department asserts that nothing in ZR § 23-49 or the ZR § 12-10 definition of "rear wall line" suggests that the rear wall of a building can be anything other than the wall opposite the wall that faces the street; and

WHEREAS, the Board accepts that Zoning Lots A and B are "waterfront zoning lots," and three (3) members of the Board find that ZR §§ 23-891 and 62-332 do not conflict, that ZR § 23-891 is applicable to Zoning Lots A and B and that the current configuration of Building Nos. 2 and 3 and Building Nos. 1 and 4 do not provide the open area required thereunder; and

WHEREAS, a majority of the Board also agrees that the walls at which Building No. 2 abuts Building No. 3 and at which Building No. 1 abuts Building No. 4—walls that are opposite the walls of each of those buildings that face a street—are the "rear walls" of those buildings and, thus, each building must provide its own open area adjacent to each of those walls at least 30 feet in depth pursuant to ZR § 23-891; and

WHEREAS, a majority of the Board agrees with the Department that "open area" and "rear yard" are distinct terms that regulate different aspects of a development's bulk and, thus, an open area required pursuant to ZR § 23-891 is not in conflict with ZR § 62-332, which exempts waterfront lots from rear yard regulations, because it is an "open area," which is defined in relation to a "rear wall," and not a "rear yard," which is defined in relation to a "rear lot line"; and

WHEREAS, one member of the Board finds that ZR § 23-891 is inapplicable to Zoning Lots A and B because if it were to apply, it would prohibit semi-detached buildings on these zoning lots as they are currently configured, where semi-detached buildings are otherwise permitted in R3-1 zoning districts as-of-right and notes that such finding is limited to waterfront zoning lots on streets, like Dare Place and Casler Place, that are perpendicular to the shoreline; and

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CONCLUSION

WHEREAS, the Board has considered all of the Appellant's arguments on appeal and a majority finds them to be without merit; and

WHEREAS, for the foregoing reasons, the Board finds that (1) the abutting buildings on Zoning Lots A and B are not "semi-detached buildings" consistent with the ZR § 12-10 definition and (2) ZR § 23-891 is applicable to the subject site and open areas measuring a minimum of 30 feet in depth are required adjacent to the rear walls of the buildings; and

Therefore it is Resolved, that the determination of the Department of Buildings, dated January 10, 2017, acting on Department Buildings Job No. 200852050 shall be and hereby is *upheld* and that this appeal shall be and hereby is *denied*.

Adopted by the Board of Standards and Appeals, March 27, 2018.

102-15-A

APPLICANT – Eric Palatnik, P.C., for Kathleen Spezio, owner.

SUBJECT – Application May 11, 2015 – Proposed enlargement of a building located partially within the bed of mapped unbuilt street, pursuant Article 3 Section 35 of the General City Law and waiver under ZR 72-10-(g) . R3-2/SRD zoning district.

PREMISES AFFECTED – 1088 Rossville Avenue, Block 7067, Lot 1, Borough of Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Laid over to May 15, 2018, at 10 A.M., for continued hearing.

2017-103-A

APPLICANT – Law Office of Steven Simicich, for Lera Property Holdings, LLC, owner.

SUBJECT – Application April 7, 2017 – 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
PREMISES AFFECTED – 3924 Victory Boulevard, Block 2620, Lot 126, Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Laid over to April 10, 2018, at 10 A.M., for continued hearing.

2017-193-A thru 2017-199-A

APPLICANT – Eric Palatnik, P.C., for Frank McErlean, owner.

SUBJECT – Application May 26, 2017 – 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.

PREMISES AFFECTED – 9, 10, 11, 12, 14, 15, and 17

Tulepo Court, Block 2260, Lot(s) 4, 10, 60, 62, 64, 66, 68, Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Laid over to May 15, 2018, at 10 A.M., for continued hearing.

2017-285-A

APPLICANT – Rosenberg Estis, P.C., for Committee for Environmental Sound Development/ Amsterdam Avenue Redevelopment Associates, LLC, owner.

SUBJECT – Application October 26, 2017 – 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.

PREMISES AFFECTED – 200 Amsterdam Avenue, Block 1158, Lot 133, Borough of Manhattan.

COMMUNITY BOARD #7M

ACTION OF THE BOARD – Laid over to June 5, 2018, at 10 A.M., for continued hearing.

ZONING CALENDAR

275-15-BZ

CEQR #16-BSA-059M

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 97th Street aka 116 East 98th Street, Block 1625, Lot 7, Borough of Manhattan.

COMMUNITY BOARD #11M

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

Abstain: Commissioner Scibetta.....1

THE RESOLUTION –

WHEREAS, the decision of the Department of

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Buildings (“DOB”), dated March 23, 2018, acting on Application No. 121189864 reads in pertinent part:

1. ZR 24-552: Proposed UG3 development does not comply with rear setback;
2. ZR 24-36: Proposed UG 3 development does not provide required rear yard for an interior lot;
3. ZR 24-382: Proposed UG 3 development within R7-2 does not comply with required rear yard equivalent for a through lot;
4. ZR 24-522: Proposed UG 3 development within R7-2 does not comply with height and setback;
5. ZR 25-631: Proposed number and size of curb cuts within R7-2 is not compliant; proposed uninterrupted curb spaces between curb cuts is not compliant; and

WHEREAS, this is an application under ZR § 72-21 to permit, on a zoning lot partially located within an R7-2 zoning district and partially located within a C1-8X zoning district, the construction of a 10-story community facility contrary to applicable bulk regulations pertaining to rear setback, rear yards, rear yard equivalents, front wall height and setback and curb cuts set forth in ZR §§ 24-552, 24-36, 24-382, 24-522 and 25-631; and

WHEREAS, this application is filed on behalf of the Marymount School of New York, a non-profit private school for girls (“Marymount”), to enable the construction of a facility for Marymount’s Upper Middle School and Upper School divisions, which serve the 6th through 12th grades; and

WHEREAS, a public hearing was held on this application on September 12, 2017, after due notice by publication in *The City Record*, with continued hearings on December 5, 2017 and February 13, 2018, and then to decision on March 27, 2018; and

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

WHEREAS, Community Board 11, Manhattan recommends disapproval of the originally proposed 12-story building based on its location mid-block and fears that it will cause injury to neighbors by depriving adjacent streets and residential windows of light and air; the Community Board further opposed the proposal because it does not provide “sufficient community benefit” to mitigate its “deleterious effects” on the district; and

WHEREAS, the Board was in receipt of thirteen letters in support of the proposal and ten letters in opposition, citing concerns about noise, the height of the building, negative impacts the construction will have on adjacent buildings and neighborhood traffic, an increase in automobile traffic and the request for a waiver of residential open space and the reduced access of nearby residences to light; and

WHEREAS, the Board notes that some of the concerns raised about the subject proposal—particularly noise and

traffic attributed to construction and a reduction in neighboring residences’ access to light—would exist if the site was developed with an as-of-right building that complied with all applicable zoning regulations and that in the course of hearings, *infra*, the open space waiver was eliminated from the proposal and the proposed total building height was reduced; and

WHEREAS, New York City Councilmember Ben Kallos initially submitted two letters and gave public testimony in opposition to the proposal on the basis that the application failed to make the necessary findings of ZR § 72-21, including that the height of the proposed building was inconsistent with neighborhood character, however, in a letter dated, December 5, 2017, Councilmember Kallos expressed his support for the revised application, noting the reduction in building height and commitments from the school to keep an open line of communication with neighbors during the construction process and to develop programs for East Harlem residents; and

WHEREAS, in addition, a representative for the Board of Directors of 112-114 East 98th Street Housing Development Fund Corporation, a cooperative located adjacent to the site (the “Co-op”), submitted letters and testimony in opposition to the proposal, citing concerns about increased traffic on East 98th Street, that the proposed building will block the Co-op’s lot line windows, the proposed building’s cantilever over a portion of the Co-op’s building and requesting that the Co-p’s residents be given access to the rooftop open space; and

WHEREAS, in response to these concerns, the applicant submits that it is actually the Co-op building that encroaches onto the subject site and, further, the cantilever visible on the plans is not the subject of any waivers, specifically floor area; that the traffic concerns raised by the Co-op are based on a traffic study that does not comply with the CEQR Technical Manual, as the applicant’s analyses have and are so required; and that Marymount is willing to address any traffic issues operationally if/as they arise; and

WHEREAS, the Board notes that any debate between the applicant and the Co-op as to encroachments and/or cantilevers is more suitably the subject of civil action and that the presence of windows in a lot line wall does not prohibit development on a neighboring lot that would require the windows be bricked over or otherwise blocked; and

WHEREAS, the subject site is comprised of three contiguous tax lots (Lots 7, 13 and 16; collectively, the “Zoning Lot”) having approximately 255 feet of frontage along the south side of East 98th Street, 202 feet of frontage along the west side of Lexington Avenue and a total of 205 feet of non-continuous frontage on the north side of East 97th Street, partially located within an R7-2 zoning district and partially located within a C1-8X zoning district, in Manhattan; and

WHEREAS, a Declaration of Zoning Lot Restrictions noticing the consolidation of these lots (formerly tax lots 7, 8, 11, 12, 13, 14, 15, 16, 57, 60, 61, 63, 65 and 66 on Block

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1625) as one zoning lot for the purpose of and in accordance with the provisions of the Zoning Resolution (CRFN 2007000556713) was filed with the New York Department of Finance Office of the City Register on November 7, 2007; and

WHEREAS, the subject site has approximately 46,417 square feet of total lot area; and

WHEREAS, Lot 7, located fully in an R7-2 zoning district and comprised of an interior lot with frontage on East 98th Street only and a through lot with frontage on both East 97th Street and East 98th Street, contains a paved athletic field currently utilized by Marymount, Lot 13, wholly located in a C1-8X zoning district, is occupied by a five-story mixed-use residential and commercial building and Lot 16, which is partially located within an R7-2 zoning district and partially located within a C1-8X zoning district, is occupied by an 18-story mixed-use residential and commercial building; and

WHEREAS, the subject building is proposed to replace the paved athletic field on Lot 7 (the "Proposed Site"); and

WHEREAS, the applicant represents that a total of 352,172 square feet of floor area is permitted on the Zoning Lot: in the C1-8X portion of the Zoning Lot, a maximum of 181,650 square feet of residential floor area is permitted pursuant to ZR § 23-153, a maximum of 181,650 square feet of community facility floor area is permitted pursuant to ZR § 33-123 and a maximum of 40,366 square feet of commercial floor area is permitted pursuant to ZR § 33-123; and in the R7-2 portion of the Zoning Lot, a maximum of 89,459 square feet of residential floor area is permitted pursuant to ZR § 23-151, and a maximum of 170,522 square feet of community facility floor area is permitted pursuant to ZR § 24-11; and

WHEREAS, the two buildings currently occupying Lots 13 and 16 utilize a total of 179,999 square feet of floor area (166,195 square feet of residential floor area and 13,804 square feet of commercial floor area) within the C1-8X portion of the Zoning Lot and 60,362 square feet of residential floor area in the R7-2 portion of the Zoning Lot; and

WHEREAS, the applicant submits that 1,651 square feet of community facility floor area within the C1-8X portion of the Zoning Lot and 110,160 square feet of community floor area within the R7-2 portion of the Zoning Lot remain undeveloped, but that no developable residential floor area remains within the R7-2 portion of the Zoning Lot; and

WHEREAS, the applicant originally proposed to develop the Proposed Site with a 12-story community facility building containing 92,168 square feet of floor area with a floor area ratio ("FAR") of 3.5, a 27'-8" rear yard on the interior portion of the Proposed Site, a 35 foot rear yard equivalent at the East 97th Street frontage and a 23'-6" rear yard equivalent at the East 98th Street frontage at a height of 68'-3" on the through lot portion of the Proposed Site, a 99'-9" front wall without setback on the East 98th Street

frontage, two curb cuts on the East 98th Street frontage 11 feet apart, one with a width of 15 feet, and the provision of some of the open space required for the residential floor area located on the Zoning Lot on the portion of the Zoning Lot located in a C1-8X zoning district, contrary to ZR §§ 24-36, 24-382, 24-522, 25-631 and 23-151; and

WHEREAS, at hearing the Board requested that the open space waiver request be eliminated because the waiver was related to and for the benefit of the residential floor area already located on the Zoning Lot, not the proposed community facility, and, because Marymount was relying on the deference extended to educational institutions under New York State case law, all waivers are required to be related to the development entitled to that deference; and

WHEREAS, the Board additionally suggested alterations to the bulk of the proposal, including the introduction of double-loaded corridors and the elimination of a plaza proposed at the East 97th Street frontage to increase the efficiency of the proposed building; and

WHEREAS, the applicant subsequently revised the application and now proposes to develop the Proposed Site with a ten-story community facility building containing 109,960 square feet of floor area with 4.2 FAR and an overall height of 180'-6" (including rooftop mechanical equipment), a front wall height of 151'-6" on the East 98th Street frontage, a 28 foot rear yard on the interior portion of the Proposed Site, a rear yard equivalent of 33 feet at a height of 60 feet along the East 97th Street frontage and no rear yard equivalent along the East 98th Street frontage on the through lot portion of the Proposed Site, no rear setback from the rear yard line of the interior lot portion of the Proposed Site at a height of 125 feet, no front setback above 60 feet and penetration of the sky exposure plane at the fifth floor and above on the East 98th Street frontage; and

WHEREAS, the applicant additionally proposes to maintain two existing curb cuts on the East 98th Street frontage of the Zoning Lot and relocate the non-complying western curb cut to be 11 feet away from the east curb cut and reduce its width from approximately 34 feet to 15 feet; and

WHEREAS, with regards to open space, the applicant now proposes to provide 7,772 square feet of open space required for the residential floor area on the Zoning Lot on the roof of the proposed building, within an R7-2 zoning district and accessible by residents of the Zoning Lot by a dedicated roof access passageway and elevator on the East 98th Street frontage, and no longer requires a waiver of ZR § 23-151; and

WHEREAS, Marymount submits that the rooftop open space may be utilized, from time to time, by students accompanied by school faculty, but that students will not be permitted to access the roof while it is being utilized by residential tenants of the Zoning Lot; further, the elevator providing access to the roof to residential tenants of the Zoning Lot will be programmed to bypass other floors of the proposed building and a security system, with visual monitors and voice communication, will be utilized to

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ensure that tenants do not mix with students; and

WHEREAS, the Board makes no finding as to whether the open space provided on the roof of the proposed building complies with all applicable zoning regulations, including, but not limited to, ZR § 24-164, but notes that no waiver of the open space requirement generated by the residential floor area on the Zoning Lot, or waiver of residential lot coverage, has been contemplated or granted with this application; and

WHEREAS, the proposed building will house Marymount's approximately 420 upper middle school (grades six through eight) and upper school students (grades nine through 12), along with 125 administrative, faculty and support staff, and allow Marymount to consolidate its school, currently spread out over three facilities, one of which is leased and located across East 97th Street from the Proposed Site, into two facilities, relocate the upper school students from their current facility, located on Fifth Avenue between East 83rd Street and East 84th Street (the "Fifth Avenue Campus") and the upper middle school students from the leased facility; the proposed building will also be Marymount's first purpose-built facility and provide much needed program space—including a gymnasium with a regulation-sized basketball court, a performance theater with a fly system and rehearsal spaces for Marymount's 37 dramatic and musical performances staged each year, music classrooms, a chapel large enough to accommodate a full school division and a designated dining room—that its existing facilities cannot accommodate and necessitated rented space in 28 other facilities for Marymount's athletic and performing arts needs, 13 of which will no longer be needed following completion of the proposed building; and

WHEREAS, the proposed building will include physical education and athletic facilities, IT offices and mechanical spaces in three floors below grade (sub cellar 2, sub cellar 1 and the cellar); the ground floor will feature entrance lobbies from both East 97th and East 98th Streets, administrative offices, Marymount's digital fabrication laboratory workshop known as the "Fab Lab," an adjacent STEAM (science, technology, engineering, arts and mathematics) workspace and the separate passageway and elevator dedicated to providing residential tenants of the Zoning Lot access to the rooftop open space; a 333-seat performing arts theater, two music rooms and specialty music and drama classrooms and support offices will be located on the second and third floors; a portion of the fourth floor will be open to the second and third floors below to accommodate the theater fly space and the remainder of the floor will be occupied by four upper middle school classrooms, academic support offices and a mechanical room; the kitchen and dining services, sized to seat approximately 300 persons, will all be consolidated on the fifth floor; the chapel, which is used for, among other things, morning mass, individual prayer and weekly chapel for each grade of students will be located on the sixth floor along with a music room, to be utilized by the school's chorus, instrumental ensemble, chamber choir, concert

choir, and others, and administrative offices; six upper middle school classrooms will be located on the seventh floor, along with a reading room utilized by students for independent study and research assignments, a common study space and a faculty office; the eighth and ninth floors will contain a total of six upper school classrooms, an art studio and four science labs, which will be shared by upper middle and upper school students, common study space and offices for faculty and school administrators; and on the tenth floor will be seven upper school classrooms and offices; and

WHEREAS, at the subject site, a rear yard of at least 30 feet at the rear lot line of the interior lot portion of the Proposed Site is required pursuant to ZR § 24-36; an open area with a minimum depth of 60 feet midway between the two street line frontages, two open areas at least 30 feet deep adjoining and extending along the full length of each street line or an open area adjoining and extending along the full length of each side lot line with a minimum width of 30 feet from each side lot line is required as a rear yard equivalent on the through lot portion of the Proposed Site pursuant to ZR § 24-382; a 20 foot set back from the rear yard line of the interior lot portion of the Proposed Site is required 125 feet above yard level pursuant to ZR § 24-552; a 20 foot front setback is required at 60 feet or six stories, whichever is less, above the street line on the East 98th Street frontage and compliance with the sky exposure plane above that height is required pursuant to ZR § 24-522; and two curbs with a maximum width of 12 feet, including splays, and at least 60 feet apart are permitted pursuant to ZR § 25-631(e); and

WHEREAS, accordingly, the applicant seeks the subject relief; and

WHEREAS, Marymount submits that the requested waivers will facilitate floorplates large enough to accommodate the particular programs planned to be housed in the proposed building, to wit, the performing arts space, gymnasium and dining room, as well as enable the necessary departmental adjacencies and provide for adequate interior circulation; and

WHEREAS, the Board acknowledges that Marymount, 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), a zoning board must grant an educational or religious institution's application 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 Marymount's programmatic needs create unnecessary hardship and practical difficulty in developing the premises in compliance with the applicable zoning regulations; and

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WHEREAS, Marymount is a non-profit educational institution and the variance is needed to further its not-for-profit mission and, thus, 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, Marymount submits 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, that the immediate area is predominantly defined by the Park Avenue Tunnel, a depressed railroad right of way that runs from East 97th Street to East 102nd Street, and a high proportion of superblocs and block-long institutions, that the proposed building will fill a gap in the street wall on the East 98th Street frontage and that the majority of students will utilize the East 97th Street frontage to access the site; and

WHEREAS, Marymount conducted a survey and projected that approximately 18 percent of students will arrive to the site by private car, 13 percent will arrive by car service, 6 percent will arrive in one of the two school operated shuttles and the remaining 63 percent of students will arrive by public transportation or on foot; as for departures, approximately 9 percent will depart by private car, 9 percent will depart by car service and 11 percent will depart in one of the two school operated shuttles; and

WHEREAS, in response to public testimony regarding the traffic impacts of the proposed building, Marymount asserts that one or more school staff will manage drop-offs and pick-ups with two-way radios, a dedicated school parking zone will be located at the East 97th Street frontage to allow cars to access the site without blocking traffic, the loading dock will serve only up to two trucks per hour in any peak hour and the curb cut relocated to align with the loading dock will not affect the operation of the other existing cut or have any adverse impact on vehicular queuing, traffic or safety on East 98th Street; and

WHEREAS, by letter dated October 2, 2017, the New York City Department of Transportation's ("DOT") Division of Transportation Planning and Management states that it finds the proposed plans to be acceptable and requests that Marymount notify DOT upon construction so that DOT can determine if traffic safety improvements or parking regulation changes are necessary; and

WHEREAS, with regards to concerns about noise generated by use of the rooftop open space, Marymount submits that noise-generating activities—i.e. amplified music, barbecues, tenant parties and any active recreational activities—will be prohibited in the space and notes that residential windows to the immediate east or west of the Proposed Site will not have a direct line of site to the rooftop open space and that, while windows of a residential building located at 1510 Lexington Avenue may have a line of site to the rooftop open space, those windows are more than 40 feet away, thus, the open space does not have the potential to result in substantially increased noise levels in adjacent residences; 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, Marymount submits that the subject proposal is the minimum variance necessary to afford relief and, in support of that assertion, submitted plans for an as-of-right 13-story building set back approximately 60 feet from the East 97th Street frontage, set back 34 feet from the East 98th Street frontage above the first floor and rise to a total height of 231'-9" feet (including rooftop mechanical equipment (the "AOR Scenario")); and

WHEREAS, Marymount represents that despite rising to a height of nearly 50 feet taller than the proposed building, the narrower floorplates of the AOR Scenario would prevent the inclusion of both the performance theater and the regulation-sized gymnasium, reduce the size of the chapel, require that the kitchen and dining facilities be located on different floors, necessitate additional vertical circulation space (and travel time) in the building and overall decreasing the efficiency of the building and its programming space; 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. 16BSA059M, dated February 12, 2018; 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") conducted an environmental review of the Proposed Site and reports that it has neither architectural nor archaeological significance, but notes that it is in radius of sites eligible for National Register Listing and New York City Landmark Designation, to wit, the New York Public Library's 96th Street Branch, which is eligible for LPC, New York State and National Register Listings, and St. Francis de Sales Roman Catholic Church, which is eligible for New York State and National Register Listings; and

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WHEREAS, by communication dated September 12, 2017, the New York City Parks Department states that it has no comments of substance with regards to the shadow analyses of the proposed building; and

WHEREAS, the New York City Department of Environmental Preservation (“DEP”), by letter dated January 31, 2018, concludes that the proposal would not result in any significant adverse air quality impact; and

WHEREAS, on February 1, 2018, DEP states that it has reviewed the Noise Memorandum prepared by the applicant’s consultant and concluded that the proposed project would not result in any significant adverse noise impact; and

WHEREAS, with regards to hazardous materials, by letter dated February 9, 2018, DEP states that it finds the January 2018 Remedial Action Plan (“RAP”) and Construction Health and Safety Plan (“CHASP”) submitted by the applicant to be acceptable, but recommended that, with regards to the RAP, the clean fill should be tested at the facility/source at a frequency of one (1) sample for every 250 (not 500) cubic yards and that, upon completion of the clean fill/top soil investigation activities, the applicant’s consultant should 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 (i.e., NYSDEC 6 NYCRR Part 375 Environmental Remediation Programs)—to DEP for review and approval prior to importation and placement on-site; additionally, DEP requests that at the completion of the project, a Professional Engineer (P.E.) certified Remedial Closure report indicating that all remedial requirements (i.e., installation of vapor barrier, proper transportation/disposal manifests and certificates from impacted soils removed and properly disposed of in accordance with all NYSDEC regulations; and two feet of DEP approved certified clean fill/top soil capping requirement in any landscaped/grass covered areas not capped with concrete/asphalt, etc.) 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, 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 zoning lot partially located within an R7-2 zoning district and partially located within a C1-8X zoning district, the construction of a 10-story community facility building contrary to applicable bulk regulations pertaining to rear setback, rear yards, rear

yard equivalents, front wall height and setback and curb cuts set forth in ZR §§ 24-552, 24-36, 24-382, 24-522 and 25-631, *on condition* that all work shall substantially conform to drawings filed with this application marked “Received March 7, 2018—Twenty-seven (27) sheets, and March 27, 2018—Three (3) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a rear setback of at least 0 feet from the rear yard line of the interior lot portion of the Proposed Site above a height of 125 feet; a minimum 28 foot rear yard on the interior lot portion of the Proposed Site, a rear yard equivalent of at least 33 feet at a height of 60 feet along the East 97th Street frontage and a rear yard equivalent of at least 0 feet along the East 98th Street frontage on the through lot portion of the Proposed Site; a maximum front wall height of 151’-6” without setback fronting on East 98th Street;

THAT this grant does not include a waiver of applicable zoning regulations with regards to residential open space or residential lot coverage;

THAT school staff shall manage drop offs and pick-ups by placing cones within a portion of the dedicated school parking zone to reserve curb space and shall move along parents or for-hire vehicles so as to not block traffic;

THAT a maximum of four school operated shuttles (two in the morning and two in the afternoon) shall access the site daily for student drop offs and pick-ups;

THAT residential tenants of the Zoning Lot shall access the elevator to the roof terrace of the proposed building via key card linked to the school’s security system;

THAT elevator controls shall be programmed to only allow express travel to the roof terrace level and ground level stops when in use by a residential tenant of the Zoning Lot;

THAT security cameras at the ground floor entrance, elevator cab and roof terrace level shall enable visual monitoring by school security staff;

THAT school faculty and staff shall be notified by security staff when the roof terrace is in use by residential tenants of the Zoning Lot;

THAT students shall not be permitted to use the roof terrace unaccompanied;

THAT clean fill should be tested at the facility/source at a frequency of one (1) sample for every 250 (not 500) cubic yards;

THAT upon completion of the clean fill/top soil investigation activities, the applicant’s consultant should 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 (i.e., NYSDEC 6 NYCRR Part 375 Environmental Remediation Programs)—to the New York City Department of Environmental Protection for review and approval prior to importation and placement on-site;

THAT at the completion of the project, a Professional Engineer (P.E.) certified Remedial Closure report indicating that all remedial requirements (i.e., installation of vapor

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barrier, proper transportation/disposal manifests and certificates from impacted soils removed and properly disposed of in accordance with all NYSDEC regulations; and two feet of DEP approved certified clean fill/top soil capping requirement in any landscaped/grass covered areas not capped with concrete/asphalt, etc.) 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, March 27, 2018.

2016-4218-BZ

CEQR No. 16-BSA-128K

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 79th Street, Block 5976, Lot 20, 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 Sheta4

Negative:0

Abstain: Commissioner Scibetta1

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated June 1, 2017, acting on Alteration Application No. 321400202, reads in pertinent part:

The proposed enlargement exceeds the permitted Floor Area Ratio permissible pursuant to Z. R. Section 23-141.

The proposed Open Space Ratio is less than Open Space Ratio required by Z. R. Section 23-141.

The proposed enlargement increases the degree of non-compliance of the easterly side yard both vertically and horizontally at the rear of the house

per Z. R. Section 23-48; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03 to permit, in an R2 zoning district and the Special Bay Ridge District, the enlargement of an existing two-family detached residence that does not comply with zoning regulations for floor area ratio, open space ratio and side yards, contrary to ZR §§ 23-141 and 23-48; and

WHEREAS, a public hearing was held on this application on October 17, 2017, after due notice by publication in *The City Record*, with a continued hearing on January 23, 2018, and then to decision on March 27, 2018; and

WHEREAS, Commissioner Ottley-Brown performed an inspection of the site and surrounding neighborhood; and

WHEREAS, Community Board 10, Brooklyn, recommends disapproval of this application, citing concerns with occupancy of the residence by the owner’s family¹ as well as floor area, height and overall volume of the enlarged residence proposed; and

WHEREAS, the subject site is located on the south side of 79th Street, between Narrows Avenue and Colonial Road, in an R2 zoning district and the Special Bay Ridge District, in Brooklyn; and

WHEREAS, the subject site has approximately 33 feet of frontage along 79th Street, 140 feet of depth, 4,582 square feet of lot area and is occupied by an existing two-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

¹ The Board refuses to consider the owner’s private affairs in this application, which regards whether bulk modifications allowing the enlargement of an existing residence are appropriate in light of the built character of the surrounding area.

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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 two-family detached residence, as contemplated in ZR § 73-622; and

WHEREAS, the applicant proposes to enlarge the existing residence from 2,412 square feet of floor area (0.53

FAR) to 4,178 square feet of floor area (0.91 FAR), decrease the open space ratio from 140 to 74 and maintain the existing side yard with a width of 3'-10" to the east; and

WHEREAS, the applicant submitted evidence in the form of historic maps demonstrating that the existing side yard is an existing non-compliance; and

WHEREAS, the applicant states that, at the subject site, floor area may not exceed 2,291 square feet (0.50 FAR) under ZR § 23-141, open space ratio must be at least 150 under ZR § 23-141 and enlargement in non-complying side yards cannot increase the degree of non-compliance under ZR § 23-48; and

WHEREAS, the applicant represents that the proposed building as enlarged is consistent with the built character of the neighborhood; and

WHEREAS, in support of this contention, the applicant surveyed single- and two-family residences in the surrounding area, finding that there are a number of residences with more than 0.91 FAR and that only four of 114 lots have complying open space ratios, with the majority having open space ratios less complying than 74; and

WHEREAS, the applicant also submitted a study of roof heights, a photographic streetscape montage, contextual streetscape illustrations and a photographic neighborhood study demonstrating that the proposed building, including its height, will fit in with the built conditions of the surrounding area; and

WHEREAS, based upon its review of the record and inspections of the subject site and surrounding neighborhood, the Board finds that the proposed building as enlarged will not alter the essential character of the neighborhood or district in which the subject building is located, nor impair the future use or development of the surrounding area; and

WHEREAS, in response to concerns raised by the Board and the community, the applicant scaled back the massing of the proposed building by eliminating the second floor balcony, redesigning the front windows and reducing the pitch of the roof to remain in character with adjacent residences; and

WHEREAS, the Board notes that the proposed rear yard will have a complying depth of 47'-8", thereby visually mitigating the additional bulk atop the enlarged 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 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.

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16-BSA-128K, dated June 15, 2016; and

WHEREAS, the Board finds that the evidence in the record supports the findings required to be made under ZR §§ 73-622 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion.

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 §§ 73-622 and 73-03

to *permit*, in an R2 zoning district and the Special Bay Ridge District, the enlargement of an existing two-family detached residence that does not comply with zoning regulations for floor area ratio, open space *ratio* and side yards, contrary to ZR §§ 23-141 and 23-48; *on condition* that all work and site conditions shall conform to drawings filed with this application marked “Received March 8, 2018”-Nineteen (19) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: there shall be a maximum of 4,178 square feet of floor area (0.91 FAR), open space ratio shall be at least 74 and the side yard to the east shall have a minimum width of 3’-10”, as illustrated on the Board-approved plans;

THAT removal of existing joists or perimeter walls in excess of that shown on the Board-approved plans shall void the special permit;

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 27, 2022;

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 27, 2018.

2017-204-BZ

CEQR No. 17-BSA-138Q

APPLICANT – Paul F. Bonfilio, for Sergio Fernandez Vette Works, owner.

SUBJECT – Application June 7, 2017– Variance (§72-21) to permit the enlargement of a non-conforming Automotive Repair Facility (UG 16B) contrary to ZR §52-22. R4A zoning district.

PREMISES AFFECTED – 124-14 20th Avenue, Block 4169, Lot 21, Borough of Queens.

COMMUNITY BOARD #7Q

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

Abstain: Commissioner Scibetta.....1

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated September 22, 2017, acting on Alteration Application No. 420859814, reads in pertinent part:

Use Group 16 not permitted in residential district. ZR 22.

The enlargement increased the degree of non conforming use of the building. ZR 22, ZR 52.

Floor area exceeds the allowable. ZR 23-141.

Front yard provided is deficient. ZR 23-45.

Side yard provided is deficient. ZR 23-46.

Provide green front yard. ZR 23-451; and

WHEREAS, this is an application under ZR § 72-21 to permit, in an R4A zoning district, the enlargement of a non-complying, non-conforming one-story commercial building used as an automotive service station (Use Group 16) that does not comply with zoning regulations for use, floor area, front yards, side yards and green front yards, contrary to ZR §§ 22-00, 52-00, 23-141, 23-45, 23-46 and 23-451; and

WHEREAS, a public hearing was held on this application on March 6, 2018, after due notice by publication in *The City Record*, and then to decision on March 27, 2018; and

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

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

WHEREAS, Queens Borough President Melinda R. Katz submitted testimony in support of this application; and

WHEREAS, Council Member Paul A. Vallone submitted testimony in support of this application; and

WHEREAS, the subject site is located on the southwest corner of 20th Avenue and 125th Street, in an R4A zoning district, in Queens; and

WHEREAS, the subject site has approximately 100 feet of frontage along 20th Avenue, 30 feet of frontage along 125th Street, 2,997 square feet of lot area and is occupied by

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a one-story commercial building enlarged with two shed additions used as an automotive service station (Use Group 16); and

WHEREAS, the applicant proposes to enlarge the subject building used as an automotive service station (Use Group 16) by increasing floor area from 1,009 square feet (0.33 FAR) to 2,579 square feet (0.86 FAR), decreasing the depths of front yards from 3.1 feet to 1.3 feet along 20th Avenue and from 48 feet to 1.7 feet along 125th Street, decreasing the depths of side yards from 2 feet to 0.7 feet to the south and from 10 feet to 1 foot to the west and waiving planting requirements for green front yards; and

WHEREAS, the applicant represents that, at the subject site, floor area may not exceed 2,248 square feet (0.75 FAR) under ZR § 23-141, front yards must have minimum depths of 10 feet under ZR § 23-45, side yards must have minimum depths of two feet with a minimum distance of 8 feet required from adjacent buildings under ZR § 23-46 and 75 square feet of 425 square feet of area in the front yards must be planted under ZR § 23-451; and

WHEREAS, the applicant submits that there are unique physical conditions—history of development, narrowness and shallowness of the subject site—inherent in and peculiar to the subject site; and

WHEREAS, the applicant states that the subject building was constructed in 1926 and has been used for automotive-related use since 1952, rendering the subject automotive service station a non-conforming use; and

WHEREAS, the applicant states that, because of the narrowness and shallowness of the subject site, as-of-right residential development in compliance with regulations applicable to corner lots would result in a building width of 13 feet with a depth of 70 feet in order to provide two front yards with depths of 10 feet and side yards with depths of 8 feet and 20 feet; and

WHEREAS, the applicant notes that an as-of-right residential development would have two stories with interiors 11 feet in width and a railroad-style layout caused by the required minimum 8-foot dimension for habitable rooms; and

WHEREAS, the applicant notes that, on corner lots in the immediate area, there are nine non-residential land uses, five of which are located on lots in excess of 3,000 square feet, one appears to be a residential and one vacant, leaving one other property out of 688 properties that is a commercial business operating on a corner lot of less than 3,000 square feet; and

WHEREAS, the Board finds that the above unique physical conditions create practical difficulties or unnecessary hardship in complying strictly with applicable zoning regulations that are not the result of general circumstances in the neighborhood or district; and

WHEREAS, the applicant states that development in strict conformity with applicable zoning regulations would not result in a reasonable return; and

WHEREAS, in support of this contention, the applicant submitted a financial feasibility study

demonstrating that the existing legal conditions, without additions to the subject building, and an as-of-right development of a new, two-family residential development would both result in negative returns but that the proposed enlargement would result in a reasonable return; and

WHEREAS, the Board finds that, because of the above unique physical conditions, there is no reasonable possibility that as-of-right development would bring a reasonable return; and

WHEREAS, the applicant states that the proposed enlargement would not alter the essential character of the neighborhood or district in which the subject site is located; and

WHEREAS, the applicant notes that there are a number of non-conforming commercial and industrial uses in the vicinity; and

WHEREAS, the applicant surveyed properties in the surrounding area, determining that 44 percent of lots have floor area ratios ranging from 0.75 FAR to 1.60 FAR, 22 percent have non-complying building types such as attached or semi-attached structures, 61 percent have non-complying front yards, 27 percent have non-complying side yards; and

WHEREAS, the Board finds that the enlargement proposed will not alter the essential character of the neighborhood or district, will not substantially impair the appropriate use or development of adjacent property and will not be detrimental to the public welfare; and

WHEREAS, the Board finds that the practical difficulties or unnecessary hardship have not been created by the owner or by a predecessor in title; and

WHEREAS, the applicant represents that, based upon its financial feasibility study, the enlargement proposed represents the minimum necessary to bring a reasonable return; and

WHEREAS, the Board finds that the variance proposed represents the minimum necessary to afford relief; and

WHEREAS, by letter dated October 11, 2017, the New York City Department of Design and Construction states that it has started reconstruction and replacement of sewer and water main work adjacent to the subject site and that private improvements have been constructed in front of the subject site on City-owned property; and

WHEREAS, in response to the Board's questions at hearing, the applicant clarified that the subject site is not in common ownership with any adjacent tract of land, revised the financial feasibility study as directed and represented that encroachments onto City-owned property will be removed; 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. 7BSA138Q, dated September 7, 2017; and

WHEREAS, the EAS documents that the project as

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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, 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 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 of discretion.

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 R4A zoning district, the enlargement of a non-complying, non-conforming one-story commercial building used as an automotive services station (Use Group 16) that does not comply with zoning regulations for use, floor area, front yards, side yards and green front yards, contrary to ZR §§22-00, 52-00, 23-141, 23-45, 23-46 and 23-451; *on condition* that all work, operations and site conditions shall conform to drawings filed with this application marked “Received June 7, 2018”- Three (3) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: floor area shall be a maximum of 2,579 square feet (0.86 FAR); front yards shall have minimum depths of 1.3 feet along 20th Avenue and 1.7 feet along 125th Street side yards shall have minimum depths of 0.7 feet to the south and 1 foot to the west, as indicated on the Board-approved plans;

THAT the trash enclosure shall be relocated within the boundaries of the subject site;

THAT the sidewalk adjacent to the subject site shall be repaired in coordination with the reconstruction and replacement of sewer and water main work by the New York City Department of Design and Construction;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy shall be obtained within one (1) year, by March 27, 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, March 27, 2018.

2017-240-BZ

CEQR No. 18-BSA-016M

APPLICANT – Troutman Sanders LLP, for Red Rooster Harlem LLC, owner.

SUBJECT – Application August 15, 2017 – 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). PREMISES AFFECTED – 310 Lenox Avenue, Block 1723, Lot 69, 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, and Commissioner Sheta.....4

Negative:0

Abstain: Commissioner Scibetta.....1

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated March 23, 2018, acting on Alteration Application No. 104522508, reads in pertinent part:

“The proposed Use Group 12A Eating and Drinking Establishment is contrary to Zoning Resolution Section 32-21, as it is not permitted within a C4 zoning district where such use is within 100 feet of a Residence District boundary”; and

WHEREAS, this is an application under ZR §§ 73-244 and 73-03 to permit, in a C4-4A zoning district and the Special 125th Street District, the operation of an eating or drinking establishment within 100 feet from the boundary of a residential zoning district, contrary to ZR § 32-21; and

WHEREAS, a public hearing was held on this application on February 27, 2018, after due notice by publication in *The City Record*, with a continued hearing on March 27, 2018, and then to decision on the same date; and

WHEREAS, Community Board 10, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is located on the southeast corner of Lenox Avenue and West 126th Street, in a C4-4A zoning district and the Special 125th Street District, in Manhattan; and

WHEREAS, the subject site has approximately 100

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feet of frontage along Lenox Avenue, 85 feet of frontage along West 126th Street, 8,493 square feet of lot area and is occupied by a three-story, with cellar, commercial building; and

WHEREAS, ZR § 73-244 provides that:

In C2, C3, C4*, C6-4**, M1-5A, M1-5B, M1-5M and M1-6M Districts, the Special Hudson Square District and the *Special Tribeca Mixed Use District*, the Board of Standards and Appeals may permit eating or drinking establishments with entertainment and a capacity of more than 200 persons or establishments of any capacity with dancing, for a term not to exceed three years, provided that the following findings are made:

- (a) that a minimum of four square feet of waiting area within the *zoning lot* shall be provided for each person permitted under the occupant capacity as determined by the New York City Building Code. The required waiting area shall be in an enclosed lobby and shall not include space occupied by stairs, corridors or restrooms. A plan shall be provided to the Board to ensure that the operation of the establishment will not result in the gathering of crowds or the formation of lines on the *street*;
- (b) that the entrance to such *use* shall be a minimum of 100 feet from the nearest *Residence District* boundary;
- (c) that such *use* will not cause undue vehicular or pedestrian congestion in local *streets*;
- (d) that such *use* will not impair the character or the future use or development of the surrounding residential or mixed use neighborhoods;
- (e) that such *use* will not cause the sound level in any affected conforming *residential use, joint living-work quarters for artists or loft dwelling* to exceed the limits set forth in any applicable provision of the New York City Noise Control Code; and
- (f) that the application is made jointly by the owner of the *building* and the operators of such eating or drinking establishment.

The Board shall prescribe appropriate controls to minimize adverse effects on the character of the surrounding area, including, but not limited to, location of entrances and operable windows, provision of sound-lock vestibules, specification of acoustical insulation, maximum size of establishment, kinds of amplification of musical instruments or voices, shielding of flood lights, adequate screening, curb cuts or parking.

Any violation of the terms of a special permit may be grounds for its revocation.

* In C4 Districts where such *use* is within 100 feet from a *Residence District* boundary

** In C6-4 Districts mapped within that portion of Community District 5, Manhattan, bounded by West 22nd Street, a line 100 feet west of Fifth Avenue, a line midway between West 16th Street and West 17th Street, and a line 100 feet east of Sixth Avenue; 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 applicant proposes to legalize the subject eating or drinking establishment located in the cellar of the subject building; and

WHEREAS, the applicant represents that the subject eating or drinking establishment operates with the following hours of operation: 6:00 p.m. to 1:00 a.m., Thursday, 6:00 p.m. to 4:00 a.m., Friday and Saturday, and 10:00 a.m. to 2:00 p.m., Sunday; and

WHEREAS, the applicant represents that the total occupancy of the cellar level is limited to 200 persons and that there are two waiting areas with 860 square feet of floor space, which is more than the 800 square feet required for 200 persons; and

WHEREAS, the Board finds that the subject eating or drinking establishment will provide a minimum of four square feet of waiting area within the zoning lot for each person permitted under the occupant capacity determined by the New York City Building Code; and

WHEREAS, the applicant states that the entrance to the cellar level of the subject building is located 126 feet from the nearest boundary of a residential zoning district; and

WHEREAS, the Board finds that the entrance to the subject eating or drinking establishment is a minimum of 100 feet from the nearest boundary of a residential zoning district; and

WHEREAS, the applicant states that most patrons of the existing eating or drinking establishment on the first floor of the subject building take public transportation or arrive by foot and that the proposed layout of the subject eating or drinking establishment provides a separate lobby entrance and two cellar waiting areas designed to foster the movement of patrons out of the street system and into the cellar; and

WHEREAS, the Board finds that the subject eating or drinking establishment will not cause undue vehicular or pedestrian congestion in local streets; and

WHEREAS, the applicant submitted a land-use survey demonstrating that the surrounding area includes a vibrant mix of commercial and residential uses, including restaurants and other commercial uses; and

WHEREAS, the Board finds that the subject eating or drinking establishment will not impair the character or the future use or development of the surrounding mixed use neighborhood; and

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WHEREAS, the applicant states that the subject eating or drinking establishment complies with the New York City Noise Code and is located entirely within the cellar of a completely enclosed building; and

WHEREAS, the applicant submitted a noise study indicating that no additional action would be necessary for compliance but recommending that the applicant seal the existing entry doors to the subject building to reduce the potential transmission of noise to the street; and

WHEREAS, the applicant provided evidence that said repairs to the doors have been completed; and

WHEREAS, the Board finds that the subject eating or drinking establishment will not cause the sound level in any affected conforming residential use to exceed applicable limits set forth in the New York City Noise Control Code; and

WHEREAS, the applicant has submitted authorizations from the building owner as well as the operator of the subject eating or drinking establishment; and

WHEREAS, the Board finds that this application is made jointly by the building owner of and the operators of the subject eating or drinking establishment; and

WHEREAS, in response to the Board's comments at hearing, the applicant clarified the hours of operation and provided evidence that the subject eating or drinking establishment would not adversely affect other tenants in the subject building; and

WHEREAS, by letter dated March 21, 2018, the Fire Department states that it has no objection to this application provided that a module be installed in the fire alarm panel to turn off all power to any musical instruments should the fire alarm system be activated on any floor; that no curtains or drapery, in areas of the subject eating or drinking establishment, be hung to obscure the view of an exit passageway; that, in the cellar, a rated wall of one-hour be constructed to separate the corridor and exit passageway with any doors installed being of similar rating to the rated wall; that the total number of customers, staff and performers be listed on the plans with total number of occupants not to exceed 200 persons; that, along exit passageway corridors outside of the subject eating or drinking establishment space, all shelving and obstructions be removed and such corridor be maintained cleared at all times with any storage cabinets installed along said corridor being of a rated cabinet and accepted by DOB with a minimum clear distance between the cabinets and corridor walls determined by the New York City Building Code for public assembly occupancy; that additional exit signs be installed along all exit passageways to better direct occupants to the means of egress; that, in the large waiting area, the door leading to the exit passageway protrudes its full width into the passage way with the door recessed into a large holding room so that, in the event of an evacuation, the door will not reduce the width of the passageway; that all security personnel employed by the subject eating or drinking establishment, during performances, hold an F-03 Certificate of Fitness "Indoor Place of Assembly Safety

Personnel," issued by the Fire Department; and

WHEREAS, in response, the applicant amended the plans to reflect the Fire Department's recommended fire-safety measures; and

WHEREAS, by letter dated March 26, 2018, the Fire Department represents that, based upon its review of this application for egress and fire safety as well as an inspection of the subject site, 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 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 project is classified as a Type I action pursuant to 6 NYCRR Part 617.4(b)(9); 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. 18BSA016M, dated November 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 December 22, 2017, the New York City Department of Environmental Protection states that the proposed project would not result in any potential for significant adverse impacts with regard to noise; 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 finds that the evidence in the record supports the findings required to be made under ZR §§ 73-244 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion.

Therefore it is Resolved, that the Board of Standards and Appeals does hereby *issue* 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 §§ 73-244 and 73-03 to *permit*, in a C4-4A zoning

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district and the Special 125th Street District, the operation of an eating or drinking establishment within 100 feet from the boundary of a residential zoning district, contrary to ZR § 32-21; *on condition* that all work and site conditions shall conform to drawings filed with this application marked "Received "March 27, 2018 – Two (2) sheets; and *on further condition*:

THAT the term of this grant shall be for three (3) years, expiring March 27, 2021;

THAT the above condition shall appear on the certificate of occupancy;

THAT a certificate of occupancy shall be obtained within one (1) year, by March 27, 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, March 27, 2018.

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 3rd and 4th 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 1, 2018, at 10 A.M., for continued hearing.

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 1, 2018, at 10 A.M., for continued hearing.

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 June 19, 2018, at 10 A.M., for adjourned hearing.

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

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice Chair Chanda, Commissioner Ottley-Brown and Commissioner Sheta.4

Negative:.....0

Abstain: Commissioner Scibetta.....1

ACTION OF THE BOARD – Laid over to May 15, 2018, 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 19th Street, Block 794, Lot 63, Borough of Manhattan.

COMMUNITY BOARD #4M

ACTION OF THE BOARD – Laid over to May 22, 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).

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R2 zoning district.
PREMISES AFFECTED – 1074 East 24th Street, Block
7605, Lot 76, Borough of Brooklyn.
COMMUNITY BOARD #14BK
ACTION OF THE BOARD – Laid over to May 22,
2018, at 10 A.M., for continued hearing.

REGULAR MEETING
TUESDAY AFTERNOON, MARCH 27, 2018
1:00 P.M.

Present: Chair Perlmutter, Vice-Chair Chanda,
Commissioner Ottley-Brown, Commissioner Sheta and
Commissioner Scibetta.

ZONING CALENDAR

2017-280-BZ

CEQR No. 18-BSA-043K

APPLICANT – Fox Rothschild LLP, for TF Cornerstone,
owner; CPFC Op Co LLC, lessee.
SUBJECT – Application October 17, 2017 – Special Permit
(§73-36) to permit 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.
PREMISES AFFECTED – 33 Bond Street, Block 166, 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, Commissioner Sheta and
Commissioner Scibetta5
Negative:0

THE RESOLUTION –

WHEREAS, the decision of the Department of
Buildings (“DOB”), dated October 12, 2017, acting on New
Building Application No. 320916041, reads in pertinent
part:

“Proposed physical culture establishment
[(“PCE”)] is not permitted as of right . . . as per
ZR 32-10”; and

WHEREAS, this is an application under ZR §§ 73-36
and 73-03 to permit, in a C6-4 zoning district and the
Special Downtown Brooklyn District, the operation of a
physical culture establishment on the first floor and in the
cellar of the subject building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this
application on March 27, 2018 after due notice by
publication in *The City Record*, and then to decision on
March 27, 2018; and

WHEREAS, Community Board 2, Brooklyn, waives
its recommendation for this application; and

WHEREAS, the subject site is located on the east side
of Bond Street, between Livingston Street and
Schermerhorn Street, in a C6-4 zoning district and the
Special Downtown Brooklyn District, in Brooklyn; and

WHEREAS, the subject site has approximately 172
feet of frontage along Bond Street, 201 feet of frontage
along Livingston Street, 298 feet of frontage along

MINUTES

Schermerhorn Street, 50,025 square feet of lot area and is occupied by a twenty-five 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 subject PCE will occupy 43,192 square feet of floor space as follows: 16,022 square feet of floor area on the first floor, including an entry lobby, management office, sales area, social area, café, play room, open workout area, cardiovascular-fitness area, pool, hot tub, lavatory, mechanical room and filter room, and 27,170 square feet of floor space in the cellar, including group fitness, a cycling room, locker rooms, steam rooms, saunas, a Pilates room, yoga room, open fitness area and a weight-lifting area; and

WHEREAS, the PCE will operate as Chelsea Piers, with the following hours of operation: 5:00 a.m. to 11:00 p.m., Monday through Thursday; 5:00 a.m. to 10:00 p.m., Friday; and 8:00 a.m. to 9:00 p.m., Saturday and Sunday; and

WHEREAS, the applicant represents that the PCE use is consistent with the vibrant mixed-use area in which it is located, that the PCE use will be fully contained within the envelope of the subject building and that the PCE use will not result in significant impacts on traffic; and

WHEREAS, in addition, the applicant submits that sound attenuation measures—including rubber flooring in all areas where free weights, cardiovascular-exercise machines and weight machines are located, dense acoustical arresting ceiling below overhead slabs and hung ceilings with acoustical ceiling tiles—will be provided within the space so as to ensure that sound levels in the building do not exceed a maximum interior noise level of 45 dBA, including sound emanating from any sound system installed; and

WHEREAS, the applicant further states that all HVAC units, pumps and fans will be installed on spring isolators and the housings will be constructed of insulated walls; and

WHEREAS, the applicant notes that all free weights and weight machines will be located in the cellar, two stories below the nearest residential units, and that the PCE will train its staff to instruct patrons that there shall be no dropping of free weights or barbells permitted in the PCE; and

WHEREAS, the Board finds that the PCE use is so

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located as not to impair the essential character or the future use or development of the surrounding area; and

WHEREAS, the applicant states that the PCE will provide a swimming pool with facilities for fitness classes, including yoga, Pilates and cycling, and open fitness areas for body building, weight reduction and aerobic exercise; 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 will be 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—will be installed in the entire PCE space; and

WHEREAS, in response to the Board's comments at hearing, the applicant detailed the proposed sound-attenuation measures on the plans and clarified that there will be no dropping of weights allowed in the PCE; 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 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.18BSA043K, dated January 10, 2018 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, the Board has determined that the proposed action will not have a significant adverse impact on the environment; and

WHEREAS, the Board finds that the evidence in the record supports the findings required to be made under ZR §§ 73-36 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion.

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 §§ 73-36 and 73-03 *to permit*, in a C6-4 zoning district and the Special Downtown Brooklyn District, the operation of a physical culture establishment on the first floor and in the cellar of the subject building, contrary to ZR § 32-10; *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked "Received March 27, 2018"- Ten (10) sheets; and *on further condition*:

THAT this grant shall be limited to a term of ten (10) years, expiring March 27, 2028;

THAT there shall be no dropping of free weights or barbells permitted in the PCE, and the PCE shall train staff to instruct patrons accordingly;

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 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 four (4) years, by March 27, 2022;

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 27, 2018.

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2017-8-BZ

APPLICANT – Sheldon Lobel, P.C., for Academic Leadership Charter School, owner.

SUBJECT – Application January 9, 2017 – 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.

PREMISES AFFECTED – 356-362 East 139th Street, Block 2301, Lot(s) 12, 13, 14, 15, Borough of Bronx.

COMMUNITY BOARD #1BX

ACTION OF THE BOARD – Laid over to June 5, 2018, at 10 A.M., for continued hearing.

2017-191-BZ

APPLICANT – Sheldon Lobel, P.C., for EMPSRGGREENE, LLC, owner.

SUBJECT – Application May 25, 2017 – 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).

PREMISES AFFECTED – 47 Greene Street, Block 475, Lot 50, Borough of Manhattan.

COMMUNITY BOARD #2M

ACTION OF THE BOARD – Laid over to June 5, 2018, at 10 A.M., for continued hearing.

2017-213-BZ

APPLICANT – Slater & Beckerman, P.C., for Dynamic Youth Community, Inc., owner.

SUBJECT – Application June 14, 2017 – 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).

PREMISES AFFECTED – 1808 Coney Island Avenue, Block 6592, Lot 39, Borough of Brooklyn.

COMMUNITY BOARD #12BK

ACTION OF THE BOARD – Laid over to May 22, 2018, at 10 A.M., for continued hearing.

Carlo Costanza, Executive Director

BULLETIN

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2018-47-A

45 Case Avenue, Located at the beginning of the east side of Case Avenue and Norman Place, Block 06670, Lot(s) 0070, Borough of **Staten Island, Community Board: 5**. Common Law Vesting application requesting that the Board determine that the property owner secured a vested right to complete construction of a proposed development under the prior R3X zoning prior to a rezoning which occurred on February 2, 2011. R3X district.

2018-48-BZ

5205 Hylan Boulevard, Located on the north side of Hylan Boulevard 0' 0" from Arbutus Avenue, Block 06499, Lot(s) 0001, Borough of **Staten Island, Community Board: 3**. Re-instatement of a previously approved variance which permitted the operation of an Automotive Service Station (UG 16B) with accessory repair facilities which expired on September 13, 2004; Amendment to permit the legalization of an attendant booth and relocation of an existing free standing illuminated sign; Waiver of the Rules. R3X Special South Richmond District (Lower Density Growth Management Area). R3X, SSRD, LDGMA district.

2018-49-BZ

1919 East 5th Street, Located on the east side of East 5th Street between Avenue R and Avenue S, Block 06681, Lot(s) 0492, Borough of **Brooklyn, Community Board: 15**. Special Permit (§73-622) to permit the enlargement of an existing single-family home, contrary to floor area, lot coverage and open space (ZR §23-142) and wall height (ZR §23-631-(b)) R2X (Special Ocean Parkway) zoning district. R2X district.

2018-50-BZ

45 West 45 Street, Located between 5th Avenue and Avenue of the Americas, Block 01261, Lot(s) 0016, Borough of **Manhattan, Community Board: 5**. Special Permit (§73-36) to permit the operation of Physical Cultural Establishment (Orange Theory Fitness) within the cellar of a commercial building contrary to ZR §32-10. C6-4.5 (Special Midtown District). C6-4.5 district.

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

CALENDAR

**SPECIAL HEARING
MAY 8, 2018, 10:00 A.M.**

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, May 8, 2018, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

SPECIAL ORDER CALENDAR

624-68-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for MMT Realty Associates LLC, owner.

SUBJECT – Application February 27, 2018 – Extension of Term of a Variance (§72-21) which permitted the operation of wholesale plumbing supply establishment (UG16) and stores and office (UG6) which expired on February 7, 2017; Extension of Time to obtain a Certificate of Occupancy which expired on February 7, 2013; Waiver of the rules. R3-2 zoning district.

PREMISES AFFECTED – 188-07/15 Northern Boulevard, Block 5364, Lot(s) 1, 5, 7, Borough of Queens.

COMMUNITY BOARD #11Q

308-79-BZ

APPLICANT – Klein Slowik PLLC, for St. George Tower & Grill Owners Corp., owner; St. George Health & Racquet Associates LLC, lessee.

SUBJECT – Application June 20, 2017 – Extension of Term of a previously approved Variance (§72-21) which permitted the operation of a Physical Cultural Establishment (*Eastern Athletic Club*) which expired on July 3, 2014; Waiver of the Rules. R7-1 (Limited Height Special Purpose District) (Brooklyn Heights Historic District).

PREMISES AFFECTED – 43 Clark Street aka 111 Hicks Street, Block 231, Lot 19, Borough of Brooklyn.

COMMUNITY BOARD #2BK

175-05-BZ

APPLICANT – Sheldon Lobel, P.C., for 18-24 Luquer Street Realty, LLC, owner.

SUBJECT – Application February 16, 2018 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) to construct a four-story multiple dwelling with accessory parking which expired on January 9, 2015; Waiver of the Rules. M1-1 zoning district.

PREMISES AFFECTED – 18-24 Luquer Street, Block 520, Lot 13, Borough of Brooklyn.

COMMUNITY BOARD #6BK

322-05-BZ

APPLICANT – Eric Palatnik, P.C., for Queens Jewish Community Council, owner.

SUBJECT – Application April 6, 2017 – Extension of Time to Complete Construction for a previously granted variance (§72-21) which permitted the enlargement of an existing two story home and the change in use to a community use facility (Queens Jewish Community Council), which expired on March 7, 2017. R4B zoning district.

PREMISES AFFECTED – 69-69 Main Street, Block 6642, Lot 1, Borough of Queens.

COMMUNITY BOARD #8Q

18-09-BZ

APPLICANT – Klein Slowik PLLC, for West 54th Street LLC c/o ZAR Property, owner; Crunch LLC, lessee.

SUBJECT – Application August 28, 2017 – Extension of Term of a special permit (§73-36) for the continued operation of a physical culture establishment (*Crunch Fitness*) which expires on November 21, 2021; Amendment to permit the change in operator; Waiver of the Rules. C6-5 and C6-7 zoning district.

PREMISES AFFECTED – 250 West 54th Street, Block 1025, Lot 54, Borough of Manhattan.

COMMUNITY BOARD #5M

2016-4150-BZ

APPLICANT – Sheldon Lobel, P.C., for Courtwood Capital LLC, owner; Grandave Fitness Inc. (d/b/a L Train CrossFit), lessee.

SUBJECT – Application March 24, 2016 – Special Permit (§73-36) to permit a physical culture establishment (*CrossFit*) on the cellar, first floor and mezzanine of an existing building commercial building. C6-4A zoning district.

PREMISES AFFECTED – 667 Grand Street, Block 2781, Lot 29, Borough of Brooklyn.

COMMUNITY BOARD #1BK

2017-62-BZ

APPLICANT – Akerman, LLP, for 387 Park South LLC c/o Chicago Deferred Exchange, owner; Barry's Bootcamp NYC, LLC, lessee.

SUBJECT – Application March 13, 2017 – 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.

PREMISES AFFECTED – 387 Park Avenue South, Block 883, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #5M

CALENDAR

2017-130-BZ

APPLICANT – Rothkrug Rothkrug & Spector, for 47-01 LASAL Associates, owner; Crossfit Sunnyside, lessee.

SUBJECT – Application April 13, 2017 – Special Permit (§73-36) to permit the legalization of a physical culture establishment (*Crossfit Sunnyside*) within an existing commercial building. M1-1 zoning district.

PREMISES AFFECTED – 47-01 Barnett Avenue, Block 142, Lot 238, Borough of Queens.

COMMUNITY BOARD #2Q

2018-17-BZ

APPLICANT – Fox Rothschild LLP, for Hylan Plaza 1339, LLC, owner; Fitness International, LLC, lessee.

SUBJECT – Application February 7, 2018 – Special Permit (§73-36) to permit the operation of a physical culture establishment (*LA Fitness*) to occupy 37,583 sq. ft. within a shopping center contrary to ZR §32-10. C4-1 zoning district.

PREMISES AFFECTED – 2600 Hylan Boulevard, Block 3969, Lot 1, Borough of Staten Island.

COMMUNITY BOARD #2SI

Carlo Costanza, Executive Director

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**REGULAR MEETING
TUESDAY MORNING, APRIL 10, 2018
10:00 A.M.**

Present: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.

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

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
Abstain: Commissioner Scibetta.....1

THE RESOLUTION –

WHEREAS, this is an application for an extension of term of a special permit, previously granted by the Board; and

WHEREAS, a public hearing was held on this application on September 26, 2017, after due notice by publication in *The City Record*, with continued hearings on November 21, 2017, and January 9, 2018, and then to decision on April 10, 2018; 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 southeast corner of Charlton Street and Greenwich Street, in an M1-6 zoning district and the Special Hudson Square District, in Manhattan; and

WHEREAS, the Board has exercised jurisdiction over the subject site since April 12, 1955, when, under BSA Calendar Number 763-54-A, the Board granted a variance of the Labor Law on condition that one primary means of exit be maintained in accordance with the requirements therefore, that a second means of egress consisting of an exterior fire escape on Greenwich Street be constructed with

counterbalanced stair to street and that this variance continue only so long as the building is occupied substantially as it was and the number of occupants per floor not exceed the number shown and that the occupancy per floor not exceed the capacity of the primary means of exit, that the interior fire alarm and fire drills be maintained, that the building not be increased in height or area and that the additional exit from the cellar and cellar stair enclosure be maintained as proposed; and

WHEREAS, on June 10, 1980, when, under BSA Calendar Number 1092-79-BZ, the Board granted a variance to permit, in an existing six-story building, the conversion of all floors above the first floor from lofts into a multiple dwelling on condition that a smoke detector with a self-contained alarm be installed in each apartment, that the existing sprinkler system be permanently retained and properly maintained, that a fire alarm station, connected to a manual alarm station that can be heard throughout the building, be installed on each floor, that 25 percent of the roof area be allocated for tenant recreation space, that all residential window openings be equipped with approved double glazed windows or with an arrangement of two operable glazed windows installed so as to reduce street traffic noise in the proposed apartments and that, if the method of sound attenuation that is proposed has not received an approval for general use from the Board, the installation not be made until details have been submitted to the Board for approval accompanied by an evaluation of the effectiveness of the proposal from an acoustical engineer; and

WHEREAS, on April 10, 2007, the Board granted a special permit to allow the operation of a physical culture establishment (“PCE”) on a portion of the first floor of a six-story, with cellar, mixed-use residential and commercial building 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 Friday, 9:00 a.m. to 9:00 p.m., and Saturday, 9:00 a.m. to 3:00 p.m., that sound attenuation measures be installed and maintained as indicated on the Board-approved plans, that the above conditions appear on the certificate of occupancy and that fire safety measures be installed and maintained as shown on the Board-approved plans; and

WHEREAS, on March 8, 2016, under BSA Calendar Number 1092-79-BZ, the Board amended the variance to permit the zoning-lot merger of the subject site with contiguous parcels on Block 597 in Manhattan and associated modifications to the Board-approved site plan on condition that the zoning calculations, including any transfer of development rights, be subject to DOB’s review and approval and be in full compliance with underlying bulk regulations, that the site remain subject to the Board’s jurisdiction, including modifications to buildings on the subject site and that all conditions from the prior resolution not specifically waived by the Board remain in effect; and

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WHEREAS, the term having expired, the applicant now seeks an extension; and

WHEREAS, the applicant represents that there have been no changes to the floor plan or operator of the facility, Oishi Judo Club, 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, based upon its review of the record, the Board has determined 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 April 10, 2007, so that as amended this portion of the resolution shall read: “to *permit* an extension of term of ten (10) years, expiring April 10, 2027; *on condition* that all work and site conditions shall conform to drawings filed with this application marked “Received June 14, 2017”-Four (4) sheets; and *on further condition*:

THAT the term of the special permit shall be for ten (10) years, expiring April 10, 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 the hours of operation shall be limited to Monday through Friday, 9:00 a.m. to 9:00 p.m., and Saturday, 9:00 a.m. to 3:00 p.m.;

THAT sound attenuation measures shall be maintained as indicated on the Board-approved plans;

THAT fire safety measures 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 April 10, 2022;

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 10, 2018.

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 2nd Street, Block 8841, Lot 500, 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 Sheta4

Negative:0

Abstain: Commissioner Scibetta.....1

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated November 4, 2015, acting on Alteration Application No. 302221619, reads in pertinent part:

“The continued use as an Eating and Drinking Establishment is not permitted . . . pursuant to Zoning Resolution Section 32-15”; and

WHEREAS, this is an application for a waiver of the Board’s Rules of Practice and Procedure, an extension of time to obtain a certificate of occupancy, an amendment and an extension of term of a special permit, previously granted by the Board; 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 December 13, 2016, January 31, 2017, and April 4, 2017, and then to decision on April 10, 2018; 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, the subject site is located on the northeast corner of Plumb 2nd Street and Harkness Avenue, in a C3 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 134 feet of frontage along Plumb 2nd Street, 353 feet of frontage along Harkness Avenue, 37,450 square feet of lot area and is occupied by a one-story, with mezzanine, commercial building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since May 27, 1980, when, under BSA Calendar Number 1233-79-BZ, the Board granted a variance to permit the construction of a two-story enlargement to an existing wholesale and retail fish-packing establishment; and

WHEREAS, on June 14, 1981, under BSA Calendar

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Number 1233-79-BZ, the Board granted an extension of time to complete construction; and

WHEREAS, on December 1, 1987, under BSA Calendar Number 233-86-BZ, the Board granted a special permit to allow a one-story enlargement of the subject building to include a new eating and drinking establishment with incidental music (Use Group 6) and modification of the accessory business sign regulations for a term of five (5) years, expiring December 1, 1992, on condition that the hours of operation for the restaurant be limited to 11:30 a.m. to 12:00 a.m., Sunday to Thursday, and 11:30 a.m. to 3:00 a.m., Friday and Saturday, and that the above conditions appear on the certificate of occupancy; and

WHEREAS, on December 1, 1987, under BSA Calendar Number 734-86-A, the Board granted an appeal under General City Law § 35 to permit the construction of part of the subject building and accessory parking in the bed of a mapped street; and

WHEREAS, on April 26, 1994, under BSA Calendar Number 733-86-BZ, the Board granted an extension of term of the special permit of five (5) years, expiring December 1, 1997, on condition that a new certificate of occupancy be obtained within one (1) year, by April 26, 1995; and

WHEREAS, on March 26, 2002, under the subject calendar number, the Board granted a special permit for the operation of an eating or drinking establishment for a term of five (5) years, expiring March 26, 2007, on condition that the subject site remain graffiti free at all times, that the hours of operation for the Use Group 6A eating or drinking establishment be limited to 11:30 a.m. to 12:00 a.m., Sunday to Thursday, and 11:30 a.m. to 3:00 a.m., Friday and Saturday, that landscaping be maintained in accordance with the Board-approved plans, that the maximum occupancy be 200 persons, that the above conditions appear on the certificate of occupancy and that a new certificate of occupancy be obtained within one (1) year, by March 26, 2003; and

WHEREAS, on July 10, 2007, under the subject calendar number, the Board granted an extension of term of five (5) years, expiring March 26, 2012, and amended the special permit to allow modifications to the site, including the addition of a cooler trailer and walk-in box, which are required by the New York City Department of Health and Mental Hygiene regulations, for use by the fish-packing establishment and the eating or drinking establishment on condition that the term appear on the certificate of occupancy and that a new certificate of occupancy be obtained by April 10, 2008; and

WHEREAS, on November 16, 2010, under the subject calendar number, the Board granted an extension of term of five (5) years, expiring November 16, 2015, on condition that the term appear on the certificate of occupancy and that a certificate of occupancy be obtained within one (1) year, by November 16, 2011; and

WHEREAS, the term having expired, the applicant now seeks a waiver of the Board's Rules of Practice and Procedure to permit the late filing of this application, an

extension of time to obtain a certificate of occupancy, an amendment and an extension of term; and

WHEREAS, the applicant proposes to construct a canopy over the existing loading berth; and

WHEREAS, the applicant submits that there will be 10,432 square feet of floor area used by the subject eating or drinking establishment and a total of 96 parking spaces with 79 on-site spaces and 17 off-site spaces; and

WHEREAS, the applicant seeks to modify the hours of operation as follows: 11:00 a.m. to 1:00 a.m., Sunday to Thursday, and 11:00 a.m. to 3:00 a.m., Friday and Saturday; and

WHEREAS, in response to questions from the Board, the applicant removed a chain-link fence, submitted evidence that maintenance of the fence and trash receptacle has improved and provided a parking maneuverability plan; and

WHEREAS, regarding pedestrian safety, the applicant represents that painted pedestrian-safety lines, a pedestrian walkway and bumpers are provided; 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, based upon its review of the record, the Board has determined that the requested waiver of the Board's Rules of Practice and Procedure, extension of time to obtain a certificate of occupancy, amendment 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 *waive* the Rules of Practice and Procedure and *reopen* and *amend* the resolution, dated March 26, 2002, as amended through November 16, 2010, so that as amended this portion of the resolution shall read: "to *permit* an extension of time to obtain a certificate of occupancy, an amendment and an extension of term of five (5) years, expiring November 16, 2020; *on condition* that all work and site conditions shall conform to drawings filed with this application marked "Received March 23, 2018"-Seven (7) sheets; and *on further condition*:

THAT the term of this grant shall be for five (5) years, expiring November 16, 2020;

THAT all required parking spaces shall be located within the property lines of the subject site or across the street, as indicated on the Board-approved plans;

THAT an off-site parking restrictive declaration, as reviewed and approved by the Department of Buildings, shall be recorded prior to issuance of a permit;

THAT the hours of operation for the Use Group 6A eating or drinking establishment shall be limited to 11:00 a.m. to 1:00 a.m., Sunday to Thursday, and 11:00 a.m. to 3:00 a.m., Friday and Saturday;

THAT landscaping shall be maintained in accordance with the Board-approved plans;

THAT the maximum occupancy shall be 200 persons;

THAT the above conditions shall appear on the

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certificate of occupancy;

THAT a certificate of occupancy shall be obtained by November 16, 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, April 10, 2018.

35-10-BZ

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

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

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

COMMUNITY BOARD #8Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Sheta4

Negative:0

Abstain: Commissioner Scibetta.....1

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated September 18, 2014, acting on New Building Application No. 420113308, reads in pertinent part:

1. The term of B.S.A. calendar # 35-10-BZ dated 03/22/2010 for obtain final certificate of occupancy is already expired on 03/08/2012. New approval from B.S.A. is required prior to approval of P.A.A.
2. As per B.S.A. calendar the relief is only granted to the previous ownership only. Any change in ownership will require new approval from B.S.A.; and

WHEREAS, this is an application for a waiver of the

Board’s Rules of Practice and Procedure, an extension of time to obtain a certificate of occupancy and an amendment to a variance, previously granted by the Board; and

WHEREAS, a public hearing was held on this application on March 31, 2015, after due notice by publication in *The City Record*, with continued hearings on April 21, 2015, June 2, 2015, July 28, 2015, April 5, 2016, and January , and then to decision on April 10, 2018; 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 8, Queens, recommends denial of this application; and

WHEREAS, the subject site is located on the north side of 77th Avenue, between Main Street and 147th Street, in an R4 zoning district, in Queens; and

WHEREAS, the site has approximately 40 feet of frontage along 77th Avenue, 100 feet of depth, 4,000 square feet of lot area and is occupied by a three-story, with cellar, community-facility building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since March 8, 2011, when, under the subject calendar number, the Board granted a variance to permit a community-facility building that does not comply with regulations for side yards, rear yards, front yards and parking on condition that the building parameters be a floor area of 7,265 square feet (1.84 FAR), a front yard with a minimum depth of 13’-0”, a side yard with a minimum width of 8’-0” along the western lot line, a side yard with a minimum width of 5’-0” along the eastern lot line, a rear yard with a minimum depth of 7’-0” at the first and second floor and 26’-3” at the third floor and two accessory parking spaces, as indicated on the Board-approved plans; that any change in control or ownership of the building requires the prior approval of the Board; that the use be limited to a house of worship (Use Group 4); that no commercial catering take place at the subject site; that the above conditions be listed on the certificate of occupancy; and that a new certificate of occupancy be obtained by March 8, 2012; and

WHEREAS, the time to obtain a certificate of occupancy having expired, the applicant now seeks a waiver of the Board’s Rules of Practice and Procedure to permit the late filing of this application, an extension of time to obtain a certificate of occupancy and an amendment; and

WHEREAS, the applicant proposes changes to the Board-approved plans to facilitate modifications to stairwells and ramps to comply with egress requirements as well as the addition of an elevator for accessibility; and

WHEREAS, the applicant also proposes interior modifications as follows: in the cellar, changes in layout of two restrooms and mechanical space; on the first floor, a reduction in occupancy from 169 to 150 persons and changes in the lobby’s configuration; on the second floor, the addition of a stairwell and changes to the restroom layout; and, on the third floor, the addition of a stairwell and

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changes to the restroom layout; and

WHEREAS, the applicant proposes to change control of the house of worship to Torath Haim Ohel Sara, a non-profit religious corporation; and

WHEREAS, in response to questions from the Board, the applicant submits that there will be decorative fencing and landscaping at the front of the subject site and that a fire alarm and sprinkler system will be installed in the building; and

WHEREAS, based upon its review of the record, the Board has determined that the requested waiver of the Board's Rules of Practice and Procedure, extension of time to obtain a certificate of occupancy and amendment 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 March 8, 2011, so that as amended this portion of the resolution shall read: "to *permit* an extension of time to obtain a certificate of occupancy and an amendment to comply with egress and accessibility requirements along with interior modifications, including a reduction in occupancy and reconfiguration of the lobby, and a change in control of the subject building; *on condition* that all work and site conditions shall conform to drawings filed with this application marked "Received March 21, 2018"-Ten (10) sheets; and *on further condition*:

THAT the building shall remain vacant under the vacate order until the building has been signed off by the Department of Buildings and Fire Department for occupancy;

THAT the bulk parameters of the building shall be as follows: a floor area of 7,345 square feet (1.84 FAR), a front yard with a minimum depth of 13'-0", a side yard with a minimum width of 8'-0" along the western lot line, a side yard with a minimum width of 5'-0" along the eastern lot line, a rear yard with a minimum depth of 7'-0" at the first and second floor and 26'-3" at the third floor and two accessory parking spaces, as indicated on the Board-approved plans;

THAT any change in control or ownership of the building requires the prior approval of the Board;

THAT the use shall be limited to a house of worship (Use Group 4);

THAT no commercial catering shall take place at the subject site;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy shall be obtained within four (4) years, by April 10, 2022;

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 10, 2018.

170-47-BZ

APPLICANT – Eric Palatnik, P.C., for Dasueram LLC, owner.

SUBJECT – Application November 28, 2017 – Extension of Term (§11-411) of a previously approved variance permitting the operation of a (UG 16B) storage warehouse in the cellar, used in conjunction with a (UG 17B) factory on the first floor which expired on November 25, 2017. R7-1 zoning district.

PREMISES AFFECTED – 1982 Crotona Parkway, Block 3121, Lot 11, 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, Commissioner Sheta and Commissioner Scibetta.....5

Negative:0

THE RESOLUTION –

WHEREAS, this is an application for an extension of term of a variance, previously granted by the Board; and

WHEREAS, a public hearing was held on this application on April 10, 2018, after due notice by publication in *The City Record*, and then to decision on April 10, 2018; and

WHEREAS, the subject site is located on the east side of Crotona Parkway, between East 178th Street and East Tremont Avenue, in an R7-1 zoning district, in the Bronx; and

WHEREAS, the Board has exercised jurisdiction over the subject site since February 10, 1948, when, under the subject calendar number, the Board granted a variance to permit the change in occupancy from storage garage to non-storage garage and factory for a term of five (5) years, expiring February 10, 1953, on condition that the windows at the rear be made fireproof self-closing, that the ramp serving the basement be separated from the balance of the first floor by fireproof construction with no openings therein between the cellar and the first floor, that the boiler room be in compliance with the code therefor and be entered only from the exterior, that such portable fire-fighting appliances be maintained as the Fire Commissioner directs, that the building not be increased in height or area, that all signs on the building be restricted to one sign as shown and that the variance shall continue only so long as the first floor is occupied for the factory use as proposed; and

WHEREAS, on January 6, 1953, under the subject

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calendar number, the Board granted an extension of term of five (5) years, expiring January 6, 1958, on condition that a certificate of occupancy be obtained within six (6) months, by July 6, 1953; and

WHEREAS, on January 29, 1963, under the subject calendar number, the Board amended the variance to permit the cellar to be used as a warehouse in conjunction with the factory on the first floor and granted an extension of term of five (5) years, expiring January 29, 1968, on condition that a certificate of occupancy be obtained; and

WHEREAS, on July 7, 1964, under the subject calendar number, the Board amended the variance so that the secondary means of exit from the cellar may be relocated to the north side of the building, leading to East 178th Street through the yard of the adjoining multiple dwelling on condition that copies of the easement agreement covering this exit be filed with the Board, the Department of Buildings and the County Clerk's Office to ensure that unobstructed egress be maintained; and

WHEREAS, on February 27, 1968, under the subject calendar number, the Board amended the variance to permit alterations to the building and granted an extension of term of five (5) years, expiring January 29, 1973, on condition that a new certificate of occupancy be obtained; and

WHEREAS, on March 6, 1973, under the subject calendar number, the Board granted an extension of term of five (5) years, expiring March 6, 1978, on condition that a new certificate of occupancy be obtained; and

WHEREAS, on April 11, 1978, under the subject calendar number, the Board granted an extension of term of five (5) years, expiring April 11, 1983, on condition that the façade of the building be painted or cleaned and that a certificate of occupancy be obtained within one (1) year, by April 11, 1979; and

WHEREAS, on July 12, 1983, under the subject calendar number, the Board granted an extension of term of five (5) years, expiring April 11, 1988, on condition that a new certificate of occupancy be obtained; and

WHEREAS, on July 5, 1988, under the subject calendar number, the Board granted an extension of term of ten (10) years, expiring April 11, 1998, on condition that a new certificate of occupancy be obtained within one (1) year, by July 5, 1989; and

WHEREAS, on November 25, 1997, under the subject calendar number, the Board granted an extension of term of ten (10) years, expiring November 25, 2007, on condition that a new certificate of occupancy be obtained within one (1) year, by November 25, 1998; and

WHEREAS, on January 29, 2008, under the subject calendar number, the Board granted an extension of term of ten (10) years, expiring November 25, 2017, 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; and

WHEREAS, by letter dated March 30, 2018, the Fire Department states that it has no objection to this application; and

WHEREAS, based upon its review of the record, the Board has determined 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 10, 1948, as amended through January 29, 2008, so that as amended this portion of the resolution shall read: "to *permit* an extension of term of ten (10) years, expiring November 25, 2027; *on condition* that all work and site conditions shall conform to drawings filed with this application marked "Received November 28, 2017"-One (1) sheet; and *on further condition*:

THAT the term of this grant shall be for ten (10) years, expiring November 25, 2027;

THAT the windows at the rear shall be fireproof self-closing;

THAT the ramp serving the basement shall be separated from the balance of the first floor by fireproof construction with no openings therein between the cellar and the first floor;

THAT the boiler room shall be in compliance with the code therefor and be entered only from the exterior;

THAT such portable fire-fighting appliances be maintained as the Fire Commissioner directs;

THAT the building shall not be increased in height or area;

THAT all signs on the building shall be restricted to one sign as shown on the Board-approved plans;

THAT copies of the easement agreement covering the secondary means of exit from the cellar, leading to East 178th Street through the yard of the adjoining multiple dwelling, shall be filed with the Board, the Department of Buildings and the County Clerk's Office to ensure that unobstructed egress be maintained;

THAT the façade of the building shall be maintained painted or cleaned;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy shall be obtained within four (4) years, by April 10, 2022;

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 10, 2018.

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154-13-BZ

APPLICANT – Sheldon Lobel, P.C., for Sandy Bergen, LLC, owner.

SUBJECT – Application February 22, 2018 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) permitting the construction of a retail building (UG 6), contrary to use regulations (§22-10) which expired on February 4, 2018. R5 zoning district.

PREMISES AFFECTED – 1054-1064 Bergen Avenue, Block 8341, Lot(s) 118 & 121, 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, Commissioner Sheta and Commissioner Scibetta.....5

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 April 10, 2018, after due notice by publication in *The City Record*, and then to decision on April 10, 2018; and

WHEREAS, the subject site is located on the block bounded by Ralph Avenue, Bergen Avenue, East 73rd Street and Avenue K, in an R5 zoning district, in Brooklyn; and

WHEREAS, the Board has exercised jurisdiction over the subject site since February 4, 2014, when, under the subject calendar number, the Board granted a variance to permit the development of a one-story commercial building (Use Group 6) on condition that the bulk parameters of the building be one story, a maximum of 5,162 square feet 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) be provided at the subject site; that signage comply with C1 zoning district regulations; and that the above conditions appear on the certificate of occupancy; and

WHEREAS, the time to complete construction having expired, the applicant now seeks an extension; and

WHEREAS, based upon its review of the record, the Board has determined 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 February 4, 2014, so that as amended this portion of the resolution shall read: “to *permit* an extension of time to complete construction of three (3) years, expiring April 10, 2021; *on condition* that all work and site conditions shall conform to the Board-approved plans; and *on further condition*:

THAT the bulk parameters of the building shall be

limited to the following: one story, a maximum of 5,162 square feet 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) shall be provided at the subject site;

THAT signage shall comply with C1 zoning district regulations;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy shall be obtained within three (3) years, by April 10, 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, April 10, 2018.

292-13-BZ

APPLICANT – Sheldon Lobel, P.C., for The Edmond J. Safra Synagogue Inc., owner.

SUBJECT – Application February 14, 2018 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) permitting the development of a Use Group 4A house of worship (*Congregation Bet Yaakob*), contrary to floor area, open space ratio, front, rear and side yards, lot coverage, height and setback, planting, landscaping and parking regulations which expired January 28, 2018. R5, R6A and R5 Special Ocean Parkway Sub-District.

PREMISES AFFECTED – 2085 Ocean Parkway, Block 7109, 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 Sheta and Commissioner Scibetta.....5

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 April 10, 2018, after due notice by

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publication in *The City Record*, and then to decision on April 10, 2018; and

WHEREAS, the subject site is located on the northeast corner of Ocean Parkway and Avenue U, partially in an R5 zoning district and partially in an R6A zoning district, in the Special Ocean Parkway District, in Brooklyn; and

WHEREAS, the Board has exercised jurisdiction over the subject site since October 16, 2012, when, under BSA Calendar Number 168-11-BZ, the Board granted a variance to permit the development of a four-story community-facility building to be used as a house of worship that does not comply with regulations for floor area ratio, open space ratio, lot coverage, front yard, side yard, rear yard, height and setback, side and rear setback, front yard planting, special landscaping and parking on condition that the building parameters be four stories, a maximum floor area of 20,361 square feet, a maximum wall height of 60'-0" and total height of 62'-4", a minimum open space of 1,866 square feet and a maximum lot coverage of 6,968 square feet (79 percent), as illustrated on the Board-approved plans; that the use be limited to a house of worship (Use Group 4); that no commercial catering take place on-site; and that the above conditions appear on the certificate of occupancy; and

WHEREAS, on January 28, 2014, under the subject calendar number, the Board granted a variance to permit the development of a two- and three-story building to be used as a house of worship that does not comply with regulations for floor area, open space, lot coverage, front yard, level of front yard, side yard, rear yard, height and setback, side and rear setback, special landscaping and parking on condition that the building parameters be two–three stories, a maximum floor area of 22,314 square feet (1.5 FAR), a maximum wall height of 47'-10" and total height of 62'-0", a minimum open space ratio of 36 percent on the corner portion of the lot and 28 percent on the interior portion of the lot and a maximum lot coverage of 63 percent on the corner portion of the lot and 72 percent on the interior portion of the lot, as illustrated on the Board-approved plans; that sound-attenuation measures be installed and maintained as reflected on the Board-approved plans; that landscaping be maintained as reflected on the Board-approved plans; that any change in control or ownership of the building requires the prior approval of the Board; that the use be limited to a house of worship (Use Group 4); that no commercial catering take place on-site; and that the above conditions appear on the certificate of occupancy; and

WHEREAS, the time to complete construction having expired, the applicant now seeks an extension; and

WHEREAS, based upon its review of the record, the Board has determined 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 January 28, 2014, so that as amended this portion of the resolution shall read: "to *permit* an extension of time to complete construction of four (4) years, expiring April 10,

2022; *on condition* that all work, site conditions and operations shall conform to the Board-approved plans; and *on further condition*:

THAT the building parameters shall be limited to the following: two–three stories, a maximum floor area of 22,314 square feet (1.5 FAR), a maximum wall height of 47'-10" and total height of 62'-0", a minimum open space ratio of 36 percent on the corner portion of the lot and 28 percent on the interior portion of the lot and a maximum lot coverage of 63 percent on the corner portion of the lot and 72 percent on the interior portion of the lot, as illustrated on the Board-approved plans;

THAT sound-attenuation measures shall be installed and maintained as reflected on the Board-approved plans;

THAT landscaping shall be maintained as reflected on the Board-approved plans;

THAT any change in control or ownership of the building requires the prior approval of the Board;

THAT the use shall be limited to a house of worship (Use Group 4);

THAT no commercial catering shall take place on-site;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy shall be obtained within four (4) years, by April 10, 2022;

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 10, 2018.

APPEALS CALENDAR

2017-103-A

APPLICANT – Law Office of Steven Simicich, for Lera Property Holdings, LLC, owner.

SUBJECT – Application April 7, 2017 – 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
PREMISES AFFECTED – 3924 Victory Boulevard, Block 2620, Lot 126, Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Laid over to May 22, 2018, at 10 A.M., for continued hearing.

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ZONING CALENDAR

2017-218-A

APPLICANT – Law Office of Steven Simicich, for Leonard Censi, owner.

SUBJECT – Application June 20, 2017 – Proposed single family detached residential building which is within the unbuilt portion of the mapped street, contrary to General City Law 35. R3A zoning district.

PREMISES AFFECTED – 35 Howe Street, Block 302, Lot 19, Borough of Staten Island.

COMMUNITY BOARD #1SI

ACTION OF THE BOARD – Laid over to May 22, 2018, at 10 A.M., for continued hearing.

2017-68-A thru 2017-96-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Joline Estates, LLC, owner.

SUBJECT – Applications March 27, 2017 – Proposed construction of twenty-nine (29) two-family residences, not fronting on a legally mapped street, contrary to General City Law 36. R3-X (SRD) zoning district.

PREMISES AFFECTED – 7 to 49 Torrice Loop and 11 to 16 Frosinone Lane, Block 7577, Various Lots, Borough of Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Laid over to June 19, 2018, at 10 A.M., for continued hearing.

2017-320-BZY

APPLICANT – Kramer Levin Naftalis & Frankel LLP by Gary Tarnoff, for Sutton 58 Holding Company, LLC, owner.

SUBJECT – Application December 19, 2017 – Proposed extension of time to complete construction for a minor development pursuant to ZR §11-331 to renew building permits lawfully issued before November 30, 2017, the date of the modified tower-on-a-base regulation, to complete the required foundation of a proposed 64-story residential apartment building. R10 zoning district.

PREMISES AFFECTED – 428-432 East 58th Street, Block 1369, Lot 34, Borough of Manhattan.

COMMUNITY BOARD #6M

ACTION OF THE BOARD – Laid over to June 19, 2018, at 10 A.M., for continued hearing.

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 – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:0

THE RESOLUTION –

WHEREAS, the decisions of the Department of Buildings (“DOB”), dated May 7, 2015, acting on New Building Application Nos. 520233266, 520233257 and 520233275, read in pertinent part:

“Attached building within R2 zoning district is contrary to Section 22-00 (ZR)”;

and
WHEREAS, the decision of DOB, dated May 7, 2015, acting on New Building Application No. 520233257, regarding Lot 97, also reads in pertinent part:

“Front yard along Broad Street is contrary to Section 23-45 (ZR)”;

and
WHEREAS, this is an application under ZR § 72-21 to permit, in an R2 zoning district and the Special Hillside Preservation District, the development of three attached residences that do not comply with zoning regulations for use, contrary to ZR § 22-00, with one that does not comply with zoning regulations for front yards, contrary to ZR § 23-45; 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 April 4, 2017, September 12, 2017, December 5, 2017, and February 13, 2018 and then to decision on April 10, 2018; 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 denial of this application, citing concerns with flooding, neighborhood character and the minimum variance necessary to afford relief; and

WHEREAS, Borough President James S. Oddo submitted testimony, citing concerns with traffic safety; and

WHEREAS, the subject site is located on the west side of Van Duzer Street, at the intersection with Broad Street, in an R2 zoning district and the Special Hillside Preservation

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District, in Staten Island; and

WHEREAS, the subject site has approximately 50 feet of frontage along Van Duzer Street, 300 feet of depth, 14,755 square feet of lot area and is vacant; and

WHEREAS, the applicant proposes to develop three attached residences, each with one front yard with a depth of 15 feet; and

WHEREAS, the applicant submits that, under ZR § 22-00, attached residences are not permitted at the subject site and that, under ZR § 23-45, the residence proposed on Lot 97 requires two front yards with depths of 15 feet each; and

WHEREAS, the applicant states that there are unique physical conditions—including steeply sloped topography, its ratio of depth to width and its status as a corner lot—that create unnecessary hardship or practical difficulties in developing the site as of right; and

WHEREAS, in support of this contention, the applicant surveyed properties in the surrounding area, finding that there are 26 vacant lots on the west side of Van Duzer Street, three of which have no access to a street, 13 of which are at least twice as large as the subject site, 14 of which have access from the top of Grymes Hill that would not require grading for construction and five of which are owned by non-profit preservation organizations; and

WHEREAS, the applicant states that the above unique physical conditions trigger additional open area or yard requirements because of the subject site's relation to Broad Street, thereby preventing use of the rear of the subject site; and

WHEREAS, the applicant states that approximately 92 percent of the subject site is steeply sloped, which affects development at the subject site because of the amount of excavation required and additional construction costs associated with the installation of retaining walls; and

WHEREAS, the Board finds that the above unique physical conditions create practical difficulties or unnecessary hardship in complying strictly with applicable zoning regulations that are not created by general circumstances in the neighborhood or district; and

WHEREAS, the applicant states that, because of the above unique physical conditions, an as-of-right development would not bring a reasonable return; and

WHEREAS, in support of this contention, the applicant supplied a financial feasibility study demonstrating that an as-of-right development—consisting of one detached residence—would result in a substantial loss on investment but that the proposed attached residences would yield a modest return; and

WHEREAS, the Board finds that, because of the above unique physical conditions, there is no reasonable possibility that development in strict conformity with applicable zoning regulations would bring a reasonable return; and

WHEREAS, the applicant states that the proposed development will not alter the character of the surrounding area because Van Duzer Street is a heavily traveled roadway, that there are a mix of commercial, single-family

and multi-family residential uses in the vicinity, that detached single-family residences to the rear of the subject site will not be affected by the proposed development because of the grade change, that across Broad Street there is a development of attached residences fronting private streets, that across Van Duzer Street there are a number of attached residences and that there is a large development of multiple dwellings two blocks from the subject site along Broad Street; and

WHEREAS, in response to community concerns regarding traffic safety at the intersection of Broad Street, the Board directed the applicant to revise the proposed site plan so that a driveway within the mapped, but unbuilt, portion of Broad Street would provide access to the subject site; and

WHEREAS, the applicant states that vehicles would access the site, park in the cellars of the proposed residences and exit the site without backing out onto Van Duzer Street; and

WHEREAS, the Board finds that the proposed variance will not alter the essential character of the neighborhood or district in which the subject site is located; 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 above practical difficulties or unnecessary hardship do not constitute a self-created hardship; and

WHEREAS, the Board finds that the above practical difficulties or unnecessary hardship have not been created by the owner or by a predecessor in title; and

WHEREAS, the applicant states that the proposed variance is the minimum necessary to permit a productive use of the site, as reflected in the financial feasibility study; and

WHEREAS, the Board finds that the proposed variance is the minimum necessary to afford relief within the intent and purposes of the Zoning 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 Final Environmental Assessment Statement CEQR No. 15BSA211R, dated April 2, 2018; 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 February 15, 2017, the New York City Landmarks Preservation

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Commission states that the project site contains no potential for archaeological resources and that no adverse impacts to historic and cultural resources from the proposed action would be expected; and

WHEREAS, by correspondence dated January 3, 2017, the New York City Department of Environmental Protection states that a search revealed no air quality permits; 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 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 of discretion.

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 R2 zoning district and the Special Hillside Preservation District, the development of three attached residences that do not comply with zoning regulations for use, contrary to ZR § 22-00, with one that does not comply with zoning regulations for front yards, contrary to ZR § 23-45 ; *on condition* that all work, operations and site conditions shall conform to drawings filed with this application marked “Received April 3, 2018”-Thirteen (13) sheets; and *on further condition*:

THAT the bulk parameters of the building on Lot 97 shall be as follows: a front yard with a minimum depth of 0’-0” along Broad Street, as illustrated on the Board-approved plans;

THAT the above condition shall appear on the certificate of occupancy;

THAT a certificate of occupancy shall be obtained within four (4) years, by April 10, 2022;

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 10, 2018.

2017-190-BZ

CEQR #17-BSA-132Q

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 31st Road, Block 569, Lot 17, 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 and Commissioner Sheta.....4

Negative:0

Abstain: Commissioner Scibetta.....1

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated September 7, 2017, acting on Application No. 420659638 reads in pertinent part:

1. ZR 23-155 [...]: Proposed Building does not comply with maximum permitted floor area ratio per ZR 23-155 [...] and requires approval from the BSA;
2. [...]
3. ZR 23-662: Proposed Building does not comply with maximum height and setback regulations per ZR 23-662 and requires approval from the BSA; and

WHEREAS, this is an application pursuant to ZR § 72-21 to permit, on a site located within an R6B zoning district, the construction of a six-story Use Group 2 affordable independent residence for seniors (“AIRS”) that does not comply with the zoning regulations relating to floor area ratio and maximum height and set back, contrary to ZR §§ 23-155 and 23-662; and

WHEREAS, this application is filed on behalf of Catherine Sheridan Housing Development Fund Company, Inc. (the “Applicant”), a subsidiary of Catholic Charities Progress of Peoples Development Corporation, the non-profit developer of affordable housing for its parent entity, Catholic Charities Brooklyn and Queens (“Catholic Charities”); and

WHEREAS, Catholic Charities—whose mission is to provide housing and shelter for low-income families, single adults, the elderly and special needs populations supported by social services—has developed over 3,500 units of social service integrated low-income and senior housing in Brooklyn and Queens since 1975 that it operates through subsidiaries; and

WHEREAS, a public hearing was held on this application on September 26, 2017, after due notice by

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publication in *The City Record*, with continued hearings on January 30, 2018, and March 20, 2018, and then to decision on April 10, 2018; and

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

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

WHEREAS, by letters dated June 20, 2017, and January 23, 2018, New York City Councilmember Costa Constantinides expressed his support of this application, noted that the “demand for affordable housing has reached a fever pitch” and reported that in his four years in office, the number one constituent request he has received, especially from seniors, is for more affordable housing; and

WHEREAS, Councilmember Constantinides also stated that, according to 2016 estimates, approximately 20,000 seniors are seeking affordable housing in the subject City Council District, that the average waiting period for senior affordable housing is 7 years and opined that the City must act quickly to meet the housing needs of its growing senior population; and

WHEREAS, by letter dated January 8, 2018, the Service Employees International Union (“SEIU”) 32BJ, a labor union representing building service workers in New York City, stated that, while they have no objection to the subject proposal, they oppose the expansion of the *Cornell Doctrine*, discussed further below; and

WHEREAS, by letter dated January 26, 2018, LiveOn NY, an organization that advocates for policy changes furthering the interests of senior centers and agencies, expressed its support for this application, particularly with respect to the proposal to include social service space in the building, which, they said, “demonstrates true recognition of what seniors need to age and thrive in their community, as most seniors desire to do”; and

WHEREAS, the Board was also in receipt of three form letters in support of the application and one form letter in opposition, citing a concern that the proposed height of the building will block neighbors’ views; and

WHEREAS, the subject site is located on the northeast corner of 31st Road and 23rd Street, in an R6B zoning district, in Queens; and

WHEREAS, the site has approximately 250 feet of frontage along 31st Road, 87 feet of frontage along 23rd Street, 25,576 square feet of lot area and is currently vacant; and

WHEREAS, the Board has exercised jurisdiction over the subject site since July 19, 1977, when, under BSA Cal. No. 237-77-BZ, the Board granted a special permit, pursuant to ZR § 73-451, allowing the construction and maintenance of an off-site parking facility accessory to a multiple dwelling located at 31-41 23rd Street (Block 568, Lot 12), Queens, on condition that the parking facility be restricted to parking accessory to the multiple dwelling building located at 31-41 23rd Street; there be no building constructed at the site; that the lot be held in single

ownership with 31-41 23rd Street, to which the parking was accessory; and that substantial construction be completed within one year; and

WHEREAS, by letter dated October 12, 2017, a letter of substantial compliance was issued permitting a change in use of the multiple dwelling located at 31-41 23rd Street from Use Group 2 Class “A” multiple dwelling units and Use Group 4 community facility to Use Group 2 AIRS, a use permitted as-of-right at the subject site and for which, pursuant to ZR § 25-252, no accessory off-street parking spaces are required; accordingly, the special permit granted to the subject site was surrendered; and

WHEREAS, at the subject site, a maximum floor area ratio of 2.20 (56,267 square feet of floor area) is permitted pursuant to ZR § 23-155; a maximum base height of 40 feet and a maximum building height of 50 feet are required pursuant to ZR § 23-662(a); and, above the maximum base height, setbacks of at least 15 feet are required from both 31st Road and 23rd Street pursuant to ZR § 23-662(c)(1); and

WHEREAS, the Applicant proposes to redevelop the site with a six-story building containing 92 units of affordable independent residences for seniors, plus one superintendent’s unit for a total of 93 units, 74,274 square feet of floor area including 6,328 square feet of accessory space on the ground floor for the provision of social and welfare services primarily for the senior residents, a floor area ratio (“FAR”) of 2.90 and a building height of 61’-8” with no setback from either 31st Road or 23rd Street; and

WHEREAS, accordingly, the Applicant seeks an increase in the FAR permitted at the site by 0.70, an 18,007 square foot increase in the residential floor area permitted, a 21’-8” increase in the maximum base height permitted, an 11’-8” increase in the maximum building height permitted and a waiver of the required 15 foot setbacks; there are no density regulations applicable to AIRS units and, thus, no waiver of density has been requested; and

WHEREAS, the Applicant submits that the waivers are required to overcome a high water table that precludes the provision of a cellar and to facilitate the development of a building that will be in context with the neighborhood as well as to provide a sufficient number of affordable residences for seniors in a single development project that satisfies public financing criteria and related regulatory and policy guidelines; and

WHEREAS, primarily, however, the Applicant relies on an extension of the deference afforded educational and religious institutions under the law of the State of New York as to zoning, known as the *Cornell Doctrine*, that obviates the need for the Board to find a “unique physical condition,” as set forth in ZR § 72-21(a), to not-for-profit affordable developers seeking bulk waivers to facilitate the development of projects that provide 100 percent affordable housing to low-income earners for the life of the building; and

WHEREAS, *Cornell University v. Bagnardi*, 68 NY2d 583 (1986) holds that, while zoning boards retain discretion,

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educational or religious institutions' land use applications are generally to be granted unless they can be shown to have a net negative impact on the health, safety or welfare of the community, though general concerns about traffic and disruption of the residential character of the neighborhood, for instance, are insufficient grounds upon which to deny such applications; and

WHEREAS, the Applicant submitted a thorough analysis of the origins of the *Cornell Doctrine* demonstrating a natural link between public policies aimed at protecting houses of worship and schools and those aimed at facilitating the development of housing for low-income earners, seniors and the formerly homeless; and

WHEREAS, in particular, the Applicant asserts that the provision of affordable housing, much like that of educational institutions and houses of worship, is in furtherance of the public health, safety, welfare and morals and a fundamental interest of the state, as evidenced by a 1965 amendment to the New York State Constitution that authorized the legislature to provide for "low rent housing and nursing home accommodations for persons of low income as defined by law," New York Constitution, article XVIII, § 1; and

WHEREAS, the Applicant submits that both New York City and State have long recognized the importance of accessibility to safe and high-quality affordable housing, as further evidenced by the New York State Tenement House Act of 1901, which banned the construction of dark and poorly ventilated tenement buildings and required that newly constructed tenement buildings be built with outward facing windows in every room, open courtyards, indoor toilets and fire safeguards; the Multiple Dwelling Law of 1929, which established proper housing standards requiring sufficient light, air, sanitation and protection from fire hazards essential to the public welfare; the New York City Housing Authority, created in 1934 to provide housing for low- and moderate-income residents and currently the largest public housing authority in North America; the Mitchell-Lama Housing Program, created by the New York State Legislature in 1955 to provide affordable rental and cooperative housing to moderate- and middle-income residents; and the Loft Law, an article of the Multiple Dwelling Law enacted in 1982 requiring residential conversions of commercial and manufacturing buildings to comply with minimum housing standards in order to ensure the health and safety of the buildings' residential tenants; and

WHEREAS, in the 1980s, the federal government expanded the availability and use of Section 8 Housing Choice Vouchers, utilized by very low-income families, the elderly and the disabled to acquire safe housing in the private housing market, and introduced the Low-Income Housing Tax Credit program, which gives state and local agencies authority to issue tax credits for costs associated with the acquisition, rehabilitation or construction of rental housing for low-income earners, while New York City Mayor Edward Koch's administration initiated and enforced

tax foreclosures on properties that were one year or more in tax arrears in an effort to increase public revenue after the fiscal crisis of 1977—an act that made the City of New York the largest owner of land within the City of New York with title to more than 100,000 vacant and partly occupied apartments—and eventually designated \$5.1 billion in city and federal funds to rebuild entire neighborhoods as part of Koch's Ten-Year Affordable Housing Plan (1986-1996); and

WHEREAS, in the 1990s, New York City Mayors David Dinkins and Rudolph Giuliani's administrations extended the City's commitment to Mayor Koch's affordable housing plan, which led to the rehabilitation and development of over 180,000 units between 1987 and 2000; and

WHEREAS, New York City Mayor Michael Bloomberg's administration also made commitments to creating and preserving affordable housing with the New Housing Marketplace Plan (July 2003), which originally committed \$3.4 billion to build and preserve 68,000 affordable housing units by 2008, but doubled its goal in February 2006 with \$7.5 billion dedicated to build and preserve 165,000 affordable housing units over the next ten years; and

WHEREAS, in 2014, current New York City Mayor Bill de Blasio introduced the Housing New York, a five-borough ten-year plan aiming to create and preserve 200,000 affordable housing units by 2024 through, among other initiatives, encouraging the development of affordable housing on underutilized public and private sites, promoting housing for seniors and the formerly homeless and creating the Mandatory Inclusionary Housing program, which, per ZR § 24-92, was "established to promote the creation and preservation of housing for residents with varied incomes in redeveloping neighborhoods and to enhance neighborhood diversity and thus to *promote the general welfare*," (emphasis added) and requires that a certain proportion of new housing developed in connection with certain zoning actions be permanently affordable; and

WHEREAS, in spite of these professed policy goals, the Applicant asserts that the City of New York is in the midst of an affordable housing crisis due to, among other things, incredible population growth; a demand for low- and moderate-income affordable housing units that outpaces the supply of those units and, relatedly, a rise in residential rents that outpaces income growth; the steady decrease in the number of rent controlled and rent stabilized (collectively, "rent regulated") units; and the aversion of residents located near proposed low-income affordable housing developments to such projects out of fear that such developments will decrease area property values and adversely affect the neighborhood's quality of life, a response that often leads to the abandonment of those projects; and

WHEREAS, the Applicant notes that the New York City Rent Guidelines Board, charged with establishing rent increases for the dwelling units subject to the Rent Stabilization Law, found that, since 1994, nearly 250,000

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units of rental housing have been removed from rent regulation protection, resulting in a net loss of 16 percent of the total stock of rent regulated affordable housing units from 1994 to 2012; in addition, many buildings, for which the regulatory requirement to be available at affordable rents has expired, have opted out of affordability programs and opted, instead, to pursue market rate or homeownership options, leading to a loss of another 68,000 units of affordable housing from the four largest subsidy programs; and

WHEREAS, in Queens, in particular, the Applicant submits that the fair market monthly rent for a two-bedroom unit in 2016 necessitated an hourly wage of \$30.21 to be considered affordable, but the estimated hourly wage in the area was, in fact, \$17.49, and in the neighborhood of Astoria, in Queens, rents in the area have increased by 26.7 percent from 2000 to 2010-2014 (compared to a 0.7 percent increase during the previous decade) while the average household income in Astoria has increased by only 5 percent in that same period, demonstrating the chasm between wages and housing affordability in New York City; and

WHEREAS, the Applicant emphasizes that the crisis has disproportionately affected New York City's senior residents, 60 years and older, a growing demographic that often relies on a fixed income and nearly one-third of which currently pay more than 50 percent of their income on housing; and

WHEREAS, in furtherance of their submission that the provision of affordable housing for low-income earners is generally, like education and free exercise of religion, in furtherance of the public health, safety, welfare and morals, the Applicant notes that when residents have to spend a large percentage of their income on housing, less money is available for those residents' other basic living needs like food or healthcare, which can lead to negative health outcomes, particularly for seniors; the insufficient supply of low-income affordable housing also results in overcrowded housing and familial instability, necessitating frequent moves and increases in the rate of homelessness; and

WHEREAS, the Applicant submits that providing low-income affordable housing units sufficient to meet the demand, thereby meeting residents' most basic need for shelter, enables residents to more actively participate in the local economy, acquire other life essentials like nutritious food and medicine, access more stable employment opportunities and altogether improves residents' quality of life; and

WHEREAS, when such housing is provided by mission-based not-for-profit institutions, in particular, the Applicant avers that these positive outcomes are more assured because of the developer's focus on the residents rather than financial profit and because the mission of the not-for-profit housing developer is to build, manage and maintain affordable housing and not package it for resale or for the building's future "upside" potential, as would be the goal for a for-profit developer; and

WHEREAS, the Applicant submits that additional

methods of facilitating the development of affordable housing for low-income residents, such as the proposed extension of the *Cornell* Doctrine herein, are necessary to close the gap between the supply and demand for low-income affordable housing since, unlike market rate or mixed-income (market rate units combined with affordable units at varying degrees of affordability) housing development projects, low-income affordable housing can only be developed in reliance on government grants and subsidies and on adequate unit counts that facilitate economies of scale; and

WHEREAS, in the letter expressing their opposition to this expansion of the *Cornell* Doctrine, SEIU 32BJ states that there is no precedent for the expansion of the doctrine to cover affordable housing, that New York State courts have rejected efforts to expand the doctrine to buildings owned by religious and educational institutions "that are used for auxiliary purposes," and that the extension of the doctrine would create a "slippery slope," specifically, in allowing deference to for-profit developments in much the same way that educational deference under the *Cornell* Doctrine is available to both publically- and privately-funded schools; and

WHEREAS, while the Board recognizes that the record does not reflect any instance in which New York State courts have declined to extend or apply the *Cornell* Doctrine to a 100 percent low-income affordable housing development, the Board notes instances in which New York State courts have applied the doctrine with the flexibility and factual specificity inherent in land use decisions including *Matter of Unitarian Universalist Church of Central Nassau v. Shorten*, 63 Misc 2d 978 (Sup Ct Nassau County 1970) (ruling that a day care center housed in an existing church, but operated by a separate non-profit corporation, was religious activity protected by the First Amendment because it shared a site with a house of worship and did not require a special permit, the application for which was denied, both because the Village zoning ordinance necessitating the special permit conflicted with and hindered State law and policy that favored the creation of facilities suitable for the care of pre-school and primary school aged children); *McGann v. Village of Old Westbury*, 186 Misc 2d 661 (Sup Ct Nassau County 2000) *affd* 293 AD2d 581 (2d Dept 2002) (off-site Roman Catholic cemetery constituted a "religious use" entitled to deference based on, among other things, evidence that cemeteries are places of worship in their own right in Roman Catholic theology); *East Hampton Library v. Zoning Board of Appeals of Village of East Hampton*, 31 Misc 3d 1231(A), 2011 NY Slip Op 50921(U) (Sup Ct Suffolk County 2011) (land use applications filed to facilitate a library operated by the University of the State of New York were entitled to educational deference both because the library was chartered by an institute of higher education and because it provided numerous instructional programs, classes, lectures and lessons, which are all educational in nature); and

WHEREAS, the Board additionally notes instances in

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which the Board, itself, has extended the *Cornell* Doctrine to permit the enlargement of hospitals associated with degree-granting educational institutions, including New York Presbyterian Hospital (BSA Cal. No. 325-12-BZ) (June 11, 2013), Mount Sinai Hospital (BSA Cal No. 170-13-BZ) (September 10, 2013), Memorial Hospital for Cancer and Allied Diseases (BSA Cal. No. 183-11-BZ) (June 19, 2012), and St. Barnabas Hospital (BSA Cal. No. 246-08-BZ) (May 19, 2009); and

WHEREAS, with regards to SEIU 32BJ’s argument that the courts have rejected efforts to expand the *Cornell* Doctrine to buildings owned by religious and educational institutions put to “auxiliary purposes,” the Board notes that in the cases cited by SEIU 32BJ on that point, the extension of deference was denied because there was no nexus between the reason for the deference (i.e. education and/or the free exercise of religion) and the actual use of the development seeking the deference; and

WHEREAS, in *People v. Kalayjian*, 76 Misc 2d 1097 (Sup Ct App Term 2d Dept 1973), the court found that a four-family dwelling occupied by members of the American Orthodox Catholic Church, but in which no religious services were conducted, did not constitute a religious use under the applicable zoning ordinance; and

WHEREAS, similarly, in *Bright House Horizon v. Zoning Board*, 121 Misc 2d 703 (Sup Ct Monroe County 1983), the court ruled that the Zoning Board of Appeals of the Town of Henrietta (the “Henrietta ZBA”) justifiably found that a health care and residential facility proposed by a non-profit corporation on behalf of the Church of First Christ Science, which was proposed to use Christian Science beliefs in lieu of traditional medical care, was not a permitted use in the subject district—which permitted churches as-of-right, but did not define the term “church”—where the proposed use did not qualify as a “church” because its purpose was not public worship, an activity typically associated with a church according to Webster’s New International Dictionary, Third Edition, but, instead, was a nursing facility intended to provide skilled nursing care for those seeking healing through Christian Science; further, the facility was not accessory to a church because it was across the street from the local Christian Science Church, not on the same lot as required for an “accessory use” under the Town Code; and

WHEREAS, in its affirmance of the Henrietta ZBA’s denial of deference to the development, the court states, “[t]he constitutional protection afforded all religions and religious beliefs is not hindered by the law’s refusal to mandate zoning approval of every institution solely because it is sponsored or operated by a religious organization in accordance with its beliefs. . . . It is the proposed use of the land, not the religious nature of the organization, which must control,” 121 Misc.2d at 709; and

WHEREAS, in contrast, the *Cornell* Doctrine is herein proposed to be extended to facilitate the construction of 100 percent low-income affordable housing developments in order to address the currently high demand for such housing

and the subject application is for a 100 percent low-income affordable housing development therefore, there is the nexus between the rationale for the deference and the proposed use of the subject property that was missing in both *Kalayjian* and *Bright House Horizon* and, accordingly, the Board finds those cases distinguishable and that they do not undermine the Applicant’s argument for deference; and

WHEREAS, finally, with regards to SEIU 32BJ’s argument that an extension of deference in this case will cause a “slippery slope,” the Board disagrees, clarifies that the application of the *Cornell* Doctrine to private educational institutions is not the result of a “slippery slope,” but, rather, based on the explicit language of the case law articulating the doctrine, including *Cornell*, which cites earlier New York Court of Appeals and Appellate Division decisions for the proposition that “schools, public, parochial and private, by their very nature, singularly serve the public’s welfare and morals,” 68 NY2d at 593 (emphasis added), and *East Hampton Library*, where the court states that “[e]ven private institutions are entitled to deferential treatment as long as they carry out the educational mission of the State, as they have the same beneficial effect upon the general welfare of the community as public schools,” 31 Misc.3d 1231(A), 2011 NY Slip Op 50921(U) at *3; and

WHEREAS, as clarified by the court in *East Hampton Library*, it is the entity’s furtherance of the State’s defined public purpose that entitles that entity to deferential treatment—hence, if deference were applied, as here suggested, where an affordable housing emergency has been declared, the solutions for which are set forth in a myriad of state-sponsored initiatives aimed at creating and preserving housing units for low-income earners, that deference should be extended only to those development projects that would fulfill this stated public purpose and dedicate 100 percent of their dwelling units to low-income earners for the life of the developments; the deference would decidedly not apply to developments that would dilute the stated public purpose by housing fewer low-income households in the project, or housing such households for a limited term of years, or as part of a project primarily aimed at providing additional market rate units; and

WHEREAS, the Board finds no support in the record for SEIU 32BJ’s argument that this extension of the *Cornell* Doctrine will result in deference being granted to market-rate housing developments, mixed-income housing developments, or to 100 percent low-income projects that are not maintained as such for the life of the building, since the stated affordable housing emergency does not encompass market-rate units; and

WHEREAS, the Board notes that the purpose of the extension of the *Cornell* Doctrine in the context of facilitating the development of housing units affordable for extremely low-, very low- and low-income earners is that in the absence of the requested bulk waivers, the Applicant is unable to provide enough units to make the development financially viable and will ultimately create zero affordable housing units; mixed-income housing developments, in

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contrast, utilize market rate and moderate-income housing units to subsidize the low-income units, often obviating any need for government assistance in the form of financial subsidies or zoning relief; and

WHEREAS, thus, the Board finds that its cabining of the extension of the *Cornell* Doctrine to facilitate only the development of 100 percent low-income affordable housing for the life of the development will not create a slippery slope because the extension is so narrowly defined both in terms of the use for which it may be applied and the emergency the deference is meant to address—the crisis-level insufficiency of housing units in New York City that are actually affordable for low-income earners; and

WHEREAS, according to the Association for Neighborhood and Housing Development (“ANHD”), an umbrella organization of 100 not-for-profit affordable housing development groups serving New York City, in 2015, extremely low- to low-income earners (those earning 10-100 percent area median income (“AMI1”)) made up 67 percent of New York City’s population with extremely low-income earners (those earning 10-30 percent AMI) constituting 27 percent of New York City’s population overall, very low- to low-income earners (those earning 40-80 percent AMI) making up 30 percent of New York City’s population overall and low moderate-income earners (those earning 90-100 percent AMI) making up only approximately 9 percent of New York City’s population overall; and

WHEREAS, thus, extremely low- to low-income residents, 57 percent of New York City’s residents, suffer the most from the housing crisis and developments proposed to provide low-income affordable housing are most often subjected to strong opposition by existing residents, in much the same way that protectionist residents oppose houses of worship and educational facilities²; and

WHEREAS, the Board recognizes the natural link between the public policy initiatives that have been put in place over decades by various levels of government aimed at supporting and defending religious and educational institutions and the development of buildings designed to facilitate those institutions’ goals and that similar public

1 As of the date of this decision, the income bands (expressed as a percentage of AMI) that qualify as extremely low-, very low- and low-income earners as expressed here, courtesy of ANHD, are consistent with those that qualify for such designation by the U.S. Department of Housing and Urban Development (“HUD”) and the New York City Department of Housing Preservation and Development (“HPD”).

2 This phenomenon is noted by the court in *Cornell* in its discussion of how the advent of the automobile and the growth and diversification of religious and educational institutions brought a host of new problems to residential areas and caused neighbors to view the construction of a new school “with distrust and concern that it would unnecessarily bring people from other communities into the neighborhood” 68 NY2d at 593.

policy initiatives have been aimed at housing the homeless and the underprivileged and encouraging the provision of affordable housing; and

WHEREAS, the Board acknowledges that the provision of affordable housing, especially low-income housing that is truly affordable, has been a major priority for New York City, State and federal administrations; and

WHEREAS, however, the Board finds unequivocally, that to prevent abuse—i.e. reliance on the *Cornell* Doctrine to facilitate projects that include any amount of market rate housing and/or less than 100 percent affordable housing for low-income persons for the life of the building—the extension of the doctrine must be restricted to (1) not-for-profit entities, (2) with an extensive history of developing and managing 100 percent low-income affordable housing, (3) for developments with restricted rents that are, in their entirety, targeted to extremely low-, very low- and low-income earners, (4) that will remain rent-restricted to such earners for the life of the development; and

WHEREAS, specifically, the Board states that the expansion of the *Cornell* Doctrine considered herein would not be available for projects that will not remain 100 percent affordable for the life of the development (i.e. are only required to remain affordable subject to a termed regulatory agreement) or to for-profit developers where only a portion of the development will qualify as low-income affordable housing; and

WHEREAS, in addition, the Board finds that the expansion of the *Cornell* Doctrine, for cases like the subject application is one way to respond to the clear housing emergency presently facing New York City; and

WHEREAS, in this case the Applicant has a very long history of developing and managing 100 percent affordable housing for low-income New Yorkers and its primary focus as an institution is in providing and maintaining this kind of low-income housing; it is also important that under Catholic Charities’ mandate, the housing will remain affordable for the life of the development, otherwise bulk variances would not be appropriate because they last for the life of the building; and

WHEREAS, therefore, for all of the reasons set forth herein, the Board finds that it is appropriate to extend the *Cornell* Doctrine to the subject application as proposed herein; and

WHEREAS, because the Board finds that the Applicant, as a not-for-profit developer of 100 percent low-income affordable housing to be kept affordable to low-income earners for the life of the development, is entitled to deference similarly afforded to educational and religious institutions under the law of the State of New York as to zoning, the Applicant is able to rely on its programmatic needs in support of the subject variance application; and

WHEREAS, as with religious and educational institutions, not-for-profit entities that wish to avail themselves of this extension of the *Cornell* Doctrine to not-for-profit 100 percent low-income housing developments will be required to demonstrate that the waivers requested

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are directly related to the public policy goal justifying the expansion and the entity's programmatic needs—to wit, the provision of 100 percent low-income housing units—and that the waivers requested are the minimum necessary to ensure a viable project that meets State and City requirements for subsidies; and

WHEREAS, the subject application originally proposed a development with 19 parking spaces and a seven-story building having a total height of 71 feet, with 92 AIRS units and an additional 7,972 square feet of floor area for a Use Group 4 senior center open to the general public on the ground floor, and requested additional waivers of the rear yard and permitted obstruction requirements applicable to the site, set forth in ZR §§ 23-47 and 24-33, to permit a portion of the public senior center to obstruct the required rear yard, and a waiver of ZR § 24-11 to allow the exceedance of the maximum floor area ratio permitted for a community facility use in a residential district; and

WHEREAS, while the Board acknowledges that parking spaces and a community center may be desirable at the site, such uses are neither required under zoning nor mandated by the Applicant's program with regards to providing affordable housing for low-income earners—the parking spaces were proposed for staff of the proposed community center and residents of the proposed building who may retain access to a vehicle and appreciate the convenience of parking on-site and the community center was proposed in order to fill a neighborhood need for gathering spaces for seniors; and

WHEREAS, further, the Applicant has not demonstrated a practical difficulty or unnecessary hardship resulting from a unique physical condition at the site that could support the grant of additional waivers to support a programmatic preference that falls outside of the provision of affordable housing for low-income seniors; and

WHEREAS, accordingly, the Applicant revised the proposal to eliminate the on-site parking spaces and Use Group 4 community center, eliminating the request for a waiver of ZR § 24-33, and providing a required 30 foot rear yard, eliminating the waiver for ZR § 23-47; and

WHEREAS, the subject proposal instead provides 6,328 square feet of accessory space on the ground floor for the provision of accessory social and welfare facilities and recreation space primarily for the senior residents of the subject building; and

WHEREAS, pursuant to the definition of “Affordable independent residence for seniors” in ZR § 12-10, the proposed building must provide floor space in an amount of not less than four percent of the total floor area for “related *accessory* social and welfare facilities primarily for residents” (emphasis in original to indicate a term defined elsewhere in ZR § 12-10) of the subject building; and

WHEREAS, in addition, pursuant to ZR § 28-21, the building must provide recreation space equal to at least 3.3 percent of the total residential floor area; and

WHEREAS, the accessory recreation, social and welfare facilities space proposed herein constitutes

approximately 8.5 percent of the total residential floor area in the building, slightly more than the 7.3 percent accessory recreation, social and welfare facilities space required pursuant to ZR §§ 12-10 and 28-21 combined, consisting of a large multi-purpose indoor recreation space, a kitchen, computer room, social service office, fitness room, art room and library; and

WHEREAS, the Applicant states that these facilities are necessary because, over its 40 year history, the Applicant has observed that low-income and formerly homeless seniors require more space and resources for the provision of social support and services; and

WHEREAS, the space is comparable to spaces provided in other of the Applicant's facilities in Brooklyn, which host fitness classes, computer classes, art classes, health screenings, bingo nights, lectures on topics such as insurance, chronic disease management and tenant rights, and will host similar programming with the goal of providing a safe and convenient environment in which the tenants can maintain their independence, interact with neighbors and build a supportive community; and

WHEREAS, among the social services provided to residents of Catholic Charities' developments generally are development and youth services, literacy and job training, food and nutrition programs, health care and mental health services, senior services, disability services, homeless services and substance abuse programs; and

WHEREAS, Catholic Charities submits that, by providing opportunities for socialization, educational programs and nutritional meals on-site, its senior residents are able to maintain their independence as well as their health and realize a higher quality of life; and

WHEREAS, the Applicant states that the subject proposed building has been designed based on their experience in developing low-income senior housing, particularly with regards to the size, layout and programming of the accessory space on the ground floor, which the Applicant anticipates to have to accommodate not only the building tenants and their visitors, but also the caregivers that work with approximately 50 percent of those tenants, an estimate based on the Applicant's observations at four other facilities they operate in Brooklyn and Queens, and also provide the additional resources required for the 30 percent of its tenants who will be formerly homeless seniors; and

WHEREAS, the Applicant asserts that an as-of-right development at the site, consisting of 64 units instead of the 92 proposed in this application, is untenable because buildings with such low low-income affordable unit counts are unlikely to be funded and, without such funding, built; additionally, by constructing more units, the Applicant is able to obtain government funding from additional sources and, thus, develop a 100 percent affordable supportive housing project for low-income seniors at the site; and

WHEREAS, the Applicant's consultant asserted at hearing that the per unit cost of the as-of-right development at the site is exceptionally high and fails to meet the income-

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to-expense ratio that makes obtaining financing for the development—and thus, its eventual construction and operation—possible; and

WHEREAS, in support of this contention, by letter dated March 19, 2018, the New York City Department of Housing Preservation and Development’s (“HPD”) Division of Special Needs Housing states that “the assumptions made in the Financing Memorandum” prepared by the Applicant’s consultant, “support the [A]pplicant’s assertion that the proposed 93-unit building is the most viable option among the options studied” for the subject site; and

WHEREAS, based on the above, the Board finds that because the subject proposal is a 100 percent low-income housing development that will remain affordable to low-income households for the life of the building, that the project is proposed to be developed by an experienced not-for-profit developer and because the waivers requested are directly related to the public policy goal of the provision of 100 percent low-income housing units, the subject proposal is entitled to deference under the herein expanded *Cornell Doctrine*, hence no finding of unique physical conditions, unnecessary hardship or practical difficulty pursuant to ZR § 72-21(a) need be found; and

WHEREAS, because the Applicant is a not-for-profit organization and the variance is needed to further its mission, the finding set forth in ZR § 72-21(b) need not be made in order to grant the variance request in this application; and

WHEREAS, the Applicant states 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, the Applicant asserts that the proposed AIRS building is consistent with the surrounding area, which is residential in character, with a mix of multi-family elevator and walk-up buildings along with one- and two-family dwellings; additionally, another Catherine Sheridan AIRS facility, an 11-story, 97 foot tall building, is located immediately across 31st Road from the subject site at 31-41 23rd Street; in terms of the bulk of surrounding buildings, the Applicant states that the majority of buildings in the immediate area have four to six-stories and the proposed, at six-stories and 61’-8” total height, is comparable in height to existing buildings located immediately to the north and east of the subject site and, thus, will not impede those developments’ access to light and air; and

WHEREAS, in support of these contentions, the Applicant submitted a height study, photographic streetscape montage, contextual streetscape illustrations and an aerial photographic neighborhood study demonstrating that the proposed AIRS building befits the built conditions of the immediate area; and

WHEREAS, the Applicant submitted a Construction Code Determination Form to DOB requesting a confirmation of the proposed development’s compliance

with applicable sections of the 2014 New York City Building Code’s (“BC”) Appendix G, titled Flood-Resistant Construction; and

WHEREAS, by decision dated April 3, 2018, DOB determined that the proposal complies with the applicable requirements of Appendix G on condition that: prior to permit approval, the plan examiner shall verify that the final construction documents demonstrate compliance with Appendix G; the Applicant confirms that the slab on grade construction complies with BC G301.2 and shall be designed and constructed to resist the loads and load combinations specified in Appendix G and ASCE 24; the Applicant updates the reference regarding compliance with plumbing and sanitary systems to ASCE 24 Chapter 8, not Chapter 7; the Applicant confirms that the use of any fill will be placed, compacted and sloped to minimize shifting, slumping and erosion during the rise and fall of flood water in accordance with ASCE 24; and that the Applicant shall indicate that an elevation certificate is required prior to sign-off as part of the flood zone compliance special inspection; and

WHEREAS, the Applicant additionally submitted a Zoning Resolution Determination Form to DOB requesting confirmation of the proposed development’s compliance with applicable sections of Article VI, Chapter 4 of the Zoning Resolution, titled Special Regulations Applying in Flood Hazard Areas; and

WHEREAS, by decision dated April 3, 2018, DOB determined that the proposal complies with the applicable requirements of ZR § 64-00, et seq., on condition that prior to permit approval, the plan examiner verifies that the final construction documents demonstrate compliance with Appendix G of the 2014 NYC Building Code; 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 practical difficulties complained of are inherent to the developmental challenges of providing 100 percent low-income affordable housing units at the site, accordingly, the Board finds that the hardship herein was not created by the owner of the site or a predecessor in title in satisfaction of ZR § 72-21(d); and

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

WHEREAS, the Applicant relies on its experience as a developer of affordable housing in Brooklyn and Queens to assert that the provision of 92 AIRS units plus one superintendent’s units, as proposed herein, is the minimum required to secure the necessary financing and meets its programmatic goal to efficiently provide social services and 100 percent affordable housing for low-income seniors in accordance with HPD design guidelines; and

WHEREAS, the Board notes that the Applicant

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originally proposed a seven-story building having a total height of 71 feet, an additional 7,972 square feet of floor area for a community facility use open to the general public on the first floor and requested additional waivers of ZR §§ 23-47, 24-33 and 24-11; and

WHEREAS, HPD reviewed the proposed development plans and financing memorandum prepared on behalf of the Applicant and, by letter dated March 19, 2018, confirmed that the plans generally comply with HPD standards for developments of this type; 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 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. 17BSA132Q, dated February 28, 2018; 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 Commission reviewed the subject proposal and concluded that the subject site is of neither architectural nor archaeological significance; and

WHEREAS, by letter dated July 12, 2017, the New York City Department of Environmental Protection (“DEP”) states that based on the results of the air quality analysis, it was determined that the development proposed herein would not result in any potential for significant adverse impacts with regards to air quality; and

WHEREAS, by letter dated January 2, 2018, DEP states that it has determined that the proposed project will not result in any potential for significant adverse impacts with regards to noise; and

WHEREAS, the New York City Department of City Planning reviewed the project for consistency with the policies and intent of the New York City Waterfront Revitalization Program (“WRP”) under WRP #17-124 and concluded that the action is consistent with and will not substantially hinder the achievement of any WRP policies; and

WHEREAS, the New York City Department of Parks reviewed the proposal with regards to open space and in response to Parks comments citing the lack of open space in

the neighborhood, the Applicant included a description of the on-site recreation amenities proposed and how these meet the needs of the residents; and

WHEREAS, an “E” designation (E-468) has been placed on the site for hazardous materials; 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 in an R6B zoning district, the construction of a six-story Use Group 2 affordable independent residence for seniors that does not comply with the zoning regulations relating to floor area ratio and maximum height and set back, contrary to ZR §§ 23-155 and 23-662; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received March 19, 2018”—Nine (9) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum of 74,274 square feet of floor area, a maximum floor area ratio of 2.90, a maximum base height and maximum building height of 61’-8” and a setback of at least 0 feet from 31st Road and a setback of at least 0 feet from 23rd Street, as indicated on the BSA-approved plans;

THAT the subject building be developed as 100 percent housing for seniors affordable for those in the 60 percent AMI and lower income range;

THAT this variance grant is exclusively for the benefit of the subject Applicant, Catherine Sheridan Housing Development Fund Company, Inc., a subsidiary of Catholic Charities Progress of Peoples Development Corporation, the non-profit developer of affordable housing for its parent entity, Catholic Charities Brooklyn and Queens;

THAT this grant may not be transferred to another developer without the express consent of the Board, which developer must also be an experienced not-for-profit low-income housing developer;

THAT the building, once constructed, shall remain affordable at the 60 percent AMI and lower income range for the life of the building;

THAT the façades, landscaping and site furnishings, as shown on the BSA-approved plans, shall be maintained in good condition and repaired and replaced as necessary to meet that criteria;

THAT prior to DOB permit approval, the plan examiner shall verify that the final construction documents demonstrate compliance with Appendix G of the 2014 NYC Building Code;

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THAT the Applicant shall confirm that the slab on grade construction complies with BC G301.2 and shall be designed and constructed to resist the loads and load combinations specified in Appendix G and ASCE 24;

THAT the Applicant shall update the reference regarding compliance with plumbing and sanitary systems to ASCE 24 Chapter 8, not Chapter 7;

THAT the Applicant shall confirm that the use of any fill will be placed, compacted and sloped to minimize shifting, slumping and erosion during the rise and fall of flood water in accordance with ASCE 24;

THAT the Applicant shall indicate that an elevation certificate is required prior to sign off as part of the flood zone compliance special inspection;

THAT an E designation (E-468) is placed on the site to ensure proper hazardous materials remediation;

THAT the project shall use natural gas as the fuel type for the HVAC system;

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 April 10, 2022;

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, April 10, 2018.

104-15-BZ

APPLICANT – Rosenberg & Estis, P.C., for 4452 Broadway Mazal LLC, owner.

SUBJECT – Application October 31, 2017– 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 – Laid over to June 19, 2018, at 10 A.M., for continued hearing.

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 May 22, 2018, at 10 A.M., for adjourned hearing.

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 June 5, 2018, at 10 A.M., for continued hearing.

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

ACTION OF THE BOARD – Laid over to May 8, 2018, at 10 A.M., for continued hearing.

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

MINUTES

extends 20 ft. into the required rear yard. C8-4 zoning district.

PREMISES AFFECTED – 412 East 90th Street, Block 1569, Lot 35, Borough of Manhattan.

COMMUNITY BOARD #8M

ACTION OF THE BOARD – Laid over to April 17, 2018, at 10 A.M., for continued hearing.

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

ACTION OF THE BOARD – Laid over to April 17, 2018, at 10 A.M., for continued hearing.

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

ACTION OF THE BOARD – Laid over to April 17, 2018, at 10 A.M., for continued hearing.

**REGULAR MEETING
TUESDAY AFTERNOON, APRIL 10, 2018
1:00 P.M.**

Present: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.

ZONING CALENDAR

2017-256-BZ

CEQR #17-BSA-148M

APPLICANT – Sahn Ward Coschignano, PLLC, for Archives L.L.C. c/o Rockrose Development L.L.C., owner; Peloton Interactive, Inc., lessee.

SUBJECT – Application August 30, 2017– 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).

PREMISES AFFECTED – 666 Greenwich Street, Block 604, Lot 33, 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 Sheta and Commissioner Scibetta.....5

Negative:0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated August 1, 2017, acting on Alteration Application No. 122911171, reads in pertinent part:

“Proposed Physical Culture Establishment [as defined in section ZR 12-10] is not permitted as of right . . . and is contrary to section ZR 32-10”; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to permit, in a C6-2 zoning district, the operation of a physical culture establishment on portions of the first floor and cellar of the subject building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on April 10, 2018, after due notice by publication in *The City Record*, and then to decision on the same date; and

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

WHEREAS, the subject site is located on the west side of Greenwich Street, between Christopher Street, Washington Street and Barrow Street, in a C6-2 zoning district, in Manhattan; and

WHEREAS, the subject site has approximately 290

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feet of frontage along Greenwich Street, 239 feet of frontage along Christopher Street, 214 feet of frontage along Washington Street, 208 feet of frontage along Barrow Street, 54,020 square feet of lot area and is occupied by an 11-story, with cellar, mixed-use commercial and residential building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since December 14, 1993, when, under BSA Calendar Number 42-93-BZ, the Board granted a special permit to allow the operation of a physical culture establishment (“PCE”) for a term of ten (10) years, expiring December 14, 2003, 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 between 6:00 a.m. to 10:00 p.m. and that the above conditions appear on the certificate of occupancy; 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 will occupy 12,450 square feet of floor space as follows: 7,160 square feet of floor area on the first floor, including reception with retail space, a tread studio, a flex studio, control rooms and a technical production closet, and 5,290 square feet of floor space in the cellar, including locker rooms, a laundry room, storage, mechanical space, dressing room, a pantry without cooking, offices and a conference room; and

WHEREAS, the PCE will operate as Peloton with the following hours of operation: 5:30 a.m. to 10:00 p.m., Monday to Friday, and 7:00 a.m. to 7:00 p.m., Saturday and Sunday; and

WHEREAS, the applicant represents that the PCE use is consistent with the mixed-use area in which it is located, that the PCE use is fully contained within the envelope of an existing building and that the PCE will not interfere with access to the residential portion of the subject building; and

WHEREAS, in addition, the applicant submits that sound attenuation measures will be provided within the PCE space as follows: an isolated floating 4-inch concrete floor slab on jack-up spring isolators; internal isolated partitions consisting of two layers of gypsum board, batt insulation and 1-inch core-board build on the isolated slab; a full-height secondary wall enclosure consisting of two layers of gypsum board on independent studs built on the structural slab; a

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noise barrier ceiling consisting of spring isolation hangers supporting a ceiling composed of 6-inch batt insulation, 1-inch core board, batt insulation, two layers of gypsum board and 2-inch acoustic theater board panels; acoustic column enclosures built onto the isolated floor of similar construction as the isolated partitions; sound-absorbing wall and ceiling treatment; 15-millimeter rubber floor finish material; and acoustic doors with an STC rating of 50 or more; and

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

WHEREAS, the applicant states that the PCE will provide classes for instruction and programs for physical improvement, including group fitness classes consisting of treadmill-based workouts as well as floor-based cardiovascular, strength, stretching and yoga workouts; 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 will be 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—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 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 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. 17BSA148M, dated June 16, 2017 and

WHEREAS, on September 29, 2017, the New York City Landmarks Preservation Commission (“LPC”) issued a Certificate of No Effect approving interior alteration at the ground floor and cellar of the shopfront at the northeast corner of the building; and

WHEREAS, on December 6, 2017, LPC issued an Authorization to Proceed for the installation of storefront infill and signage at the subject site; and

WHEREAS, the Board finds that the evidence in the record supports the findings required to be made under ZR §§ 73-36 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion.

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 §§ 73-36 and 73-03 *to permit*, in a C6-2 zoning district, the operation of a physical culture establishment on portions of the first floor and cellar of the subject building, contrary to ZR § 32-10; *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked “Received August 30, 2017”-Fourteen (14) sheets; and *on further condition*:

THAT this grant shall be limited to a term of ten (10) years, expiring April 10, 2028;

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 April 10, 2022;

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 10, 2018.

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77-15-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Arasu Jambukeswaran, owner.

SUBJECT – Application April 9, 2015 – Variance (§72-21) to allow the alteration of an existing two-family dwelling on the second floor and an enlargement, located within an R2A zoning district.

PREMISES AFFECTED – 244-36 85th Avenue, Block 8609, Lot 22, Borough of Queens.

COMMUNITY BOARD #13Q

ACTION OF THE BOARD – Laid over to June 19, 2018, at 10 A.M., for continued hearing.

2016-4472-BZ

APPLICANT – Sheldon Lobel, P.C., for Marino Plaza 63-12, LLC, owner; Body By Fitness Health Club 1 Inc., lessee.

SUBJECT – Application December 28, 2016 – 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 zoning district.

PREMISES AFFECTED – 245-01–245-13 Jamaica Avenue aka 245-13 Jericho Turnpike, Block 8659, Lot 1, Borough of Queens.

COMMUNITY BOARD #13Q

ACTION OF THE BOARD – Laid over to June 26, 2018, at 10 A.M., for continued hearing.

2017-31-BZ

APPLICANT – Akerman, LLP for ROCK 34, Inc., owner.

SUBJECT – Application January 27, 2017 – Variance (§72-21) to permit the development of a three-story, three-family residential building on a narrow corner lot contrary to ZR §23-45 (front yard) and ZR §23-462 (a) (required side yards). R5 zoning district.

PREMISES AFFECTED – 107-17 34th Avenue, Block 1722, Lot 27, Borough of Queens.

COMMUNITY BOARD #3Q

ACTION OF THE BOARD – Laid over to May 8, 2018, at 10 A.M., for continued hearing.

2017-259-BZ

APPLICANT – Eric Palatnik, P.C., for Yisrael Grafstein, owner.

SUBJECT – Application September 1, 2017 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area, open space and lot coverage (ZR §23-142); 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.

PREMISES AFFECTED – 1760 East 28th Street, Block 6810, Lot 29, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to June 5,

2018, at 10 A.M., for continued hearing.

2017-299-BZ

APPLICANT – Duane Morris LLP by Jon Popin, for Douglaston Shopping Center Owner LLC, owner.

SUBJECT – Application November 14, 2017– 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.

PREMISES AFFECTED – 242-02 61st Avenue, Block 8286, Lot 185, Borough of Queens.

COMMUNITY BOARD #11Q

ACTION OF THE BOARD – Laid over to May 8, 2018, at 10 A.M., for continued hearing.

2017-308-BZ

APPLICANT – Greenberg Traurig by Jay A. Segal, for East Side Homestead LLC, owner.

SUBJECT – Application November 29, 2017 – 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.

PREMISES AFFECTED – 50 East 69th Street, an interior lot located on the south side of East 69th Street, on the block bounded by East 69th Street, Park Avenue, East 68th Street and Madison Avenue. Block 1383, Lot 40. Borough of Manhattan.

COMMUNITY BOARD #8M

ACTION OF THE BOARD – Laid over to June 5, 2018, at 10 A.M., for continued hearing.

Carlo Costanza, Executive Director

BULLETIN

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April 27, 2018

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Tuesday, April 17, 2018**

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2017-235-BZ	111-02 Sutphin Boulevard, Queens

DOCKETS

New Case Filed Up to April 17, 2018

2018-54-BZ

761 Sheridan Avenue, The premises is located on Concourse Village West between East 156th Street and East 158th Street, Block 02458, Lot(s) 0124, Borough of **Bronx, Community Board: 4**. Special Permit (§73-19) to permit the construction of a charter school (UG 3) (Classical Charter School) contrary to ZR §32-10. C8-3 zoning district. C8-3 district.

2018-55-BZ

222 Johnson Avenue, Premises is a full block bounded by Johnson Avenue to the north, Bushwick Avenue to the east, Boerum Street to the south, and Humboldt Street to the west., Block 03072, Lot(s) 1, 40, Borough of **Brooklyn, Community Board: 1**. Special Permit (§73-433) to permit the waiver of 34 existing parking spaces accessory to an existing Section 8 dwelling to facilitate the development and preservation of affordable housing contrary to ZR §§25-23 and 25-251. R6 zoning district. R6/C1-3 district.

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

CALENDAR

**REGULAR MEETING
MAY 15, 2018, 10:00 A.M.**

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, May 15, 2018, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

SPECIAL ORDER CALENDAR

933-28-BZ

APPLICANT – Gerard J. Caliendo, R.A., AIA, for RB Auto Repair/Roger Budhu, owner.

SUBJECT – Application October 16, 2015 – Extension of Term, Amendment & Waiver (11-413) for an extension of the term of a variance which permitted the operation of an automotive repair facility and gasoline service station (UG 16) and an Amendment for the legalization of the enlargement with an insulated corrugated metal enclosure. R5 zoning district.

PREMISES AFFECTED – 125-24 Metropolitan Avenue, Block 9271, Lot 4, Borough of Queens.

COMMUNITY BOARD #9Q

40-06-BZ

APPLICANT – MP Design and Construction/Maria Maloney, for UDR 10 Hanover-LLC-Constantine Koukoulis, owner; 10 Hanover Sq Gym, LLC-Alex Reznik-Senior MGM Dir, lessee.

SUBJECT – Application June 9, 2017 – Extension of Term of a previously approved Special Permit (§73-36) which permitted the operation of a Physical Culture Establishment (Goldman-Sachs) on the cellar and sub-cellar levels in a 21-story mixed-use building which expired on August 22, 2016; Amendment to permit the change in operator to (Complete Body) and a change in hours of operation; Waiver of the Rules. C5-5 (LM) zoning district

PREMISES AFFECTED – 10 Hanover Sq (aka 4-12 Hanover Sq. 110-124 Pearl St, 76-88 Water Street), Block 31, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #1M

45-08-BZ

APPLICANT – Rampulla Associates Architects, for 65 Androvette Street, LLC, owner.

SUBJECT – Application April 25, 2018 – Extension Time to Complete Construction of Variance (§72-21) to construct a new four-story, 81-unit age restricted residential facility which expired on May 19, 2017. M1-1 (Area M), SRD & SGMD zoning district.

PREMISES AFFECTED – 55 Androvette Street, Block 7407, Lot(s) 1, 80, 82 (Ten. 1), Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEALS CALENDAR

257-15-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for ESL8 Properties LLC, owner.

SUBJECT – Application November 18, 2015 – Proposed construction within the bed of a mapped street is contrary to Article 3 Section 35 of the General City Law and related bulk waivers under ZR 72-01-(g). R3-2(NA-1) zoning district.

PREMISES AFFECTED – 1221 Forest Hill Road, Block 1965, Lot 59, Borough of Staten Island.

COMMUNITY BOARD #2SI

2017-5-A thru 2017-7-A

APPLICANT – Eric Palatnik, P.C., for Cetka Mersimovski, owner.

SUBJECT – Application January 6, 2017 – 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.

PREMISES AFFECTED – 620A, 620B, 620C Sharrotts Road, Block 7400, Lot 40, Borough of Staten Island.

COMMUNITY BOARD #3SI

2017-254-A thru 2017-255-A

APPLICANT – Eric Palatnik, P.C., for Ottavio Savo, owner.

SUBJECT – Application August 28, 2017 – Proposed construction of a one-family home not fronting a legally mapped street contrary to General City Law 36. R3X/SRD zoning district.

PREMISES AFFECTED – 115 and 117 Arbutus Avenue, Block 6523, Lot(s) 24, 27, Borough of Staten Island.

COMMUNITY BOARD #3SI

CALENDAR

**REGULAR MEETING
MAY 15, 2018, 1:00 P.M.**

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, May 15, 2018, 1:00 P.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

ZONING CALENDAR

2016-4265-BZ

APPLICANT – Law Office of Fredrick A. Becker, for 25 Bleecker Street, LLC, owner.

SUBJECT – Application October 6, 2016 – Variance (§72-21) to permit the development of a six-story and penthouse structure containing commercial retail (UG 6) on the first and cellar floors contrary to ZR §42-14(D)(2)(B) and residential (UG 2) in the upper floors contrary to ZR §42-10. The proposed rear yard does not comply with ZR §§43-26 & 43-27. M1-5B (NOHO Historic District) zoning district.

PREMISES AFFECTED – 25 Bleecker Street, Block 529, Lot 54, Borough of Manhattan.

COMMUNITY BOARD #2M

2016-4275-BZ

APPLICANT – Gerald J. Caliendo, R.A., AIA, for Joseph G. Ciampa/Ciampa North Co., owner; Push Fitness Club, lessee.

SUBJECT – Application October 31, 2016 – Special Permit (§73-36) to permit the legalization of a physical cultural establishment (*Push Fitness Club*) located on the first floor, basement and mezzanine levels of the existing commercial building contrary to ZR §42-10. M1-1 zoning district.

PREMISES AFFECTED – 132-15 14th Avenue, Block 4012, Lot(s) 45 & 30, Borough of Queens.

COMMUNITY BOARD #7Q

2017-149-BZ

APPLICANT – Sheldon Lobel, P.C., for Willard J. Price Associates LLC, owner.

SUBJECT – Application May 15, 2017 – 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.

PREMISES AFFECTED – 510 Quincy Street & 651-671 Gates Avenue, Block 1811, Lot 19, Borough of Brooklyn.

COMMUNITY BOARD #3BK

2017-209-BZ

APPLICANT – Eric Palatnik, P.C., for Yoel Zagelbaum, owner.

SUBJECT – Application June 9, 2017 – 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.

PREMISES AFFECTED – 1622 East 29th Street, Block 679, Block 8, Borough of Brooklyn.

COMMUNITY BOARD #15BK

2017-304-BZ

APPLICANT – Simons & Wright LLC, for 160 17th Street, LLC, owner; Brooklyn Prospect Charter School, lessee.

SUBJECT – Application November 21, 2017 – 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.

PREMISES AFFECTED – 160 17th Street, Block 630, Lot 22, Borough of Brooklyn.

COMMUNITY BOARD #7BK

Carlo Costanza, Executive Director

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**REGULAR MEETING
TUESDAY MORNING, APRIL 17, 2018
10:00 A.M.**

Present: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.

SPECIAL ORDER CALENDAR

450-46-BZ

APPLICANT – Friedman & Gotbaum LLP by Shelly S. Friedman, Esq., for 41 East LLC, owner.

SUBJECT – Application October 28, 2016 – Extension of Term (§ 11-411) of a previously approved variance permitting commercial (UG 6B) contrary to residential use regulations which expired on November 1, 2014; Waiver of the Rules. R8B/LH-1A (Upper East Side Historic District) zoning district.

PREMISES AFFECTED – 41 East 62nd Street, Block 1377, Lot 27, Borough of Manhattan.

COMMUNITY BOARD #8M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....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 term of a variance, previously granted by the Board; and

WHEREAS, a public hearing was held on this application on April 17, 2018, after due notice by publication in *The City Record*, and then to decision on April 17, 2018; and

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

WHEREAS, the subject site is located on the north side of East 62nd Street, between Madison Avenue and Park Avenue, in an R8B zoning district and the Upper East Side Historic District, in Manhattan; and

WHEREAS, the site has approximately 35 feet of frontage along East 62nd Street, 100 feet of depth, 3,515 square feet of lot area and is occupied by a five-story, with cellar, mixed-use commercial and community facility building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since July 23, 1946, when, under the subject calendar number, the Board granted a variance to permit the building to be occupied as a private estate office for a term of ten (10) years, expiring July 23, 1956, on condition that the building not be increased in height or area, that the front

of the building be reconstructed as proposed and constructed of face brick, stone trimmings and ornamental iron and the interior may be altered and rearranged as indicated, that upon the termination of the variance the building be used for a use conforming in a residential zoning district and the former use as a stable or garage not be restored, that any sign constructed on the building be restricted to a small bronze nameplate at the entrance doorway, complying as to size with the requirements for signs in residential zoning districts and that all work be completed within one (1) year, by July 23, 1947; and

WHEREAS, on September 24, 1946, under the subject calendar number, the Board amended the variance so that, in the event the owner desires to construct the first floor of the building for a depth of approximately 71 feet, such construction may be permitted; and

WHEREAS, on May 8, 1956, under the subject calendar number, the Board granted an extension of term of ten (10) years, expiring May 8, 1966, on condition that a new certificate of occupancy be obtained; and

WHEREAS, on September 13, 1966, under the subject calendar number, the Board granted an extension of term of five (5) years, expiring September 13, 1971, on condition that a certificate of occupancy be obtained; and

WHEREAS, on October 5, 1971, under the subject calendar number, the Board granted an extension of term of five (5) years, expiring September 13, 1976, on condition that a new certificate of occupancy be obtained; and

WHEREAS, on October 5, 1976, under the subject calendar number, the Board granted an extension of term of ten (10) years, expiring October 5, 1986, on condition that a new certificate of occupancy be obtained; and

WHEREAS, on December 16, 1986, under the subject calendar number, the Board granted an extension of term of ten (10) years, expiring October 5, 1996, on condition that a new certificate of occupancy be obtained; and

WHEREAS, on November 1, 1994, under the subject calendar number, the Board amended the variance to delete the condition that occupancy of the building be limited to the use as a private estate office and for no other purpose and to instead permit commercial occupancy (Use Group 6B only) and granted an extension of term of ten (10) years, expiring November 1, 2004, on condition that occupancy be limited to a single use, that the use be solely limited to Use Group 6B office use and that a new certificate of occupancy be obtained within one (1) year, by November 1, 1995; and

WHEREAS, on March 1, 2005, under the subject calendar number, the Board amended the variance to permit a complying addition to the building to be occupied by a conforming community-facility use and granted an extension of term of ten (10) years, expiring November 1, 2014, on condition that commercial floor area of the subject site be limited to 5,905 square feet (1.68 FAR), that there be no accessory business signage at the subject site and that the above conditions appear on the certificate of occupancy; and

WHEREAS, by letter dated August 28, 2006, under the subject calendar number, the Board approved minor

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modifications to the Board-approved plans to add a non-structural, non-load-bearing roof to three existing walls in the rear yard to house community facility use, increasing floor area by 1,019 square feet in compliance with applicable zoning regulations, with no changes proposed to any commercial portions of the subject building; and

WHEREAS, by letter dated June 12, 2014, under the subject calendar number, the Board approved minor modifications to the Board-approved plans to permit the construction of a mezzanine within the existing community facility portion of the building, increasing community facility floor area by 191 square feet in compliance with applicable zoning regulations; and

WHEREAS, the term of the variance having expired, the applicant now seeks a waiver of the Board's Rules of Practice and Procedure to allow the late filing of this application and an extension of term; and

WHEREAS, based upon its review of the record, the Board has determined that the requested waiver of the Board's Rules of Practice and Procedure 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 July 23, 1946, as amended through March 1, 2005, so that as amended this portion of the resolution shall read: "to *permit* an extension of term of ten (10) years, expiring November 1, 2024; *on condition* that all work and site conditions shall conform to drawings filed with this application marked "Received October 28, 2016"-Eleven (11) sheets; and *on further condition*:

THAT the term of this grant shall be for ten (10) years, expiring November 1, 2024;

THAT commercial floor area shall be limited to 5,905 square feet (1.68 FAR);

THAT there shall be no accessory business signage at the subject site;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy shall be obtained within four (4) years, by April 17, 2022;

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 17, 2018.

789-45-BZ

APPLICANT – Vassalotti Associates Architects, LLP, for Woodside 56, LLC, owner; Leemilt's Petroleum, Inc., lessee.

SUBJECT – Application June 22, 2016 – Extension of Term of a previously granted Variance (§11-411) for the continued operation of a (UG16) gasoline service station (Getty) which expired on July 13, 2016; Waiver of the Rules. M1-1/R5 zoning district.

PREMISES AFFECTED – 56-02/20 Broadway, Block 1195, Lot 44, Borough of Queens.

COMMUNITY BOARD #2Q

ACTION OF THE BOARD – Laid over to June 5, 2018, at 10 A.M., for continued hearing.

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 May 22, 2018, at 10 A.M., for continued hearing.

31-91-BZ

APPLICANT – Alfonso Duarte, for Frank Mancini, owner.

SUBJECT – Application April 13, 2017 – Extension of term and amendment (§ 1-07.3(3) (ii)) of the Board's Rules of Practice and Procedures for a previously granted Variance (§72-21) which permitted a one story enlargement to an existing non-conforming eating and drinking establishment (Use Group 6) which expired on July 28, 2012;. Waiver of the Rules. R6 & R6B zoning districts.

PREMISES AFFECTED – 173 Kingsland Avenue aka 635 Meeker Avenue, Block 2705, Lot 34, Borough of Brooklyn.

COMMUNITY BOARD #1SI

ACTION OF THE BOARD – Laid over to June 5, 2018, at 10 A.M., for adjourned hearing.

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

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Gold Street, Block 122, Lot 10, Borough of Brooklyn.

COMMUNITY BOARD #2BK

ACTION OF THE BOARD – Laid over to May 15, 2018, at 10 A.M., for deferred decision.

2017-48-A

APPLICANT – Akeeb Shekoni, for Nigerian Muslim Community of Staten Island, owner; Hamzat Kabiawu, lessee.

SUBJECT – Application February 17, 2017 – Proposed construction located within the bed of a mapped street, contrary to General City Law 35. R3A Zoning District.

PREMISES AFFECTED – 36 Hardy Street, Block 638, Lot(s) 44,46,47,49, Borough of Staten Island.

COMMUNITY BOARD #ISI

ACTION OF THE BOARD – Laid over to June 5, 2018, at 10 A.M., for continued hearing.

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 44th Street, Block 702, Lot 56, Borough of Queens.

COMMUNITY BOARD #1Q

ACTION OF THE BOARD – Off Calendar.

ZONING CALENDAR

105-15-BZ

CEQR #15-BSA-206K

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 – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Sheta3

Negative:0

Abstain: Commissioner Sheta and Commissioner Scibetta...2

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated April 27, 2015, acting on New

Building Application No. 320958308, reads in pertinent part:

“Proposed development of Use Group 6 building is contrary to ZR Section 24-11 (floor area and lot coverage), . . . ZR Section 24-34 (front yard), and ZR 25-31 (parking spaces) and proposed Use Group 6 local retail and office uses are contrary to ZR Section 22-00”; and

WHEREAS, this is an application under ZR § 72-21 to permit, in an R4 zoning district, the development of a three-story mixed-use commercial and community-facility building that does not comply with zoning regulations for floor area, lot coverage, front yards, parking and use, contrary to ZR §§ 24-11, 24-34, 25-31 and 22-00; and

WHEREAS, a public hearing was held on this application on March 21, 2017, after due notice by publication in *The City Record*, with continued hearings on June 20, 2017, August 15, 2017, November 14, 2017 and February 27, 2017, and then to decision on April 17, 2018; 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 disapproval of this application, citing concerns with neighborhood character, given the presence of single- and two-family residences in the area, the potential for parking issues and the friendliness of the owner to residents; and

WHEREAS, New York State Senator Martin J. Golden submitted testimony in opposition to this application, citing concerns with neighborhood character and parking; and

WHEREAS, New York State Assembly Member Helen E. Weinstein submitted testimony in opposition to this application, concurring with concerns regarding neighborhood character and parking; and

WHEREAS, New York State Assembly Member Steven H. Cymbrowitz submitted testimony in opposition to this application, citing concerns with higher-density development in relation to neighborhood character, parking capacity, inadequate site maintenance by the owner and environmental contamination at the subject site; and

WHEREAS, the subject site is located on Avenue Z, between East 22nd Street, Jerome Avenue and East 21st Street, in an R4 zoning district, in Brooklyn; and

WHEREAS, the subject site has approximately 200 feet of frontage along Avenue Z, 58 feet of frontage along East 21st Street, 203 feet of frontage along Jerome Avenue, 22 feet of frontage along East 22nd Street, 7,965 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 December 9, 1958 when, under BSA Calendar Number 1423-39-BZ, the Board granted a variance to permit the site to be occupied by a gasoline service

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station, lubritorium, car wash, minor auto repairs, office and sales and storage for a term of fifteen (15) years, expiring December 9, 1973; and

WHEREAS, subsequently, the Board amended and extended the variance at various times; and

WHEREAS, on February 22, 1995, under BSA Calendar Number 1423-39-BZ, the Board granted an extension of term of ten (10) years, expiring December 9, 2003, on condition that there be no parking of vehicles on the sidewalks, that the subject site remain graffiti-free and that a new certificate of occupancy be obtained within one (1) year, by February 22, 1996; and

WHEREAS, on July 12, 2011, under BSA Calendar Number 118-10-BZ, the Board reinstated and amended the variance to permit the change in use from gasoline service station to automotive repair station for a term of five (5) years, expiring July 12, 2016, on condition that fencing and landscaping be installed in conformance with the Board-approved plans, that no auto sales or auto painting take place on the subject site, that the site only be accessed from Avenue Z, that all lighting be directed downward and away from adjacent residences, that the site be maintained free of debris and graffiti, that all signage comply with C1 zoning district regulations, that the hours of operation be limited to Monday through Saturday, 8:00 a.m. to 7:00 p.m., and closed Sunday, and that the above conditions appear on the certificate of occupancy; and

WHEREAS, originally, the applicant proposed to develop a four-story mixed-used commercial and community-facility building with no parking spaces; and

WHEREAS, in response to community concerns and questions from the Board, the applicant reduced the massing of the proposed development by reducing the height, floor area and number of stories and by adding parking; and

WHEREAS, the applicant now proposes to develop a three-story mixed-use commercial and community-facility building with 21,234 square feet of floor area (2.67 FAR), lot coverage of 100 percent, street wall height of 34'-10", no front yards, six parking spaces and use for retail in Use Group 6 on the first floor, professional offices in Use Group 6 on the second floor and medical offices in Use Group 4 on the third floor; and

WHEREAS, the applicant represents that, at the subject site, 15,929 square feet of floor area (2.00 FAR) is permitted for community facility use under ZR § 24-11, lot coverage may not exceed 60 percent under ZR § 24-11, front yards must have minimum depths of 15 feet under ZR § 24-34, 60 parking spaces are required under ZR § 25-31 and use for retail and professional offices in Use Group 6 are not permitted under ZR § 22-00; and

WHEREAS, the applicant states that there are unique physical conditions—the size and irregular trapezoidal-shape of the lot with four street frontages and subsurface soil contamination created by historic commercial use of the site—that create practical difficulties or unnecessary hardship in developing the subject site as of right; and

WHEREAS, the applicant states that the trapezoidal

shape and street frontages are unique physical conditions, and, in support of this contention, the applicant studied neighboring properties, finding that there are five trapezoidal blocks created by diagonal intersections but that the subject site is the only such site with four street frontages; and

WHEREAS, in comparison to the site directly west of the subject site, the applicant states that said site is more than twice as large as the subject site and located in an R7A zoning district, where there are less strict yard requirements and a higher floor area ratio; and

WHEREAS, the applicant also illustrated that an as-of-right development would have a width of 24 feet, tapered to 12 feet, with extremely small floor plates; and

WHEREAS, the applicant states that the historic use of the subject site as an automotive service station has caused subsurface soil contamination with significant remediation costs and that the Phase I Environmental Site Assessment concludes that the potential for low levels of soil and groundwater contamination at the subject site may require proper characterization and disposal at the time of construction, that there is a potential need for a vapor mitigation system in future buildings at the subject site due to subsurface ground conditions, that there is a possible presence of soil contamination around the 55-gallon fuel oil underground storage tank, which was closed in place in 2001, that there is a possible presence of soil contamination around the two underground hydraulic lift units in the subject building and that there is a possible presence of asbestos-containing building materials or lead-based paints in the existing building at the subject site; and

WHEREAS, the Board finds that the above unique physical conditions create practical difficulties or unnecessary hardship in complying strictly with applicable zoning regulations that are not created by general circumstances in the neighborhood or district; and

WHEREAS, the applicant states that, because of the above unique physical conditions, as-of-right development of the subject site would not provide a reasonable return; and

WHEREAS, in support of this contention, the applicant supplied a financial feasibility study demonstrating that as-of-right development—consisting of a three-story community facility with seven open parking spaces—would result in a substantial loss on investment but that the proposed three-story mixed-use building with six enclosed parking spaces would yield a modest return; and

WHEREAS, the Board finds that, because of the above unique physical conditions, there is no reasonable possibility that development in strict conformity with applicable zoning regulations would bring a reasonable return; and

WHEREAS, the applicant states that the proposed development will not alter the essential character of the neighborhood because its bulk and use are consistent with surrounding neighborhood characteristics; and

WHEREAS, the applicant submitted a neighborhood-character study, including area maps indicating that, while

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there are residential uses in the surrounding area, Avenue Z also serves as the neighborhood's main shopping area with commercial uses lining the street for several blocks from the subject site; and

WHEREAS, the applicant further represents that the proposed commercial uses of retail and professional offices are consistent with the vibrant mix of uses in the surrounding area, including retail stores such as a drug store, convenience store, laundromat, hair salon and restaurant, and notes that professional offices keep limited daytime hours of operation, do not create noise, fumes or emissions and would be adequately separated from residences by the open areas provided by the surrounding streets with an entrance along Avenue Z, directly across from retail uses rather than residences; and

WHEREAS, the applicant's study further finds that, within the surrounding area, there are buildings of similar and greater heights to the proposed development, including multiple residential buildings that rise more than 60 feet in height and a community facility with a height of approximately 50 feet, where the proposed development has a height of 34'-10", which complies with applicable zoning regulations, and that nine building had lot coverages at or above 75 percent; and

WHEREAS, the applicant also studied parking demand and concluded that the proposed development will result in a peak parking demand of 41 parking spaces, which can be accommodated by parking spaces provided at the subject site as well as the 354 on-street parking spaces within the surrounding area; and

WHEREAS, the applicant states that, in order to protect the surrounding area, there will be air monitoring during all soil disturbance activity to safeguard against fugitive dust and volatile organic contaminants and that these safeguards will be performed under a community air monitoring plan to be included in the Remedial Action Plan, should one be required based on the results of the Phase II Environmental Site Assessment; and

WHEREAS, the applicant also proposes to plant street trees around the entirety of the subject site as a buffer and visual amenity to the surrounding area; and

WHEREAS, the Board finds that the proposed variance will not alter the essential character of the neighborhood or district in which the subject site is located; 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 above practical difficulties or unnecessary hardship do not constitute a self-created hardship; and

WHEREAS, the Board finds that the above practical difficulties or unnecessary hardship have not been created by the owner or by a predecessor in title; and

WHEREAS, the applicant states that the proposed variance is the minimum necessary to permit a productive use of the site, as reflected in the financial feasibility study; and

WHEREAS, specifically, the financial feasibility study examined multiple alternate development scenarios—including a three-story commercial office building with ground floor retail and no parking, a three-story office building with first-floor retail and six parking space and a three-story residential building with first-floor retail and six parking spaces—determining that none would result in a reasonable return on investment; and

WHEREAS, the Board finds that the proposed variance is the minimum necessary to afford relief within the intent and purposes of the Zoning 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 Final Environmental Assessment Statement CEQR No. 15BSA206K, received April 16, 2018; 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 correspondence dated August 10, 2017, the New York City Landmarks Preservation Commission represents that it has no objection to this application; and

WHEREAS, by letter dated November 14, 2017, the New York City Department of Environmental Protection ("DEP") states DEP finds the November 2017 RAP and CHASP for the proposed project acceptable; and

WHEREAS, DEP further states that it has no objection to this application on condition that, at completion of the project, a Remedial Closure Report certified by a professional engineer shall be submitted to DEP for review and approval and shall indicate that all remedial requirements have been properly implemented, including installation of vapor barrier and transportation-disposal manifests for removal and disposal of soil in accordance with New York State Department of Environmental Contamination regulations; and

WHEREAS, by correspondence dated March 2, 2018, the New York City Department of City Planning's Waterfront and Open Space Division states that it finds that the actions will not substantially hinder the achievement of any Waterfront Revitalization Program ("WRP") policy and hereby concurs that this action 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

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on the environment; and

WHEREAS, 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 of discretion.

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 zoning district, the development of a three-story mixed-use commercial and community-facility building that does not comply with zoning regulations for floor area, lot coverage, front yards, parking and use, contrary to ZR §§ 24-11, 24-34, 25-31 and 22-00; *on condition* that all work, operations and site conditions shall conform to drawings filed with this application marked “Received April 6, 2018”-Fourteen (14) sheets; and *on further condition*:

THAT the parameters of the building shall be as follows: a maximum floor area of 21,234 square feet (2.67 FAR), a maximum lot coverage of 100 percent, no front yards, six parking spaces, use for retail in Use Group 6 on the first floor and professional offices in Use Group 6 on the second floor, as illustrated on the Board-approved plans;

THAT the subject structure shall be provided with dry flood proofed construction to at or above Design Flood Elevation;

THAT temporary flood shields shall be provided for doors and windows with openings at or below Design Flood Elevation;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy shall be obtained within four (4) years, by April 17, 2022;

THAT the proposed work shall comply with all other applicable sections of codes, rules, regulations and laws;

THAT at completion of the project, a Remedial Closure Report certified by a professional engineer shall be submitted to the New York City Department of Environmental Protection for review and approval and shall indicate that all remedial requirements have been properly implemented, including installation of vapor barrier and transportation-disposal manifests for removal and disposal of soil in accordance with New York State Department of Environmental Contamination regulations;

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 17, 2018.

2016-4169-BZ

CEQR #16-BSA-108K

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 – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated March 27, 2016, acting on Department of Buildings Application No. 321316795 reads in pertinent part:

ZR 42-00: The property is located in M1-1 zoning district, and therefore no residential occupancy and use is 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 penthouse Use Group 2 multi-family residential building, contrary to ZR § 42-00; and

WHEREAS, a public hearing was held on this application on September 26, 2017, after due notice by publication in *The City Record*, with continued hearings on December 12, 2017, March 20, 2018, and April 17, 2018, and then to decision on April 17, 2018; and

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

WHEREAS, Community Board 1, Brooklyn, recommends disapproval of this application because of the size of the proposal, which the Community Board is concerned will set a precedent for larger developments in the area, and the lack of affordable units; and

WHEREAS, the subject site is located on the south of Boerum Street, between Bushwick Avenue and White Street, in an M1-1 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 25 feet of frontage along Boerum Street, a depth of 88 feet, 2,188 square feet of lot area and is currently vacant; and

WHEREAS, the applicant proposes to develop the site with a four-story plus penthouse Use Group 2 multi-family

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residence with eight dwelling units, 4,811 square feet of floor area, a floor area ratio (“FAR”) of 2.2 and a building height of 40 feet; 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 states that, pursuant to ZR § 72-21(a), the small size, narrow width and vacancy 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, the applicant submitted a study of 46 lots located within 400 feet of the subject premises and an M1-1 zoning district demonstrating that five lots (11 percent) have 2,188 square feet of lot area or less, are vacant and are not held in common ownership with adjacent lots and 24 lots (52 percent) are developed with non-conforming residential uses; and

WHEREAS, at hearing, the Board noted that all five of these lots are located on the subject block of Boerum Street, east of Bushwick Place, and requested that the applicant expand the study area; and

WHEREAS, the applicant submitted a study of 80 lots located within 800 feet of the subject premises and an M1-1 zoning district showing that eight lots (10 percent) have 2,188 square feet of lot area or less, are vacant and are not held in common ownership with adjacent lots; and

WHEREAS, the applicant states that the small footprint of the subject site is inadequate for modern manufacturing use, which is further illustrated by the fact that the site has remained vacant since the demolition of residential buildings on the site more than 20 years ago; and

WHEREAS, accordingly, the Board finds that the small size, narrow width and vacancy 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, in satisfaction of 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 contention, submitted a financial analysis for (1) a one-story as-of-right industrial building (the “AOR Development”) and (2) the subject proposal; and

WHEREAS, the financial analyses submitted with the application conclude that only the subject proposal will generate a reasonable return, approximately 1 percent, which the AOR Development will result in a loss of more than 73 percent of the projected development costs; 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 submits 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 portion of Boerum Street east of Bushwick Place is primarily characterized by non-conforming residential use—of the 35 lots on this portion of Boerum Street, 24 lots (69 percent) are developed, at least in part, with non-conforming residential uses, including each of the lots on either side of the subject lot, thus the development of the subject premise with a residential use would be compatible with the subject social block of Boerum Street; and

WHEREAS, the applicant originally proposed a building with a total height of 45 feet, but revised the proposal in response to comments by the Board and the Community Board to reduce the height of the building to 40 feet so as to be more consistent with the height of the residential buildings on the lots located immediately adjacent to and on either side of the subject premises; and

WHEREAS, in response to concerns from the Board regarding the use of EFIS or a synthetic stucco system, an unattractive and easily damaged material, on the exterior of the proposed building, the applicant submits that stucco will only be utilized at the back and sides of the subject building and the front will be comprised of a metal panel and glass system; and

WHEREAS, in addition, the applicant clarified that the front wall of the proposed building will be located no closer to the street line than the closest street wall of an existing adjacent building on an adjoining zoning lot so as to maintain a consistent street wall; 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. 16BSA108K, dated April 16, 2018; and

WHEREAS, the EAS documents that the project, as currently 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

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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 29, 2018, the New York City Department of Environmental Protection (“DEP”) states that February 2018 Remedial Action Plan (“RAP”) and Construction Health and Safety Plan (“CHASP”) submitted by the applicant’s consultants are acceptable and requests that, at the completion of the project, a Professional Engineer certified Remedial Closure Report indicating all remedial requirements have been properly implemented (i.e., installation of vapor barrier; transportation/disposal manifests for removal and disposal of soil in accordance with NYSDEC regulations; and two feet of DEP approved certified clean fill/top soil capping requirement in any landscaped/grass covered areas not capped with concrete/asphalt, etc.) be submitted to DEP for review and approval; and

WHEREAS, by a separate letter dated April 2, 2018, DEP states that an assessment of facilities within a 400 foot radius of the subject site showed that nearby industrial uses would not exceed applicable impact thresholds and that the proposed project would not result in significant air quality impacts; and

WHEREAS, with respect to noise, DEP states that the proposed project does not require any noise attenuation beyond the typical window wall construction and that the proposed project would not result in a significant noise impact; and

WHEREAS, the New York City Landmarks Preservation Commission (“LPC”) reviewed the proposal and noted that, while the site is adjacent to an industrial complex located at 221 McKibbin Street on the New York State and National Registers, the subject site is of neither architectural nor archaeological significance; and

WHEREAS, in light of the subject site’s adjacency to a landmarked property, the Board conditions the subject grant on the compliance of all construction on the site with DOB’s Technical Policy and Procedure Notice (“TPPN”) 10/88 titled, in part, Procedures for the Avoidance of Damage to Historic Structures Resulting from Adjacent Construction; and

WHEREAS, the New York City Department of Parks reviewed the shadow analysis for the subject proposal and concluded that the analysis was satisfactory; 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 penthouse Use Group 2 multi-family residential building with eight dwelling units, contrary to ZR § 42-00; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received January 18, 2018” – fourteen (14) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum of 4,811 square feet of residential floor area (2.2 FAR) and a maximum of eight dwelling units;

THAT upon the completion of the project, a Professional Engineer certified Remedial Closure Report indicating all remedial requirements have been properly implemented (i.e., installation of vapor barrier; transportation/disposal manifests for removal and disposal of soil in accordance with NYSDEC regulations; and two feet of DEP approved certified clean fill/top soil capping requirement in any landscaped/grass covered areas not capped with concrete/asphalt, etc.) shall be submitted to DEP for review and approval;

THAT all construction on the site shall comply with DOB’s Technical Policy and Procedure Notice (“TPPN”) 10/88 titled, in part, Procedures for the Avoidance of Damage to Historic Structures Resulting from Adjacent Construction;

THAT substantial construction shall be completed pursuant to ZR § 72-21;

THAT a certificate of occupancy shall be obtained with 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, April 17, 2018.

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2016-4230-BZ

CEQR #17-BSA-005X

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 – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Sheta.....4

Negative:0

Abstain: Commissioner Scibetta.....1

THE RESOLUTION –

WHEREAS, the decision of the Bronx Borough Commissioner, dated June 27, 2016, acting on Department of Buildings (“DOB”) Application No. 220428320 reads in pertinent part:

1. [. . .]
2. Provide proof of compliance for maximum permitted height and setback. As per Z.R. 33-432, the maximum permitted street wall height in the C8-1 is 35 ft. for community facility buildings in commercial districts with a 20 ft. setback requirement. [. . .]
3. Provide proof of compliance for required parking. As per Z.R. 36-21, the requirements for a House of Worship in a C8-1 zoning district require 1 parking space per 15 persons. The proposed application requires 40 parking spaces and 0 parking spaces are being provided on the site; and

WHEREAS, this is an application under ZR § 72-21 to permit, on a site located in a C8-1 zoning district, the construction of a three story, plus cellar, Use Group 4 House of Worship contrary to applicable bulk regulations pertaining to front wall height and setback and parking set forth in ZR §§ 33-432 and 36-21; and

WHEREAS, this application is filed on behalf of the Muslim American Society of Upper New York, a non-profit religious organization (the “Muslim American Society” or “Applicant”) to enable the construction of a mosque; and

WHEREAS, a public hearing was held on this application on November 14, 2017, after due notice by publication in *The City Record*, with continued hearings on January 30, 2018, and March 6, 2018, and then to decision on April 17, 2018; and

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

WHEREAS, Community Board 11, Bronx,

recommends approval of this application; and

WHEREAS, the Board was also in receipt of approximately 23 letters in support of the proposal and five letters in opposition, citing concerns regarding parking; and

WHEREAS, the subject site is located on the east side of Amethyst Street, between Rhinelander Avenue and Sagamore Street, in a C8-1 zoning district, in the Bronx; and

WHEREAS, the site was formerly comprised of four contiguous tax lots (Former Tax Lots 11, 12, 13 and 14) that have been merged into a single lot (Lot 11) pursuant to an Application for Mergers and Apportionments filed with the New York City Department of Finance and approved as of March 6, 2014, although the New York City Tax Map has not yet been updated to reflect this merger; and

WHEREAS, the site has approximately 100 feet of frontage along Amethyst Street, a depth of 95 feet, 9,500 square feet of floor area and is occupied by two two-story plus basement structures on Former Tax Lots 11 and 14, while Former Tax Lots 12 and 13 are vacant; and

WHEREAS, the Applicant proposes to demolish the existing buildings and construct a three-story plus cellar building containing 22,756 square feet of floor area (2.39 FAR) that provides a 15 foot setback from the front wall and penetrates the sky exposure plane and provides zero parking spaces; and

WHEREAS, at the subject site, a setback of 20 feet at the front wall height of 35 feet or three stories, whichever is less, for a community facility and conformance to the sky exposure plane above that height are required pursuant to ZR § 33-432 and one parking space per 15 person-rated capacity of the facility’s largest room of assembly, in this case, 40 spaces, is required pursuant to ZR § 36-21; and

WHEREAS, accordingly, the Applicant seeks the subject relief; and

WHEREAS, the Muslim American Society submits that its existing mosque, located approximately three blocks away and to the southwest of the subject site at 702 Rhinelander Avenue (Block 4050, Lot 39), a two-story plus basement building having a capacity of approximately 110 persons including an office for the Imam, is inadequate in size to meet the needs of its existing congregation, which often overflows onto the sidewalks during Friday prayer services and Muslim holidays; and

WHEREAS, the Applicant states that the existing mosque hosts five daily prayers from dawn to approximately an hour and a half after sunset, prayer sessions on Friday afternoons attended by approximately 475 congregants on a regular basis and attracting up to 800 congregants on Muslim holidays, Quran and Arabic classes for children and adults, tutoring services for neighborhood children, Muslim and non-Muslim alike, and limited marriage counseling and ceremony services, but such programming is compromised by the limited space available at the existing location; and

WHEREAS, the mosque proposed herein will accommodate all of the congregants in a single Friday prayer session, provide much needed space for the other programming currently offered at the existing mosque,

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enabling multiple programs to occur simultaneously, as well as provide designated community spaces, a library for Arabic and Islamic studies and recreation space for congregants, particularly children; and

WHEREAS, specifically, the proposed facility will be comprised of an open hall with a maximum occupancy of 350 persons for community gatherings, men's restroom, refrigerated storage (food is not proposed to be prepared on site, but food will be brought onto the site from nearby halal food vendors, necessitating this space for food waste) and seven classrooms for the after-school tutoring services and well as Quran and Arabic classes offered on weekday afternoons and weekends; a lobby and the main prayer area for male congregants with a maximum occupancy of 596 persons and office on the first floor; a secondary main prayer area for female congregants with a maximum occupancy of 356 persons, women's restrooms and four additional classrooms on the second floor; a recreation area with a maximum occupancy of 358 persons for youth activities, a conference room for community group meetings, men's and women's restrooms and room for storage on the third floor; and

WHEREAS, the Board acknowledges that the Muslim American Society, 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 to support the subject variance application; and

WHEREAS, specifically, as held in *Cornell University v. Bagnardi*, 68 NY2d 583 (1986), zoning boards must grant an educational or religious institution's application 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 are insufficient grounds for the denial of such applications; and

WHEREAS, based on the above, the Board finds that the Muslim American Society's programmatic needs create unnecessary hardship and practical difficulty in developing the premises in compliance with the applicable zoning regulations; and

WHEREAS, the Muslim American Society is a not-for-profit religious organization, the variance is needed to further its not-for-profit mission and, thus, 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 submits 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, that though no activities will occur outside of the proposed building, the following sound attenuation measures will be incorporated into the construction of the proposed mosque so as to ameliorate any adverse noise effects on neighbors: thick exterior walls, airspace in interior partition walls to be filled with sound absorbing blankets, no windows on the side elevations, minimal use of windows (relying, instead on an air conditioning system), windows with noise reduction of at

least 25 dBA and solid, rather than hollow, exterior doors; and

WHEREAS, with regards to the request for a parking waiver, the Applicant has submitted transportation surveys showing that approximately 29 percent of congregants travel to the existing mosque by automobile, often carpooling with an average of 3 congregants in each car, 9 percent travel by subway or bus and the remaining 62 percent walk; the Applicant additionally submitted a traffic analysis concluding that, based on the surveyed modal splits and full occupancy of the main prayer room, the peak parking demand will be 58 parking spaces (29 percent of 596 persons divided by 3 persons, on average, per vehicle) and that there is an adequate number of available on-street parking spaces on surrounding streets during the peak period of Fridays between 12:00 p.m. and 2:00 p.m.; and

WHEREAS, in addition, more than twenty congregants attended the Board's January 30 hearing and indicated, by show of hands, that they walk to prayers at the existing mosque and the Board heard testimony from congregants that Islam considers those that travel to the mosque by foot to be rewarded more than those who travel to the mosque by automobile; and

WHEREAS, nevertheless, the Board conditions this approval on the Applicant utilizing a site manager to manage parking and drop offs at the site to ensure that the operation of the proposed mosque does not adversely impact the surrounding area; and

WHEREAS, with regards to the finish of the proposed building, the Board expressed concern that the sides and rear of the building were proposed to be unfinished concrete block, an unattractive material inappropriate for a stately religious building, and the Applicant revised the drawings to indicate that the façade will be made up of brick, brick veneer, split-faced block and stone veneer; 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 the grounds for this variance was not created by the owner or a predecessor in title in accordance with ZR § 72-21(d); and

WHEREAS, the Muslim American Society submits that the subject proposal is the minimum variance necessary to afford relief and, in support of that assertion, submitted plans for an as-of-right three-story plus cellar building containing 10,570 square feet of floor area (1.11 FAR) and 16 parking spaces and states that such development would be inadequate to accommodate its programmatic needs; among other things, the provision of accessory parking spaces on the lot significantly reduces the floorplate of the building and results in a main prayer room with a maximum capacity of only 215 persons, less than half of the 475 persons, on average, who attend Friday afternoon prayer sessions; and

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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. 17BSA005X, dated March 15, 2018; 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, an “E” designation (E-473) has been placed on the site for hazardous materials and an environmental review by the New York City Office of Environmental Remediation (“OER”) must be satisfied prior to the issuance of building permits to facilitate construction of the proposed building; and

WHEREAS, by letter dated December 8, 2017, the New York City Department of Environmental Preservation states that the proposed project would not result in any significant adverse air quality or noise impacts; and

WHEREAS, the New York City Landmarks Preservation (“LPC”) conducted an environmental review of the subject site and reports that the site is neither architectural nor archaeological significant; 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 a C8-1 zoning district, the construction of a three story, plus cellar, Use Group 4 House of Worship contrary to applicable bulk regulations pertaining to front wall height and setback and parking set forth in ZR §§ 33-432 and 36-21, *on condition* that all work shall substantially conform to drawings filed with this application marked “Received March 30, 2018”—Fifteen (15) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a front setback of at least 15 feet above a 35

foot front wall, obstructions penetrating the sky exposure plane and at least zero parking spaces, as indicated on the BSA-approved plans;

THAT an E designation (E-473) is placed on the site to ensure proper hazardous materials remediation;

THAT the façade materials shall be brick, brick veneer, split faced block and stone veneer, as shown on the BSA-approved plans;

THAT no unfinished concrete block or EIFS shall be permitted on a visible façade of the building;

THAT a site manager shall be utilized to manage parking and drop offs at the site to deter double and triple parking and ensure that travel lanes remain unobstructed;

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, April 17, 2018.

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 – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated January 11, 2017, acting on Alteration Application No. 520229592, reads in pertinent part:

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“The proposed Use Group (16B) for gasoline service station with accessory uses . . . is not permitted as of right as per (ZR 22-00)”;

WHEREAS, this is an application for a reinstatement of a variance, previously granted by the Board; and

WHEREAS, a public hearing was held on this application on August 8, 2017, after due notice by publication in *The City Record*, with continued hearings on October 17, 2017, and January 9, 2018, and then to decision on April 17, 2018; and

WHEREAS, Commissioner Ottley-Brown performed an inspection of the 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 northwest corner of Bay Street and Fingerboard Road, in an R3A zoning district, on Staten Island; and

WHEREAS, the Board has exercised jurisdiction over the subject site since January 6, 1959, when, under BSA Calendar Number 960-57-BZ, the Board granted a variance to permit the subject site to be occupied as a gasoline service station for a term of fifteen (15) years, expiring January 6, 1974, on condition that the accessory building be constructed 30 feet by 40 feet and set against the north lot line, that there be five pumps on one island and three on another, all of a low approved type, that gasoline storage tanks not exceed twelve 550-gallon approved tanks, that there may be three curb cuts to Fingerboard Road and one curb cut to Bay Street, all of the size and location shown on the Board-approved plans, that along the westerly lot line there be constructed a woven wire fence of the chain link type not less than 5’-6” in height, including a masonry base, that along the northerly lot line, where the rear wall of the accessory building does not occur, there be constructed a concrete retaining wall, that there may be a post standard for supporting a sign, which may be illuminated, constructed at the intersection of the building line of Bay Street and the future widening line of Fingerboard Road, that at such intersection there be constructed a block of concrete not less than twelve inches in height and extending for a distance of five feet along either building line, that the site where not occupied by accessory building and pumps be surfaced with concrete or asphaltic pavement, that signs be limited to the signs shown on the front elevations of the Board-approved plans, that the accessory building be of face brick on all four sides and without cellar, that all temporary signs or advertising devices be excluded, that there may be for a similar term minor repairing with hand tools only for adjustments maintained solely within the accessory building, that there may be parking of cars so parked as not to interfere with the servicing of the station, that such portable fire-fighting appliances be maintained as the Fire Commissioner requires and that a certificate of occupancy be obtained; and

WHEREAS, on January 6, 1959, under BSA Calendar Number 342-58-A, the Board granted an appeal under General City Law § 35 to permit the curb cuts and

driveways to be constructed within the bed of a mapped street on condition that such space as is included in the proposed street widening be paved and sidewalk and curbing construction and that upon acquisition of such space by the City for street widening recompense to the owner be in amount as determined by the court; and

WHEREAS, on October 6, 1959, under BSA Calendar Number 960-57-BZ, the Board amended the variance so that there may be two curb cuts on Fingerboard Road and two curb cuts on Bay Street, that the westerly curb cut on Fingerboard Road be located twenty feet from the westerly property line, that there may be one pump island on Fingerboard Road and one on Bay Street, that the building may be located 45 feet back of the Bay Street property line, that at the corner there may be constructed a post standard supporting a sign, which may be illuminated and extending not more than four feet beyond the building line, that this sign be relocated to the new building line after the widening of Fingerboard Road and that waste oil and fuel oil tanks may be relocated; and

WHEREAS, on October 6, 1959, under BSA Calendar Number 324-58-A, the Board amended the appeal to permit the rearrangement of curb cuts and sign; and

WHEREAS, on January 5, 1960, under BSA Calendar Number 960-57-BZ, the Board granted an extension of time to complete construction on condition that a certificate of occupancy be obtained; and

WHEREAS, on June 23, 1970, under BSA Calendar Number 960-57-BZ, the Board amended the variance to revise the Board-approved plans on condition that signs be limited to those permitted in a C1 zoning district and that a copy of the original resolution, as amended, and a certified copy of the drawings as approved by the Board be permanently posted in the office of this automotive service station; and

WHEREAS, on March 19, 1974, under BSA Calendar Number 960-57-BZ, the Board granted an extension of term of ten (10) years, expiring March 19, 1984, on condition that a new certificate of occupancy be obtained; and

WHEREAS, on July 3, 1984, under BSA Calendar Number 960-57-BZ, the Board granted an extension of term of ten (10) years, expiring March 19, 1994, 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; and

WHEREAS, on August 8, 1995, under BSA Calendar Number 960-57-BZ, the Board amended the variance to permit the alteration of the existing sales office to create an attendant’s area and the construction of a new metal canopy over two new concrete pump islands and granted an extension of term of ten (10) years, expiring March 19, 2004, on condition that the site remain graffiti free, that there be no outdoor repair work at the site and that a new certificate of occupancy be obtained within one (1) year, by August 8, 1996; and

WHEREAS, the term of the variance having expired, the applicant now seeks a waiver of the Board’s Rules of

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Practice and Procedure to permit the late filing of this application and a reinstatement of the variance; and

WHEREAS, the applicant has sufficiently demonstrated that the use of the gasoline service station has been continuous since the expiration of term, that substantial prejudice would result were this application denied and that the gasoline service station does not substantially impair the appropriate use and development of adjacent properties; and

WHEREAS, the applicant further submits that there are no changes or additions proposed for the gasoline service station, that continuation of the gasoline service station will not result in any on-site traffic congestion, that the gasoline service station has existed compatibly with the surrounding neighborhood for decades, that all lighting will be directed downward and away from residential uses, that there will be no parking of cars on the sidewalk or in such a manner as to obstruct pedestrian or vehicular traffic and that all vehicle repairs take place entirely within the service building; and

WHEREAS, in response to questions from the Board, the applicant submitted evidence that fencing and landscaping have been installed, that dead cars, the boat, extraneous trash receptacles and extraneous banners have been removed, that the refuse area is fully enclosed and that lighting will not adversely affect residential uses in the vicinity; and

WHEREAS, based upon its review of the record, the Board has determined that the requested reinstatement 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 6, 1959, as amended through August 8, 1995, so that as amended this portion of the resolution shall read: “to *permit* a reinstatement of the variance for a term of ten (10) years, expiring April 17, 2028; *on condition* that all work and site conditions shall conform to drawings filed with this application marked “Received April 17, 2018”-Six (6) sheets; and *on further condition*:

THAT the term of this grant shall be for ten (10) years, expiring April 17, 2028;

THAT no banners or signs shall be permitted in excess of those shown on the Board-approved plans;

THAT there shall be no parking of vehicles on the sidewalk or in such a manner as to obstruct pedestrian or vehicular traffic;

THAT parking shall be limited to cars awaiting service;

THAT no dead storage of motor vehicles (Use Group 16) shall be permitted;

THAT fencing and landscaping shall be repaired and replaced as necessary to maintain the subject site in an aesthetically pleasing condition;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy shall be obtained within one (1) year, by April 17, 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, April 17, 2018.

2017-100-BZ

CEQR #17-BSA-111M

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 90th Street, Block 1569, Lot 35, Borough of Manhattan.

COMMUNITY BOARD #8M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated March 27, 2017, acting on Application No. 121191352 reads in pertinent part:

1. ZR 32-31, ZR 73-19: Use Group 3 is not permitted in a C8-4 district. BSA Special Permit required.
2. ZR 33-292: New building extends into required 30 ft open area contrary to Zoning Resolution. BSA Variance required.
3. ZR 33-26: New building extends into 20 ft rear yard contrary to Zoning Resolution. BSA Variance required.; and

WHEREAS, this is an application for a special permit, pursuant to ZR § 73-19, and a variance, pursuant to ZR § 72-21, to permit, on a zoning lot located in a C8-4 zoning district, the construction of a Use Group 3 school contrary to applicable use regulations set forth in ZR § 32-31 and

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applicable open area and rear yard regulations set forth in ZR § 33-292 and 33-26; and

WHEREAS, this application is filed on behalf of the Trustees of the Spence School, Inc., a non-profit private educational institution for young women (“Spence” or the “Applicant”) to facilitate the construction of a new educational and athletic facility; and

WHEREAS, a public hearing was held on this application on November 21, 2017, after due notice by publication in *The City Record*, with continued hearings on March 6, 2018 and April 10, 2018, and then to decision on April 17, 2018; 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, New York City Council Member Benjamin J. Kallos recommends approval of this proposal with the understanding that Spence will provide access to the subject proposed school building to students from nearby P.S. 151 and P.S. 527 for their physical education curricula during school day hours at no cost to those schools; and

WHEREAS, the subject site is located on the south side of East 90th Street, between First Avenue and York Avenue, in a C8-4 zoning district, in Manhattan; and

WHEREAS, the site has approximately 149 feet of frontage along East 90th Street, a depth of 101 feet, 15,005 square feet of lot area and is occupied by a two-story parking garage that, the Applicant notes, is built to the rear lot line without a rear yard or an open area and is proposed to be demolished to facilitate the development proposed herein; and

WHEREAS, the rear lot line of the subject site is coincident with a zoning district boundary line that separates a C8-4 zoning district and an R8B zoning district; and

WHEREAS, the subject site is located within walking distance of Spence’s main school buildings, located at 22 East 91st Street and 17 East 90th Street, which house the school’s fifth through twelfth grades (the “Main Building”), and its lower school building, located at 56 East 93rd Street (the “Lower School”); and

WHEREAS, Spence proposes to construct a six-story building measuring 93 feet to the top of the mechanical bulkhead containing 53,974 square feet of zoning floor area, a floor area ratio of 3.60, built to the rear lot line to a height of 29 feet with a rear yard having a depth of 20 feet above that height; and

WHEREAS, at the subject site, schools without living or sleeping accommodations are permitted by special permit of the Board pursuant to ZR §§ 32-31 and 73-19, an open area at curb level at least 30 foot in depth is required pursuant to ZR § 33-292 and a rear yard of at least 20 feet is required pursuant to ZR § 33-26; and

WHEREAS, accordingly, the Applicant seeks the subject relief; 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 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 Spence meets the ZR § 12-10 definition of “school”; and

WHEREAS, with regards to § 73-19(a), Spence states that it has searched for sites of adequate size within a zoning district that would have permitted a Use Group 3 school use as-of-right within the bounds of Community Board 8 and the lower half of Community Board 11 since 2011 and ultimately identified three such sites, including the subject site, within Spence’s price range—one was subject to a zoning lot development agreement that would not have accommodated all of the school’s required programming and the other was purchased by another institution; and

WHEREAS, Spence submits that between losing one potential site to another purchaser and acquiring the subject site in 2011, they continued to monitor real estate listings for appropriate sites, but did not identify an alternative to the

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subject site that would permit the proposed use as-of-right; and

WHEREAS, accordingly, the Board finds that, within the neighborhood to be served, there is no practical possibility of obtaining a site of adequate size located in a district wherein it is permitted as of right in satisfaction of ZR § 73-19(a); and

WHEREAS, the Board acknowledges that the rear lot line of the subject site is coincident with a zoning district boundary line separating a C8-4 zoning district and an R8B zoning district, in which a Use Group 3 school without living or sleeping accommodation is permitted as of right, and that the subject site has a depth of 101 feet, accordingly, the proposed building is located not more than 400 feet from the boundary of a district wherein it would be permitted as-of-right as required under ZR § 73-19(b); and

WHEREAS, as to ZR § 73-19(c), Spence asserts, and the Board finds, that the window and sound-attenuating exterior walls of the proposed building will be constructed so as to ensure adequate separation from noise, traffic and other adverse effects of the surrounding C8-4 zoning district and achieve an interior noise level of 45 dBA L10(1) or lower; and

WHEREAS, this application has been referred to the New York City Department of Transportation (“DOT”) Division of School Safety for review, as required in ZR § 73-19, and, by letter dated November 6, 2017, DOT states that it finds the proposed plans acceptable and requested that upon approval of the application and construction of the school, DOT be notified so that they can determine if traffic safety improvements or parking regulation changes are necessary; and

WHEREAS, in addition, Spence represents that the two intersections closest to the site—at East 90th Street and York Avenue to the east and East 90th Street and First Avenue to the west—are signalized crossings with crosswalks allowing for safe access to the site; 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 variance, pursuant to ZR § 72-21, waiving open area and rear yard requirements set forth in ZR §§ 33-292 and 33-26; and

WHEREAS, the subject building is proposed in order to address deficiencies in Spence’s existing physical plant with regards to spaces for earth sciences and ecological studies, athletic and dance programs; specifically, the proposed building will house a gymnasium large enough to accommodate regulation-sized basketball, volleyball and badminton courts, nine squash courts (the minimum required for school team competitions), locker rooms, a new Eco-Lab including a greenhouse, planting terrace, classroom and teaching kitchen, a multipurpose space to serve as the home of the school’s dance department as well as provide an alternative venue for the school’s drama productions, readings, chamber music recitals, film screenings and lectures, and a student study center; and

WHEREAS, the building is proposed to include

mechanical space in the cellar, a gymnasium with spectator seating in retractable bleachers on the first floor; a viewing area, spectator seating in fixed bleachers and a training room on the second floor (approximately half of which is also open to the gymnasium below); four double-height squash courts, team rooms and a study center on the third floor; five double-height squash courts, double-height squash spectator seating and locker rooms on the fourth floor; a double-height multi-purpose space and restrooms on the fifth floor (much of which is also open to the fourth floor below); and a classroom, teaching kitchen, office, greenhouse and roof top garden on the sixth floor; and

WHEREAS, Spence submits that it relies on 34 off-site venues in four boroughs for its various athletic programs and that the long travel time to off-campus venues frustrates scheduling in an already highly scheduled academic day; Spence also represents that the proposed building will enable the school to reduce their demand for off-site venues by approximately 30 percent; and

WHEREAS, the proposed building will substantially augment the school’s existing on-campus athletic facilities, which are comprised of two non-regulation sized gymnasias (one each in the Main Building and the Lower School Building), a 300 square foot gymnasium in the Main Building utilized for the storage of athletic equipment, a 300 square foot yoga and cycling room in the Main Building, a 1,000 square foot storage room in the gymnasium in the Lower School Building equipped with physical education equipment, and improvised storage spaces; and

WHEREAS, in response to Board inquiry as to whether the gymnasium in the proposed facility is duplicative of the two existing gymnasias, Spence states that the existing gymnasias are utilized for physical education classes, which are mandated by state law for every grade level, their uses is incorporated into the daily school day curriculum, thus they must be located proximate to the primary academic program facilities; further, Spence states that the existing gymnasias lack the necessary height clearances and size for team competition; and

WHEREAS, additionally, Spence states, that both the Main Building and Lower School Building are located mid-block within an R8 zoning district, have been designated as individual landmarks by the New York City Landmarks Preservation Commission (“LPC”) and are located within the Expanded Carnegie Hill Historic District; thus, any alteration of the existing gymnasias to provide the regulation-sized facilities of the subject proposal would likely be in excess of the maximum applicable bulk regulations, require waivers of the Zoning Resolution and have a remote likelihood of LPC approval; and

WHEREAS, in response to Board inquiry as to why the Eco-Lab could not be accommodated elsewhere within Spence’s existing physical plant, Spence states, again, that its existing individually landmarked building would require significant and visible alterations in order to accommodate the elevator and stair bulkheads necessary to provide full access to the roof; and

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WHEREAS, Spence submits that, in addition to addressing these spatial deficiencies, the proposed building and the regulation-sized courts accommodated therein will enable Spence to host “home” games and competitions like its peer schools; help Spence students qualify for athletics-based college recruitment and financial assistance, which rely on games played on regulation-sized courts; and enable Spence to offer summer camp programs to the greater community; Spence additionally reports that it intends to work with local public schools P.S. 151 and P.S. 527 (the “Public Schools”), which lack their own gymnasias, to provide those schools with access to the proposed gymnasium during specified times; and

WHEREAS, Spence submits that the requested waivers will facilitate floorplates large enough to enable the combination of several different athletic spaces having significant volumetric demands into a single building with efficient circulation; and

WHEREAS, the Board acknowledges that Spence, 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), a zoning board must grant an educational or religious institution’s application 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 Spence’s programmatic needs create unnecessary hardship and practical difficulty in developing the premises in compliance with the applicable zoning regulations; and

WHEREAS, Spence is a non-profit educational institution and the variance is needed to further its non-profit mission and, thus, 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, Spence submits 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 that the first two floors of the proposed building will replace an existing two-story parking garage that is currently built to the rear lot line to a height of between 22 and 25 feet above grade and provides neither a 30 foot open area above curb level at the zoning district boundary line nor a 20 foot rear yard, thus the proposed building, built to a height of 29 feet above grade, will substantially mimic existing conditions at the site with regards to incursions in the rear yard; and

WHEREAS, in addition, the immediate area, particularly the subject block of East 90th Street, is primarily residential in character—some residential buildings having commercial on their lower floors—with the

exception of a parking facility located immediately to the east of the site, a commercial building across East 90th Street from the subject site and industrial and commercial uses located mid-block on East 91st Street, thus the community facility use will be consistent with the existing character of the neighborhood; and

WHEREAS, the Applicant states that the proposed building will operate six days a week between approximately 6:00 a.m. and 9:30 p.m. and expects peak activity to occur from 3:00 p.m. to the early evening hours; Spence states that the school will provide shuttle bus service to the site from its other buildings for grades K-5, that its students, faculty and staff will generally travel to the subject site by foot, spectators are expected to travel to the site by foot or public transportation and that, of teams from other schools visiting to play games at the facility, 66 percent are expected to use public transportation to access and depart the site and 34 percent are expected to arrive and depart by foot; and

WHEREAS, during hearing, the Board expressed concerns regarding the potentially simultaneous use of the athletic, music, dance and classroom spaces in the proposed facility, including the Public Schools’ use of the gymnasium for physical education, will adversely affect vehicular and pedestrian traffic networks existing in the immediate area; and

WHEREAS, in response, Spence states that, even including the trips to the site from the Public Schools, there will be no significant adverse pedestrian impacts for the sidewalk analysis location during the midday peak hour of 1:00 p.m. to 2:00 p.m., the time during which the last possible public school group visiting the facility for physical education would be departing the facility by foot; and

WHEREAS, further, Spence states that simultaneous use of the various spaces in the proposed facility will be minimal: that the only uses of the facility during school day hours of 8:15 a.m. to 3:00 p.m. will be in the Eco-Lab and the Public Schools’ use of the gymnasium between the hours of 8:45 a.m. and 1:00 p.m.; that the Athletics Director will develop a schedule of home and away games to minimize scheduling any two sports programs to play home games at the proposed facility on the same afternoon and, on occasions when two home games are scheduled in the same afternoon, the games will be staged to prevent simultaneous arrivals and departure; and that the squash courts will never be used by other schools during the school day because sports are not scheduled during the day in order to not interfere with academic classes; and

WHEREAS, the Board was in receipt of four letters in opposition to the proposal and testimony from a representative of a nearby condominium located on East 90th Street, expressing concerns regarding the existing congested conditions on East 90th Street, the incompatibility of a school use with a commercial zoning district, noise associated with construction of the proposal, noise associated with the school on evenings and weekends once it is in operation, the height of the school and its likelihood to

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decrease accessible daylight to certain properties; and

WHEREAS, by letter dated April 10, 2018, DOT states that, based on the Level 1 (Trip Generation) screening assessment performed by the Applicant's consultant following the CEQR Technical Manual guidelines and indicating that the subject proposal would generate fewer than 50 vehicle trip-ends during the weekday AM and PM peak hours because the majority of arrivals to the facility are expected by foot or school-provided shuttle bus, the agency agrees with the Board that a detailed traffic analysis is not necessary; and

WHEREAS, the Board notes that the subject use is permitted in a C8-4 zoning district pursuant to special permit upon satisfying certain findings and, those findings having been satisfactorily made in this case, the subject proposal is not, in fact, an incompatible use at the subject site in the subject zoning district; and

WHEREAS, with regards to concerns about noise due to construction of the subject proposal and the loss of light to nearby buildings, the Board notes that as-of-right construction at the site would also contribute to noise in the area and block certain buildings' access to sunlight and also that the height of the building is permitted as-of-right; with regards to concerns that, once in operation, the subject facility will have noise impacts, the Board notes that the Applicant has represented that the mechanical systems for the facility will meet all applicable noise regulations of the New York City Noise Code and the Buildings Code and, thus, not have the potential to result in a significant increase in noise levels at any nearby noise receptors, that the proposal itself will not introduce a new noise receptor and, therefore, the proposal would not have the potential to result in any significant adverse noise impacts; 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, Spence submits that the subject proposal is the minimum variance necessary to afford relief and, in support of that assertion, submitted plans for an as-of-right eight-story building with a total height of over 126 feet that can provide the multipurpose space, a regulation-sized gymnasium for basketball, volleyball and badminton and nine squash courts, but provides a gymnasium that is too narrow to accommodate two regulation-sized volleyball courts, as the proposed facility can, rendering it unsuitable for volleyball tournaments; does not provide adequate viewing areas or spectator seating for the squash courts or the gymnasium, respectively; prevents necessary program space adjacencies in the building, i.e., necessitates the relocation of team rooms from adjacent to the gymnasium on the first and second floors to the third floor, which will

promote the mixing of different event populations and pose operational, as well as scheduling complexities; splits the locations of the Eco-Lab classroom and the Eco-lab greenhouse and garden onto different floors; reduces the size of the exterior plant area adjacent to the Eco-Lab on the building roof by more than half; requires a greater amount of, yet less efficient, vertical circulation; and, at more than 30 feet taller than the proposed building, will have a greater impact on the light and air available to its immediate neighbors; 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. 17BSA111M, dated April 13, 2018; 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, LPC conducted an archaeological review of the subject site and determined that it was of no archaeological significance; and

WHEREAS, by communication dated September 21, 2017, the Waterfront and Open Space Division of the New York City Department of City Planning ("DCP") states that they completed review of the proposed project for consistency with the policies and intent of the New York City Waterfront Revitalization Program ("WRP") under WRP # 17-127 and finds that the action will not substantially hinder the achievement of any WRP policy and is, thereby, consistent with those policies; and

WHEREAS, by letter dated February 27, 2018, the New York City Department of Environmental Protection ("DEP") states that DEP finds the Revised November 2017 Remedial Action Plan ("RAP") submitted by the Applicant's consultant acceptable on condition that the RAP be revised to require that the clean fill used at the site (if required) be tested at the facility/source at a frequency of one (1) sample for every 250 (not 500) cubic yards; and

WHEREAS, DEP further requested that, at the completion of the project, a Professional Engineer-certified Remedial Closure Report—indicating that all remedial requirements have been properly implemented (i.e., installation of vapor barrier; proper transportation/disposal manifests and certificates from impacted soils removed and properly disposed of in accordance with all NYSDEC regulations; and two feet of DEP approved certified clean

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fill/top soil capping requirement in any landscaped/grass covered areas not capped with concrete/asphalt; etc.)—be submitted to DEP for review and approval; and

WHEREAS, on March 2, 2018, the Applicant submitted a revised RAP indicating that “any new at grade landscaped portions of the Site would have a ‘soil cap’ consisting of two feet of imported clean fill, i.e., tested at the source facility . . . at a frequency of one composite sample per 250 cubic yards,” as requested by DEP; and

WHEREAS, by letter dated March 21, 2018, DEP’s Bureau of Environmental Planning and Analysis states that the subject proposal would not result in significant air quality impacts; and

WHEREAS, by letter dated April 10, 2018, DOT agrees with the Board that a detailed traffic analysis is not necessary; 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 §§ 73-19 and 72-21, to permit, on a zoning lot located in a C8-4 zoning district, the construction of a Use Group 3 school building contrary to applicable use regulations set forth in ZR § 32-31 and applicable open area and rear yard regulations set forth in ZR § 33-292 and 33-26, *on condition* that all work shall substantially conform to drawings filed with this application marked “Received November 9, 2017”-Twenty (20) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a rear yard of at least 0 feet to a maximum height of 29 feet, an open area at the rear lot line, which is coincidental with a zoning district boundary line, of at least 0 feet to a maximum height of 29 feet, above such height a rear yard and open area at least 20 feet in depth will be provided, as illustrated on the Board-approved plans;

THAT Spence shall contact DOT School Safety Division upon construction of the school in order for DOT to determine if traffic safety improvements or parking regulation changes are necessary;

THAT at the completion of the project, a Professional Engineer-certified Remedial Closure Report—indicating that all remedial requirements have been properly implemented (i.e., installation of vapor barrier; proper transportation/disposal manifests and certificates from impacted soils removed and properly disposed of in accordance with all NYSDEC regulations; and two feet of DEP approved certified clean fill/top soil capping

requirement in any landscaped/grass covered areas not capped with concrete/asphalt; etc.)—shall 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, April 17, 2018.

2017-205-BZ

CEQR #17-BSA-139X

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

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:0

THE RESOLUTION –

WHEREAS, the decisions of the Department of Buildings (“DOB”), dated May 11, 2017, acting on Application No. 220211893 reads in pertinent part:

ZR 42-10: Proposed Community Facility use group 3A is prohibited in a M1-1 district does not conform to the use regulations of the Zoning Resolution and must be referred to BSA [. . .]; and

WHEREAS, this is an application under ZR § 72-21 to permit, on a site located in an M1-1 zoning district, the conversion of an existing building into a Use Group (“UG”) 3A non-profit institution with sleeping accommodations, contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this

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application on January 23, 2018, after due notice by publication in *The City Record*, with continued hearings on February 27, 2018, and April 10, 2018, and then to decision on April 17, 2018; and

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

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

WHEREAS, New York City Council Member Andrew Cohen submitted a letter in support of the application; and

WHEREAS, the Board was also in receipt of three form objections in opposition to the proposal, citing a decline in safety and cleanliness of the area due to residents of an existing homeless shelter on Bronx Boulevard and a preference that the subject site be developed as a community center for neighborhood services or affordable housing; and

WHEREAS, the subject site is located on the northeastern corner of Nereid Avenue and Bullard Avenue, in an M1-1 zoning district, in the Bronx; and

WHEREAS, the site has approximately 96 feet of frontage along Nereid Avenue, 264 feet of frontage along Bullard Avenue, a mapped but unimproved street, 24,755 square feet of lot area and is occupied by a four-story building previously owned and operated by the United States government as the Sgt. Joseph E. Muller United States Army Reserve Center (the "Muller Building"); and

WHEREAS, this application is filed on behalf of United Services Housing Development Fund Corporation, a wholly owned subsidiary of The Doe Fund, a non-profit organization that provides transitional work programs, educational and vocational training, individual counseling and supportive housing services to individuals with histories of homelessness, incarceration and substance abuse (the "Applicant" or "Doe Fund"); and

WHEREAS, the Applicant proposes to convert the Muller Building into a UG 3A non-profit institution with sleeping accommodations to provide permanent supportive housing for formerly homeless adults and provide an off-street parking area accessory to this site at 4449 Bronx Boulevard (Block 5065, Lot 53, the "Muller Parking Site," together with the subject site, the "Muller Sites"); and

WHEREAS, at the subject site, such use is not permitted pursuant to ZR § 42-10; and

WHEREAS, accordingly, the Applicant seeks the subject relief; and

WHEREAS, the Applicant filed a separate application, under BSA Cal. No. 2017-206-BZ, for a variance to permit the development of 4449 Bronx Boulevard with off-street parking accessory to the herein proposed development, contrary to ZR § 42-10; and

WHEREAS, the two cases were heard together, but separate resolutions have been issued for each under their respective calendar numbers; and

WHEREAS, the Doe Fund states that a series of legal limitations on the use of the Muller Sites constitute a unique

physical condition sufficient to satisfy ZR § 72-21(a) and additionally asserts that practical difficulties and unnecessary hardship have resulted from their reliance, in good faith, on the City of New York (the "City") committing financial support to the Doe Fund for a conversion of the Muller Sites to as-of-right UG 5 transient accommodations on the subject site with accessory off-street parking on the Muller Parking Site and the City's subsequent reversal on that commitment; and

WHEREAS, the Doe Fund entered into a legally binding agreement with the City and the New York City Department of Homeless Services ("DHS"), effective February 16, 2012, for the redevelopment of the Muller Sites under the Defense Base Closure and Realignment Act of 1990 and the Base Closure Community Redevelopment and Homeless Assistance Act of 1994 (the "LBA"); and

WHEREAS, the Doe Fund also entered into an operating agreement with DHS, dated February 16, 2012 (the "DHS Contract"), to redevelop the Muller Sites with a transitional residence for at least 200 homeless adults and operate and maintain the transitional residence by providing, among other things, transitional housing and support services including assessment and orientation, transitional housing, education and independent living skills preparation, permanency services, substance abuse treatment, financial management, personal responsibility, health care and recreation ("Homeless Services"); and

WHEREAS, the LBA required, among other things, that the City request that the Department of the Army, one of three military departments within the United States Department of Defense, convey the Muller Sites to the Doe Fund by quitclaim deed at no cost to the Doe Fund; that the Doe Fund deliver Homeless Services in accordance with the DHS Contract; that the Doe Fund not change the scope of the services provided at the site without the express written consent of the City, which would not be unreasonably withheld or delayed; and that the Doe Fund execute and cause to be recorded a restrictive covenant against the subject site in favor of the City restricting its future use or disposition to "a facility to be used to provide services for homeless adults or such other Homeless Assistance (defined below) use as reasonably determined by the City for a period of thirty (30) years from the date of execution of the Deed"; and

1 In a later section, the LBA defines "Homeless Assistance" as "any eligible activity, program or service that has been delineated or defined by the following laws and regulations: 24 C.F.R. §§ 576.21, 583.100, 582.100, 582.325 (Emergency Shelter Grants, Supportive Housing and Shelter Plus Care Programs); Section IV.A. of the Notice of Allocations, Application Procedures, and Requirements for the Homelessness Prevention and Rapid Re-Housing Program Grantees under the American Recovery and Reinvestment Act of 2009, or any other federal, state or local law program designed to prevent homelessness or transition those who are homeless into permanent housing."

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WHEREAS, the Muller Sites were transferred to the Applicant from the federal government, acting by and through the United States Army Corps of Engineers, by quitclaim deed, executed September 18, 2013; and

WHEREAS, on September 20, 2013, in consideration of the funds to be provided by the City pursuant to the DHS Contract, the Doe Fund executed a Declaration of Restrictive Covenant on the subject site in favor of the City restricting the use and maintenance of the property “as a facility to be used to provide services for homeless adults, or such other Homeless Assistance use” for thirty (30) years (the “Covenant”); and

WHEREAS, the Covenant was subsequently recorded against the subject property, as required by the LBA, on December 29, 2014; and

WHEREAS, DOB approved Job No. 220211893 “for the conversion of an existing building to a mixed use transient hotel” at the subject site on December 5, 2014, and issued Alteration Type I Permit No. 220211893-01-AL on March 19, 2015; and

WHEREAS, the Doe Fund states that they utilized public funding provided pursuant to the DHS Contract for the renovation of the Muller Building to a UG 5 transient occupancy use, a use permitted as-of-right at the subject site, and that construction was commenced shortly after the issuance of DOB permits; and

WHEREAS, in or around February 2016, the Applicant states that the City revoked public funding for the conversion, by which point more than \$9 million, approximately 63 percent of the total anticipated construction costs, had been expended at the Muller Sites; and

WHEREAS, by notice dated November 4, 2016, the New York City Department of Social Services (“DSS”) informed the Doe Fund of the City’s election to terminate the DHS Contract; a subsequent letter from DSS, dated May 25, 2017, explained that funding was terminated “because the City of New York is no longer providing funding for The Doe Fund’s operation of a *transitional* shelter (Use Group 5 transient occupancy use)” (emphasis added) and stated that the City, instead, intended “to provide funding for the construction and operation of supportive housing, once Doe submits technically viable proposals for such funding”; and

WHEREAS, the supportive, non-transient housing use referenced in the 2017 letter from DSS, for which it was stated the City alternatively intended to provide funding, and accessory uses thereto have never been permitted as-of-right at the Muller Sites, which, since December 5, 1961, have been located within an M1-1 zoning district; and

WHEREAS, the Doe Fund submits that the organization primarily relies on public funding sources for its housing programs and that it cannot complete the conversion of the Muller Sites or maintain future operations because the City has changed its policy with regards to providing funding for an as-of-right conversion to transient occupancy; further, the Doe Fund states that it cannot fulfill its legal obligations under the Covenant, which was entered

into, in part, on reliance on the City’s promise to provide the necessary funding and requires the Doe Fund to provide Homeless Services including housing, without seeking the relief sought herein and obtaining a zoning waiver to permit UG 3A use at the subject site; and

WHEREAS, the Doe Fund represents that since the termination of the DHS Contract, it has sought capital funding for the subject proposal, including from the New York City Department of Housing Preservation and Development (“HPD”), and was issued an emergency loan from the Fund for the City of New York, sponsored by HPD, to support the Doe Fund’s operating expenses and fund pre-development activities associated with the development of the Muller Sites; and

WHEREAS, by letter dated February 13, 2018, HPD states that it received a proposal from the Applicant requesting funds for the subject development and that it is the intention of HPD to provide development financing subject to availability for this project if it meets certain guidelines and requirements; 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, for instance, 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 uniqueness finding set forth in ZR § 72-21(a); and

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, 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

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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 approvals were obtained and later revoked based on a circumstance that existed when the approvals were first granted; (2) that the approval process included an inquiry into the issue that would subsequently be the basis for the reversal of the approval; (3) that the owner could not have anticipated the reversal of the approval in light of municipal assurances to the contrary; and (4) that construction was performed and expenditures were made subsequent to the issuance of the approvals; and

WHEREAS, in this case, (1) Doe Fund entered into agreements with the City, pursuant to which the Covenant was recorded against the subject site restricting its use to Homeless Services for thirty (30) years, and the City not only subsequently terminated the funding to be provided under those agreements, rendering the Doe Fund unable to comply with the Covenant with an as-of-right plan to redevelop the Muller Sites for transient occupancy with off-street parking accessory thereto, but also agreed to provide funding for a redevelopment that could not be accomplished as-of-right and would require a variance; (2) the LBA, to which the City was a party, made explicit reference to the DHS Contract, which made the Doe Fund responsible for “renovating the [Muller Building] into a *transitional residence*” (emphasis added), “maintaining the *transitional residence*” (emphasis added) and “providing *transitional housing and support services*” (emphasis added), thus, the City was on notice that the Muller Sites were to be redeveloped as a UG 5 transient occupancy with accessory off-street parking use; (3) the Doe Fund, having recorded the Covenant, obtained DOB permits and commenced construction, could not have anticipated the City terminating the DHS Contract and its obligations to provide funding, on which the Doe Fund so heavily relied; and (4) more than \$9 million was expended on converting the Muller Sites subsequent to the execution of the LBA and DHS Contract and the Doe Fund's recordation of the Covenant; and

WHEREAS, the Doe Fund represents that the City's reversal with regards to providing funding for redevelopment of the Muller Sites for transient occupancy necessitates a near complete demolition of the construction heretofore completed because the proposed use requires entirely new layouts; specifically, whereas the UG 5

conversion was comprised of common sleeping rooms, bathrooms and lounge areas on the second and third floors and offices, meeting rooms, a lecture hall and a common dining area with a commercial kitchen on the first floor and in the basement, the subject proposal for UG 3A use necessitates construction of individual studio apartments, each with their own kitchens and bathrooms, on all four floors of the Muller Building with a multipurpose room and counseling offices on the first floor, and the only completed room that can be retained is a lecture hall constructed in the basement; and

WHEREAS, in response to Board inquiry as to whether housing is a necessary component of the redevelopment of the Muller Sites, the Doe Fund asserts that redevelopment of the Muller Building without a housing component is not viable because there is neither public nor political support, and therefore no public funding available, for such a facility; and

WHEREAS, in response to Board inquiry as to whether the proposed UG 3A and accessory off-street parking use of the Muller Sites is permitted pursuant to the Covenant and LBA, New York City Law Department submitted a letter, dated February 16, 2018, stating that both the LBA and the Covenant permit the property “to be used to provide supportive housing as currently contemplated by HPD and Doe Fund”; and

WHEREAS, in granting the subject relief, the Board makes no determination as to whether the UG 3A facility proposed herein satisfies the restrictions on the subject site set forth in the LBA and/or Covenant; and

WHEREAS, accordingly, the Board finds that the applicant has made all of the findings required to establish their good faith reliance on the execution of the LBA and DHS Contract—specifically, their recording of the Covenant in satisfaction of requirements set forth in the LBA and over \$9 million in construction costs—in satisfaction of ZR § 72-21(a); and

WHEREAS, the Doe Fund is a non-profit institution and the variance is needed to further its non-profit mission and thus, 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 Doe Fund submits 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 that the immediate area is dominated by three large institutional developments—a facility associated with Montefiore Medical Center located immediately east of the subject site on Nereid Avenue, a center for the New York City Department of Homeless Services located across Nereid Avenue from the subject site and the subject property, which has historically been used as an Army Reserve Center—and, therefore, similar to the proposed use and the footprint and envelope of the existing building will remain; and

WHEREAS, further east of the site and across Bronx

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Boulevard are a C8-1 zoning district, comprised of mixed-use residential and commercial, manufacturing and parking facilities, and an R5 zoning district, comprised of primarily residential uses; immediately to the west of the site, across the mapped but unbuilt portion of Bullard Avenue, are railroad tracks for freight and Metro North trains and the Bronx River; and

WHEREAS, by letter dated April 12, 2018, the New York City Department of Environmental Protection (“DEP”) concludes that, upon review of revised air quality analysis and noise analysis backup materials from the Applicants consultants, the subject proposal would not result in any significant adverse air quality or noise impacts; 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 Doe Fund submits, and the Board finds, that the subject proposal is the minimum variance necessary to afford 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. 17BSA139X, dated April 16, 2018; 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 January 18, 2018, the Waterfront and Open Space Division of the New York City Department of City Planning (“DCP”) states that they completed review of the project for consistency with the policies and intent of the New York City Waterfront Revitalization Program (“WRP”) under WRP # 17-184 and finds that the action will not substantially hinder the achievement of any WRP policy and is, thereby, consistent with those policies; and

WHEREAS, by letter dated March 28, 2018, as part of its hazardous materials impact review, DEP states that they find the March 2018 Work Plan and Health and Safety Plan (“HASP”) submitted by the Applicant’s consultants acceptable and requests that, upon completion of investigation activities, the Applicant submit a detailed Phase II report—including, at a minimum, an executive

summary, narrative of the field activities, laboratory data and conclusions, comparison of indoor and outdoor air analytical results to New York State Department of Health’s October 2006 Guidance for Evaluating Soil Vapor Intrusion in the State of New York, updated site plans depicting sample locations and remedial recommendations, if warranted—to DEP for review and approval; and

WHEREAS, the Applicant proposed to complete air quality testing once the building is fully enclosed and the HVAC systems are fully functional and submit the results to DEP prior to obtaining any certificate of occupancy, including a temporary CO; and

WHEREAS, by communication dated March 29, 2018, DEP states that it agrees with the proposal to conduct air quality testing once the building is fully enclosed and has no objection to such testing being a condition of this approval; and

WHEREAS, by letter April 12, 2018, DEP states that the proposed project would not result in any significant air quality and noise impacts as outlined in the air quality and noise analyses found in the EAS; 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 conversion of an existing building into a Use Group 3A non-profit institution with sleeping accommodations, contrary to ZR § 42-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received January 4, 2018”-Eight (8) sheets and “April 3, 2018”-One (1) sheet; and *on further condition*:

THAT air quality testing shall be conducted once the building is fully enclosed and the HVAC systems are fully functional according to the March 2018 Work Plan and HASP;

THAT the Phase II report be submitted to DEP for review and approval prior to obtaining any certificate of occupancy, including a temporary CO;

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

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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 17, 2018.

2017-206-BZ

CEQR #17-BSA-139X

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

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

THE RESOLUTION –

WHEREAS, the decisions of the Department of Buildings (“DOB”), dated June 5, 2017, acting on Application No. 220151671 reads in pertinent part:

ZR 42-10: Proposed off[-]street parking accessory for UG 3A non[-]profit with sleeping accommodations in a Manufacturing district M1-1, does not conform to the use regulations of ZR 42-10 of the Zoning Resolution and must be referred to the BSA; 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 an open parking area accessory to a Use Group (“UG”) 3A non-profit institution with sleeping accommodations, contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on January 23, 2018, after due notice by publication in *The City Record*, with continued hearings on February 27, 2018, and April 10, 2018, and then to decision on April 17, 2018; and

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

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

WHEREAS, New York City Council Member Andrew Cohen submitted a letter in support of the application; and

WHEREAS, the Board was also in receipt of three form objections in opposition to the proposal, citing a decline in safety and cleanliness of the area due to residents of an existing homeless shelter on Bronx Boulevard and a preference that the subject site be developed as a community center for neighborhood services or affordable housing; and

WHEREAS, the subject site is located on the west side of Bronx Boulevard, between Nereid Avenue and East 239th Street, in an M1-1 zoning district, in the Bronx; and

WHEREAS, the site has approximately 80 feet of frontage along Bronx Boulevard, a depth of 140 feet, 11,224 square feet of lot area and was previously used as a parking lot accessory to the Sgt. Joseph E. Muller United States Army Reserve Center (the “Muller Building”), located at 555 Nereid Avenue (Block 5065, Lot 1; the “Muller Building Site”; together with the subject site, the “Muller Sites”); and

WHEREAS, this application is filed on behalf of United Services Housing Development Fund Corporation, a wholly owned subsidiary of The Doe Fund, a non-profit organization that provides transitional work programs, educational and vocational training, individual counseling and supportive housing services to individuals with histories of homelessness, incarceration and substance abuse (the “Applicant” or “Doe Fund”); and

WHEREAS, the Applicant proposes to develop the subject site with an open parking area with 23 spaces accessory to a UG 3A non-profit institution with sleeping accommodations; and

WHEREAS, at the subject site, such use is not permitted pursuant to ZR § 42-10; and

WHEREAS, accordingly, the Applicant seeks the subject relief; and

WHEREAS, the Applicant filed a separate application, under BSA Cal. No. 2017-205-BZ, for a variance to permit the conversion of the Muller Building into a UG 3A non-profit institution with sleeping accommodations to provide permanent supportive housing for formerly homeless adults, to which the subject site will be accessory; and

WHEREAS, the two cases were heard together, but separate resolutions have been issued for each under their respective calendar numbers; and

WHEREAS, the Doe Fund states that a series of legal limitations on the use of the Muller Sites constitute a unique physical condition sufficient to satisfy ZR § 72-21(a) and additionally asserts that practical difficulties and unnecessary hardship have resulted from their reliance, in good faith, on the City of New York (the “City”) committing financial support to the Doe Fund for a conversion of the Muller Sites to as-of-right UG 5 transient accommodations (on the Muller Building Site) with accessory off-street parking located on the subject site and the City’s subsequent reversal on that commitment; and

WHEREAS, the Doe Fund entered into a legally binding agreement with the City and the New York City

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Department of Homeless Services (“DHS”), effective February 16, 2012, for the redevelopment of the Muller Sites under the Defense Base Closure and Realignment Act of 1990 and the Base Closure Community Redevelopment and Homeless Assistance Act of 1994 (the “LBA”); and

WHEREAS, the Doe Fund also entered into an operating agreement with DHS, dated February 16, 2012 (the “DHS Contract”), to redevelop the Muller Sites with a transitional residence for at least 200 homeless adults and operate and maintain the transitional residence by providing, among other things, transitional housing and support services including assessment and orientation, transitional housing, education and independent living skills preparation, permanency services, substance abuse treatment, financial management, personal responsibility, health care and recreation (“Homeless Services”); and

WHEREAS, the LBA required, among other things, that the City request that the Department of the Army, one of three military departments within the United States Department of Defense, convey the Muller Sites to the Doe Fund by quitclaim deed at no cost to the Doe Fund; that the Doe Fund deliver Homeless Services in accordance with the DHS Contract; that the Doe Fund not change the scope of the services provided at the site without the express written consent of the City, which would not be unreasonably withheld or delayed; and that the Doe Fund execute and cause to be recorded a restrictive covenant against the Muller Building Site in favor of the City restricting its future use or disposition to “a facility to be used to provide services for homeless adults or such other Homeless Assistance (defined below)¹ use as reasonably determined by the City for a period of thirty (30) years from the date of execution of the Deed”; and

WHEREAS, the Muller Sites were transferred to the Applicant from the federal government, acting by and through the United States Army Corps of Engineers, by quitclaim deed, executed September 18, 2013; and

WHEREAS, on September 20, 2013, in consideration of the funds to be provided by the City pursuant to the DHS Contract, the Doe Fund executed a Declaration of Restrictive Covenant on the Muller Building Site in favor of the City restricting the use and maintenance of the property “as a facility to be used to provide services for homeless adults, or such other Homeless Assistance use” for thirty

¹ In a later section, the LBA defines “Homeless Assistance” as “any eligible activity, program or service that has been delineated or defined by the following laws and regulations: 24 C.F.R. §§ 576.21, 583.100, 582.100, 582.325 (Emergency Shelter Grants, Supportive Housing and Shelter Plus Care Programs); Section IV.A. of the Notice of Allocations, Application Procedures, and Requirements for the Homelessness Prevention and Rapid Re-Housing Program Grantees under the American Recovery and Reinvestment Act of 2009, or any other federal, state or local law program designed to prevent homelessness or transition those who are homeless into permanent housing.”

(30) years (the “Covenant”); and

WHEREAS, the Covenant was subsequently recorded against the Muller Building Site, as required by the LBA, on December 29, 2014; and

WHEREAS, DOB approved Job No. 220211893 “for the conversion of an existing building to a mixed use transient hotel” at the Muller Building Site on December 5, 2014, and issued Alteration Type I Permit No. 220211893-01-AL on March 19, 2015; and

WHEREAS, the Doe Fund states that they utilized public funding provided pursuant to the DHS Contract for the renovation of the Muller Building to a UG 5 transient occupancy use, a use permitted as-of-right at the Muller Building Site, and that construction was commenced shortly after the issuance of DOB permits; and

WHEREAS, in or around February 2016, the Applicant states that the City revoked public funding for the conversion, by which point more than \$9 million, approximately 63 percent of the total anticipated construction costs, had been expended at the Muller Sites; and

WHEREAS, by notice dated November 4, 2016, the New York City Department of Social Services (“DSS”) informed the Doe Fund of the City’s election to terminate the DHS Contract; a subsequent letter from DSS, dated May 25, 2017, explained that funding was terminated “because the City of New York is no longer providing funding for The Doe Fund’s operation of a *transitional* shelter (Use Group 5 transient occupancy use)” (emphasis added) and stated that the City, instead, intended “to provide funding for the construction and operation of supportive housing, once Doe submits technically viable proposals for such funding”; and

WHEREAS, the supportive, non-transient housing use referenced in the 2017 letter from DSS, for which it was stated the City alternatively intended to provide funding, and accessory uses thereto have never been permitted as-of-right at the Muller Sites, which, since December 5, 1961, have been located within an M1-1 zoning district; and

WHEREAS, the Doe Fund submits that the organization primarily relies on public funding sources for its housing programs and that it cannot complete the redevelopment of the Muller Sites or maintain future operations because the City has changed its policy with regards to providing funding for an as-of-right conversion to transient occupancy; further, the Doe Fund states that it cannot fulfill its legal obligations under the Covenant, which was entered into, in part, on reliance on the City’s promise to provide the necessary funding and requires the Doe Fund to provide Homeless Services without seeking the relief sought herein and obtaining a zoning waiver to permit off-street parking accessory to the UG 3A use at the subject site; and

WHEREAS, the Doe Fund represents that since the termination of the DHS Contract, it has sought capital funding for the subject proposal, including from the New York City Department of Housing Preservation and Development (“HPD”), and was issued an emergency loan

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from the Fund for the City of New York, sponsored by HPD, to support the Doe Fund’s operating expenses and fund pre-development activities associated with the development of the Muller Sites; and

WHEREAS, by letter dated February 13, 2018, HPD states that it received a proposal from the Applicant requesting funds for the subject development and that it is the intention of HPD to provide development financing subject to availability for this project if it meets certain guidelines and requirements; 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, for instance, 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 uniqueness finding set forth in ZR § 72-21(a); and

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, 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 approvals were obtained and later revoked based on a circumstance that existed when the approvals were first granted; (2) that the approval process included an inquiry into the issue that would subsequently be the basis for the reversal of the approval; (3) that the owner could not have anticipated the reversal of the approval in light of municipal assurances to the contrary; and (4) that construction was performed and expenditures were made subsequent to the issuance of the approvals; and

WHEREAS, in this case, (1) Doe Fund entered into agreements with the City, pursuant to which the Covenant was recorded against the Muller Building Site restricting its use to Homeless Services for thirty (30) years, and the City not only subsequently terminated the funding to be provided under those agreements, rendering the Doe Fund unable to comply with the Covenant with an as-of-right plan to redevelop the Muller Sites for transient occupancy with off-street parking accessory thereto, but also agreed to provide funding for a redevelopment that could not be accomplished as-of-right and would require a variance; (2) the LBA, to which the City was a party, made explicit reference to the DHS Contract, which made the Doe Fund responsible for “renovating the [Muller Building] into a *transitional* residence” (emphasis added) “maintaining the *transitional* residence” (emphasis added) and “providing *transitional* housing and support services” (emphasis added), thus, the City was on notice that the Muller Sites were to be redeveloped as a UG 5 transient occupancy with accessory off-street parking use; (3) the Doe Fund, having recorded the Covenant, obtained DOB permits and commenced construction, could not have anticipated the City terminating the DHS Contract and its obligations to provide funding, on which the Doe Fund so heavily relied; and (4) more than \$9 million was expended on converting the Muller Sites subsequent to the execution of the LBA and DHS Contract and the Doe Fund’s recordation of the Covenant; and

WHEREAS, the Doe Fund represents that the City’s reversal with regards to providing funding for redevelopment of the Muller Sites for transient occupancy necessitates a near complete demolition of the construction heretofore completed because the proposed UG 3A use requires entirely new layouts in the Muller Building; specifically, whereas the UG 5 conversion was comprised of common sleeping rooms, bathrooms and lounge areas on the second and third floors and offices, meeting rooms, a lecture hall and a common dining area with a commercial kitchen on the first floor and in the basement, the proposal for UG 3A use necessitates construction of individual studio apartments, each with their own kitchens and bathrooms, on all four floors of the Muller Building with a multipurpose room and counseling offices on the first floor, and the only completed room that can be retained is a lecture hall

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constructed in the basement; and

WHEREAS, in response to Board inquiry as to whether housing is a necessary component of the redevelopment of the Muller Sites, the Doe Fund asserts that redevelopment of the Muller Building without a housing component is not viable because there is neither public nor political support, and therefore no public funding available, for such a facility; and

WHEREAS, in response to Board inquiry as to whether the proposed UG 3A and accessory off-street parking use of the Muller Sites is permitted pursuant to the Covenant and LBA, New York City Law Department submitted a letter, dated February 16, 2018, stating that both the LBA and the Covenant permit the property “to be used to provide supportive housing as currently contemplated HPD and Doe Fund”; and

WHEREAS, accordingly, the Board finds that the applicant has made all of the findings required to establish their good faith reliance on the execution of the LBA and DHS Contract—specifically, their recording of the Covenant in satisfaction of requirements set forth in the LBA and over \$9 million in construction costs—in satisfaction of ZR § 72-21(a); and

WHEREAS, the Doe Fund is a non-profit institution and the variance is needed to further its non-profit mission and thus, 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 Doe Fund submits 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, that the proposed open parking provided at the site is consistent with its historic use as parking accessory to the Army Reserve Center and that the context and impacts of parking accessory to the proposed UG 3A use is identical to the context and impacts of parking accessory to a UG 5, or other as-of-right, use; and

WHEREAS, additionally, there are several parking lots located on the subject block of Bronx Boulevard, including one directly across the street from 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 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 Doe Fund submits, and the Board finds, that the subject proposal is the minimum variance necessary to afford 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. 17BSA139X., dated April 16, 2018;; 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 January 18, 2018, the Waterfront and Open Space Division of the New York City Department of City Planning (“DCP”) states that they completed review of the project for consistency with the policies and intent of the New York City Waterfront Revitalization Program (“WRP”) under WRP # 17-184 and finds that the action will not substantially hinder the achievement of any WRP policy and is, thereby, consistent with those policies; and

WHEREAS, by letter dated March 28, 2018, DEP states that they find the March 2018 Work Plan and Health and Safety Plan (“HASP”) submitted by the Applicant’s consultants acceptable and requests that, upon completion of investigation activities, the Applicant submit a detailed Phase II report—including, at a minimum, an executive summary, narrative of the field activities, laboratory data and conclusions, comparison of indoor and outdoor air analytical results to New York State Department of Health’s October 2006 Guidance for Evaluating Soil Vapor Intrusion in the State of New York, updated site plans depicting sample locations and remedial recommendations, if warranted—to DEP for review and approval; and

WHEREAS, the Applicant proposed to complete air quality testing once the building is fully enclosed and the HVAC systems are fully functional and submit the results to DEP prior to obtaining any certificate of occupancy, including a temporary CO; and

WHEREAS, by communication dated March 29, 2018, as part of its hazardous materials impact review, DEP states that it agrees with the proposal to conduct air quality testing once the building is fully enclosed and has no objection to such testing being a condition of this approval; and

WHEREAS, by letter dated April 12, 2018, the New York City Department of Environmental Protection (“DEP”) concludes that, upon review of revised air quality analysis and noise analysis backup materials from the Applicants consultants, the subject proposal would not result in any significant adverse air quality or noise impacts; and

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

WHEREAS, by letter April 12, 2018, DEP states that the proposed project would not result in any significant air quality and noise impacts as outlined in the air quality and noise analyses found in the EAS; 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 in an M1-1 zoning district, the development of an open parking facility accessory to a Use Group 3A non-profit institution with sleeping accommodations, contrary to ZR § 42-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received January 4, 2018”-Eight (8) sheets and “April 3, 2018”-One (1) sheet; and *on further condition*:

THAT air quality testing shall be conducted once the building is fully enclosed and the HVAC systems are fully functional according to the March 2018 Work Plan and HASP;

THAT the Phase II report be submitted to DEP for review and approval prior to obtaining any certificate of occupancy, including a temporary CO;

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, April 17, 2018.

2017-216-BZ

CEQR #17-BSA-149X

APPLICANT – Sheldon Lobel, P.C., for Safeguard Chemical Corp., owner; Civic Builders, Inc., lessee.

SUBJECT – Application July 16, 2017 – 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.

PREMISES AFFECTED – 411 Wales Avenue, Block 2574, Lot 82, 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, Commissioner Sheta and Commissioner Scibetta.....5

Negative:0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated January 25, 2018, acting on Alteration Application No. 220595005, reads in pertinent part:

“The proposed Use Group 3 School is not permitted . . . , contrary to ZR 42-12”; and

WHEREAS, this is an application under ZR §§ 73-19 and 73-03 to permit, in an M1-2 zoning district, the operation of a school, contrary to ZR § 42-12; and

WHEREAS, this application has been filed in conjunction with Neighborhood Charter School: Bronx (the “School”); and

WHEREAS, a public hearing was held on this application on March 20, 2018, after due notice by publication in *The City Record*, and then to decision on April 17, 2018; and

WHEREAS, Commissioner Ottley-Brown performed an inspection of the site and surrounding neighborhood; and

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

WHEREAS, the subject site is located on the south side of East 144th Street, between Concord Avenue and Wales Avenue, in an M1-2 zoning district, in the Bronx; and

WHEREAS, the subject site has approximately 200 feet of frontage along East 144th Street, 63 feet of frontage along Concord Avenue, 100 feet of frontage along Wales Avenue, 32,498 square feet of lot area and is occupied by a two-story, with cellar, manufacturing building; and

WHEREAS, ZR § 73-19 provides:

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 *street* 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.

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 preliminary 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, as to the threshold issue of whether the School qualifies as a school for purposes of ZR § 73-19, the applicant states that the School meets the ZR § 12-10 definition of “school” 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, further, the applicant submitted copies of the School’s application, the School’s New York State Board of Regents Authorization and the School’s Certificate of Existence; and

WHEREAS, with respect to ZR § 73-19(a), an applicant must demonstrate its 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 states that, at full capacity, the School would serve 620 students at the elementary and middle school level with approximately 102 staff members; and

WHEREAS, the applicant submits that the School has conducted an exhaustive search for potential sites using the following criteria: availability for rent; affordability; providing an existing, stand-alone building of suitable size that can be renovated to provide adequate educational

facilities; and proximity to public transportation; and

WHEREAS, additionally, the applicant considered other properties as follows: 415 Concord Avenue (property too small), 500 East 132nd Street (school space above industrial warehouse), 441 Southern Boulevard (property too small) and 798 Southern Boulevard (not within neighborhood to be served); 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 states that the subject building is approximately one block from an R7-1 zoning district boundary line and that the subject site is within 400 feet of said R7-1 zoning district, and notes that school uses are permitted as of right in R7-1 zoning districts; and

WHEREAS, the applicant submitted a radius diagram which reflects that the subject site is adjacent to an R7-1 zoning district; 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 submits that a composite window-wall sound attenuation level of 28 dBA will be required to mitigate noise sources and that the newly insulated exterior walls would provide an STC rating above 40 with double-paned windows that would meet the sound attenuation level of 28 dBA; and

WHEREAS, the Board finds that the conditions surrounding the site and the Proposed Building’s use will adequately separate the proposed school use 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 submits that the School would serve approximately 620 students, who would arrive primarily by school bus or by public transportation or walking with some dropped off by private automobile; and

WHEREAS, the applicant states that approximately nine school buses would carry a total of approximately 310 students and that, to avoid traffic congestion related to dropping off and picking up students, two “no standing” zones are proposed to ensure that movement of through traffic would not be obstructed and that students arriving and

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department with caregivers by private vehicles would not cross the street mid-block; and

WHEREAS, the applicant states that the “no standing” zone along East 144th Street would be designated for school buses to provide elementary students direct and safe access to the School’s main entrance and that the Wales Avenue “no standing” zone would allow for private car drop offs and pickups and would replace two existing curb cuts; and

WHEREAS, the applicant further submitted an operational plan detailing a protocol for dropping off and pickup up students, whereby an administrator would be stationed in front of the main entrance during arrival to ensure children arrive and depart safely from the subject building, team leaders equipped with walkie-talkies would stand on Wales Avenue and East 144th Street to oversee the proposed “no standing” zones and escort students into the building and crossing guards would be located at adjacent intersections; and

WHEREAS, the operational plan clarifies that pedestrians would likely arrive from the north or west of the subject site along a designated safe pedestrian route, that the nearest subway station is approximately one block east of the subject site, that most arrivals by public bus would walk from the transit stops to the west; and

WHEREAS, the applicant states that, with the School’s operational plan, the School will provide two “no standing” zones, adequate ingress and egress, bus staging, staggered arrivals and departures and pedestrian safety measures, such as escorts to oversee arrivals and departures as well as crossing guards, to ensure that the School would have minimal transportation-related impacts; and

WHEREAS, the Board referred the application to the School Safety Engineering Office of the Department of Transportation (“DOT”); and

WHEREAS, by letter dated March 15, 2017, DOT states that the existing curb cuts along the School’s Wales Avenue frontage should be removed as they will no longer be necessary; and

WHEREAS, the Board finds that the abovementioned measures will control traffic so as to protect children going to and from the proposed school; and

WHEREAS, therefore, the Board finds that the requirements of ZR § 73-19(d) are met; and

WHEREAS, in response to the Board’s comments at hearing, the applicant clarified that no students would be arriving after 7:35 a.m.; 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 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. 17BSA149X, dated April 11, 2018; 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 letters dated May 25, 2017, and January 9, 2018, the New York City Landmarks Preservation Commission states that the project site is not a location of architectural or archaeological significance; and

WHEREAS, by letter dated March 6, 2018, the Department of Environmental Protection (“DEP”) states that based on the submitted backup materials and analysis, it was determined that the proposed project would not result in potential significant adverse noise impacts; and

WHEREAS, by letter dated April 13, 2018, DOT states that, though no safety or operational improvements were identified under Level 1 and Level 2 screening assessments for the projected pedestrian and vehicular trips, the applicant will perform a follow-up traffic and pedestrian monitoring plan within six (6) months of the School’s opening and within six (6) months of full occupancy to verify the travel demand assumptions used to project pedestrian and vehicular trips, assess pedestrian safety and circulation and recommend improvement measures, if warranted; that the applicant would submit for DOT’s review and approval a scope-of-work for the traffic monitoring plan including travel demand and mode choice surveys, pedestrian and traffic data collection and analysis and a signal warrant analysis, if warranted; that data collection would include 24-hour automatic traffic recorder counts, manual turning movement counts, vehicular classification counts, pedestrian counts including at uncontrolled and mid-block crossings, intersection geometry including the verification of field signal timing and field observations including queue lengths; that the applicant will conduct pedestrian and vehicular levels-of-service analyses and safety assessment and identify improvement measures, if warranted; that the applicant will be responsible for all costs associated with the monitoring plan as well as any subsequent measures requiring capital improvements including traffic signals and curb extensions; that the applicant will submit all of the required drawings as per AASHTO and DOT specifications and requirements for DOT review and approval; and that DOT will participate in the review process relating to all future modifications to geometric alignment, striping and signage during the preliminary and final design phases; and

WHEREAS, by letter dated March 21, 2018, DEP

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concur with the March 12, 2018, memorandum's recommendation prepared on behalf of the applicant that an (E) designation for hazardous materials be placed on the zoning map pursuant to ZR § 11-15 for the subject site and states that the (E) designation shall ensure that testing and mitigation will be provided as necessary before any further development or soil disturbance; and

WHEREAS, further hazardous materials assessment should be coordinated through the Office of Environmental Remediation; and

WHEREAS, by letter dated April 13, 2018, DEP states that, with the proposed (E) designation language restricting operable windows at certain locations of the subject building, the project would not result in a potential significant air quality impact; and

WHEREAS, an (E) designation (No. 475) has been assigned to 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, the Board finds that the evidence in the record supports the findings required to be made under ZR §§ 73-19 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion.

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 *permit*, in an M1-2 zoning district, the operation of a school, contrary to ZR § 42-12; *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked "Received March 29, 2018"-Eleven (11) sheets; and *on further condition*:

THAT the second floor, until occupied by Neighborhood Charter School: Bronx, shall only be occupied by a middle school or high school;

THAT drop off times for school buses shall only be from 7:00 a.m. to 7:35 a.m. and pickup times for school buses shall only be from 3:50 p.m. to 4:15 p.m.;

THAT intersection mitigation measures shall be implemented as follows: at the intersection of Wales Avenue and Saint Mary's Street, there shall be a crossing guard to correspond with peak arrival and departure hours, there shall be, to the extent deemed appropriate by the Department of Transportation, two stop signs to control vehicles on Wales Avenue and there shall be an enhanced crosswalk painted on the northern leg of the intersections; at the intersection of Wales Avenue and East 144th Street, there shall be a crossing guard employed to correspond with peak arrival and departure hours; at the intersection of Concord Avenue and

East 144th Street, there shall be a crossing guard employed, there shall be, to the extent deemed appropriate by the Department of Transportation, two stop signs to control vehicles traveling on East 144th Street and an enhanced crosswalk on the eastern leg of the intersection;

THAT monitoring of level of service shall occur prior to occupancy of building and shall include other monitoring as required by the Department of Transportation as follows: the applicant shall perform a follow-up traffic and pedestrian monitoring plan within six (6) months of the School's opening and within six (6) months of full occupancy to verify the travel demand assumptions used to project pedestrian and vehicular trips, assess pedestrian safety and circulation and recommend improvement measures, if warranted; that the applicant shall submit for DOT's review and approval a scope-of-work for the traffic monitoring plan including travel demand and mode choice surveys, pedestrian and traffic data collection and analysis and a signal warrant analysis, if warranted; that data collection shall include 24-hour automatic traffic recorder counts, manual turning movement counts, vehicular classification counts, pedestrian counts including at uncontrolled and mid-block crossings, intersection geometry including the verification of field signal timing and field observations including queue lengths; that the applicant shall conduct pedestrian and vehicular levels-of-service analyses and safety assessment and identify improvement measures, if warranted; that the applicant shall be responsible for all costs associated with the monitoring plan as well as any subsequent measures requiring capital improvements including traffic signals and curb extensions; that the applicant shall submit all of the required drawings as per AASHTO and DOT specifications and requirements for DOT review and approval; and that DOT will participate in the review process relating to all future modifications to geometric alignment, striping and signage during the preliminary and final design phases;

THAT sub-slab, vapor-barrier and closed-window conditions shall be implemented as required by the Office of Environmental Remediation in accordance with (E) designation requirements;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy shall be obtained within four (4) years, by April 17, 2022;

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

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17, 2018.

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 June 19, 2018, at 10 A.M., for deferred decision.

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 76th Road, Block 6686, Lot 1, Borough of Queens.

COMMUNITY BOARD #8Q

ACTION OF THE BOARD – Laid over to June 26, 2018, at 10 A.M., for adjourned hearing.

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 45th Avenue. Block 5538, Lot 30. Borough of Queens.

COMMUNITY BOARD #11Q

ACTION OF THE BOARD – Laid over to June 26, 2018, at 10 A.M., for adjourned hearing.

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 62nd Street, Block 5734,

Lot 35, Borough of Brooklyn.

COMMUNITY BOARD #11BK

ACTION OF THE BOARD – Laid over to June 5, 2018, at 10 A.M., for continued hearing.

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 62nd Street, Block 5734, Lot 45, Borough of Brooklyn.

COMMUNITY BOARD #11BK

ACTION OF THE BOARD – Laid over to June 5, 2018, at 10 A.M., for continued hearing.

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

THE VOTE TO CLOSE HEARING –

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

ACTION OF THE BOARD – Laid over to May 15, 2018, at 10 A.M., for decision, hearing closed.

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 June 19, 2018, at 10 A.M., for continued hearing.

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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

ACTION OF THE BOARD – Laid over to June 19, 2018, at 10 A.M., for continued hearing.

2016-4468-BZ

APPLICANT – Bryan Cave LLP, for 27 East 61st 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 61st Street, Block 1376, Lot 24, Borough of Manhattan.

COMMUNITY BOARD #8M

ACTION OF THE BOARD – Laid over to June 26, 2018, at 10 A.M., for continued hearing.

2017-221-BZ

APPLICANT – Eric Palatnik, P.C., for Spartan Petroleum Corp., owner.

SUBJECT – Application June 30, 2017 – 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.

PREMISES AFFECTED – 1781 Bay Ridge Parkway, Block 6215, Lot 47, Borough of Brooklyn.

COMMUNITY BOARD #11BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to June 5, 2018, at 10 A.M., for decision, hearing closed.

2017-228-BZ

APPLICANT – Fox Rothschild LLP, for Charles B. Wang Community Health Center, Inc., owner.

SUBJECT – Application July 17, 2017 – 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.

PREMISES AFFECTED – 131-66 40th Road, 131-68 40th Road, 40-46 College Point Boulevard, Block 5060, Lot(s) 37, 42, Borough of Queens.

COMMUNITY BOARD #7Q

ACTION OF THE BOARD – Laid over to June 26, 2018, at 10 A.M., for adjourned hearing.

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 June 26, 2018, at 10 A.M., for continued hearing.

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**REGULAR MEETING
TUESDAY AFTERNOON, APRIL 17, 2018
1:00 P.M.**

Present: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.

ZONING CALENDAR

2017-319-BZ

CEQR #18-BSA-075K

APPLICANT – Akerman, LLP, for Kingsway Realty LLC, owner; 1601 Kings Highway Fitness Group, LLC, lessee. SUBJECT – Application December 15, 2017 – Special Permit (§73-36) to permit the operation of a Physical Cultural Establishment (*Planet Fitness*) on portions of the ground, second and third floors of a new mixed-use building contrary to ZR §32-10. C4-4A zoning district.

PREMISES AFFECTED – 1601 Kings Highway, Block 6779, Lot 22, 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 Sheta and Commissioner Scibetta.....5

Negative:0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated November 16, 2017, acting on New Building Application No. 320992155, reads in pertinent part:

“The proposed physical culture establishment [(‘PCE’)] is not permitted as-of-right . . . per ZR Section 32-10”; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to permit, in a C4-4A zoning district, the operation of a physical culture establishment on portions of the first, second and third floors of the subject building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on April 17, 2018, after due notice by publication in *The City Record*, and then to decision on April 17, 2018; and

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

WHEREAS, the subject site is located on the northeast corner of Kings Highway and East 16th Street, in a C4-4A zoning district, in Brooklyn; and

WHEREAS, the subject site has approximately 179 feet of frontage along Kings Highway, 108 feet of frontage along East 16th Street, 17,880 square feet of lot area and is being developed with a new five-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

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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 16,539 square feet of floor space as follows: 2,337 square feet of floor area on the first floor, including a reception area, mechanical massage chairs, spa, tanning and mechanical hydro massage, 1,613 square feet of floor area on the second floor, used as exercise areas, and 12,589 square feet of floor area on the third floor, including exercise areas with cardiovascular equipment and weight-lifting areas and locker rooms; and

WHEREAS, the PCE will operate as Planet Fitness, with the following hours of operation: 24 hours per day, seven days per week; and

WHEREAS, the applicant represents that the PCE use is consistent with the vibrant commercial area in which it is located, that the PCE use will be fully contained within the envelope of a new commercial building and that there are a variety of retail uses, offices, and multiple dwellings in the vicinity; and

WHEREAS, in addition, the applicant submits that sound attenuation measures, including demising walls insulated with flexible fiberglass and acoustic rubber-tile flooring, will be provided within the space so as to not disturb other tenants in the building; and

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

WHEREAS, the applicant states that the PCE will provide classes and instruction 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 the PCE will be 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—will be installed in the entire PCE space; and

WHEREAS, in response to the Board's comments at hearing, the applicant clarified the above fire safety measures on the plans, explained that the massage chairs offered in the PCE will be mechanical and that no massages will be offered on-site by persons and represents that the subject building will be entirely commercial; and

WHEREAS, the applicant also states that signage at the subject site will be illuminated, not flashing; 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 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. 18-BSA-075K, dated December 18, 2017; and

WHEREAS, the Board finds that the evidence in the record supports the findings required to be made under ZR §§ 73-36 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion.

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 §§ 73-36 and 73-03 to *permit*, in a C4-4A zoning district, the operation

of a physical culture establishment on portions of the first, second and third floors of the subject building, contrary to ZR § 32-10; *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked "Received April 17, 2018"-Nine (9) sheets; and *on further condition*:

THAT this grant shall be limited to a term of ten (10) years, expiring April 17, 2028;

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,

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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 four (4) years, by April 17, 2022;

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 17, 2018.

2018-43-BZ

CEQR #18-BSA-114Q

APPLICANT – NYC Mayor's Office of Housing Recovery Operations (HRO)

SUBJECT – Application March 26, 2018 – 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-A zoning district.

PREMISES AFFECTED – 47 West 14th Road, Block 15318, Lot 66. 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 Sheta and Commissioner Scibetta.....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, in an R3A zoning district and the Special Coastal Risk District, the development of a detached two-story residence in compliance with flood-resistant construction standards that does not comply with the zoning requirements for waterfront yards and visual mitigation elements, contrary to ZR §§ 64-A332, 64-A353 and 64-61; 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 north side of West 14 Road, west of Cross Bay Boulevard, in an R3A zoning district and the Special Coastal Risk District, in Queens; and

WHEREAS, the subject site has approximately 25 feet of frontage along West 14 Road, 100 feet of depth, 2,500 square feet of lot area and is occupied by a detached two-story residence; and

WHEREAS, the Board has exercised jurisdiction over the subject site since March 8, 2016, when, under BSA Cal. No. 2016-3615-A, the Board granted a waiver of General City Law § 35 to permit construction of a building 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 exceeding 32 feet; 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

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(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, the applicant now seeks a special permit, pursuant to ZR § 64-92, to allow the development of a detached two-story residence with a waterfront yard with a depth of 12'-10" and one visual mitigation element; and

WHEREAS, the applicant represents that, at the subject site, a waterfront yard must have a minimum depth of 18'-6" under ZR §§ 64-A332 and 64-A353, and two visual mitigation elements are required under ZR § 64-61; and

WHEREAS, in accordance with ZR § 64-92(a), the need to reconstruct the existing residence creates practical difficulties in complying with flood-resistant construction standards without the modification of the regulations for waterfront yards and visual mitigation elements, and 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, the applicant states that 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 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. 18BSA114Q, dated March 26, 2018; and

WHEREAS, the Board finds that the evidence in the record supports the findings required to be made under ZR § 64-92 and that the applicant has substantiated a basis to warrant exercise of discretion.

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 § 64-92 to *permit*, in an R3A zoning district and the Special Coastal Risk District, the development of a detached two-story residence in compliance with flood-resistant construction standards that does not comply with the zoning requirements for waterfront yards and visual mitigation elements, contrary to ZR §§ 64-A332, 64-A353 and 64-61; *on condition* that all work and site conditions shall conform to drawings filed with this application marked "Received April 16, 2018" one (1) sheet and "Received March 26, 2018"-Eight (8) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: a waterfront yard with a minimum depth of 12'-10" and one (1) visual mitigation element;

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

THAT DOB and related agency application(s) filed in connection with the authorized use or bulk shall be signed off by DOB and all other relevant agencies within four (4) years, by April 17, 2022;

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 plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, April 17, 2018.

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2018-44-BZ

CEQR #18-BSA-115Q

APPLICANT – NYC Mayor's Office of Housing Recovery Operations (HRO)

SUBJECT – Application March 26, 2018 – 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 – 643 Beach 66th Street, Block 16027, Lot 25. 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 Sheta and Commissioner Scibetta.....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, in an R4-1 zoning district, the development of a detached two-story two-family 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, 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 southwest corner of Beach 66th Street and De Costa Avenue, in an R4-1 zoning district, in Queens; and

WHEREAS, the subject site has approximately 33 feet of frontage along Beach 66th Street, 100 feet of frontage along De Costa Avenue, 3,350 square feet of lot area and is occupied by a detached two-story two-family residence ; 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, 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 residence with a front yard measuring approximately 6'-6" along De Costa Avenue; and

WHEREAS, at the subject site, a front yard of at least 10 feet is required pursuant to ZR § 23-45; and

WHEREAS, in accordance with ZR § 64-92(a), the narrowness of the subject lot creates practical difficulties in complying with flood-resistant construction standards without the modification of the front yard requirements, and 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 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 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 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. 18BSA115Q, dated March 26, 2018; and

WHEREAS, the Board finds that the evidence in the record supports the findings required to be made under ZR § 64-92 and that the applicant has substantiated a basis to warrant exercise of discretion.

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 § 64-92 to *permit*, in an R4-1 zoning district, the development of a detached two-story two-family 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 and site conditions shall conform to drawings filed with this application marked "Received March 26, 2018"-Ten (10) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: a front yard with a minimum depth of 6'-6" along De Costa Avenue, as illustrated on the Board-approved plans;

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

THAT DOB and related agency application(s) filed in connection with the authorized use or bulk shall be signed off by DOB and all other relevant agencies within four (4) years, by April 17, 2022;

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 plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, April 17, 2018.

2018-45-BZ

CEQR #18-BSA-116R

APPLICANT – NYC Mayor's Office of Housing Recovery Operations (HRO)

SUBJECT – Application March 26, 2018 – 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 – 318 Colony Avenue, Block 03889, Lot 17. 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 Sheta and Commissioner Scibetta.....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, in an R3-1 zoning district, the development of a detached two-story one-family residence in compliance with flood-resistant construction standards that does not comply with the zoning requirements for front yards, side yards, rear yards and visual mitigation elements, contrary to ZR §§ 23-45, 23-48, 64-A352, 23-461, 23-47, 64-A353 and 64-61; 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 Colony Avenue, between Lincoln Avenue and Greeley Avenue, in an R3-1 zoning district, in Staten Island; and

WHEREAS, the subject site has approximately 33 feet of frontage along Colony Avenue, 59 feet of depth, 1,953 square feet of lot area and is occupied by a detached one-story one-family residence; and

WHEREAS, the Board has exercised jurisdiction over the subject site since March 8, 2016, when, under BSA Cal. No. 2016-2805-A, the Board granted a waiver of General

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City Law (“GCL”) § 35 to permit the elevation or reconstruction of the existing one-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 exceeding 32 feet; 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, the applicant now seeks a special permit, pursuant to ZR § 64-92, to allow the development of a two-story one-family residence with a front yard with a depth of 10’-2”, side yards with widths of 3’-0” and total width of 6’-0”, a rear yard with a depth of 10’-0” and no visual mitigation elements; and

WHEREAS, at the subject site, a front yard must have a minimum depth of 15’-0” under ZR § 23-45, side yards must have minimum widths of 5’-0” under ZR § 23-461 and must total 10’-8” under ZR §§ 23-48 and 64-A352, a rear yard must have a minimum depth of 12’-0” under ZR §§ 23-47 and 64-A353 and one visual mitigation element is required under ZR § 64-61; and

WHEREAS, in accordance with ZR § 64-92(a), the need to reconstruct the existing residence creates practical difficulties in complying with flood-resistant construction standards without the modification of requirements for front yards, side yards, rear yards and visual mitigation elements because of the shallowness and narrowness of the subject site and the need to develop an accessible residence, and 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 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 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. 18BSA116R, dated March 26, 2018; and

WHEREAS, the Board finds that the evidence in the record supports the findings required to be made under ZR § 64-92 and that the applicant has substantiated a basis to warrant exercise of discretion.

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 § 64-92 to *permit*, in an R3-1 zoning district, the development of a detached two-story one-family residence in compliance with flood-resistant

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construction standards that does not comply with the zoning requirements for front yards, side yards, rear yards and visual mitigation elements, contrary to ZR §§ 23-45, 23-48, 64-A352, 23-461, 23-47, 64-A353 and 64-61; *on condition* that all work and site conditions shall conform to drawings filed with this application marked “Received April 16, 2018” one (1) sheet and “Received March 26, 2018”-Seven (7) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: the front yard shall have a minimum depth of 10’-2”, side yards shall have minimum widths of 3’-0” and a minimum total width of 6’-0” and the rear yard shall have a minimum depth of 10’-0”, as illustrated on the Board-approved plans;

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

THAT DOB and related agency application(s) filed in connection with the authorized use or bulk shall be signed off by DOB and all other relevant agencies within four (4) years, by April 17, 2022;

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 plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, April 17, 2018.

280-13-BZ

APPLICANT – Sheldon Lobel, P.C., for CA Plaza, LLC, owner.

SUBJECT – Application July 19, 2013 – Special Permit (§73-44) to permit the reduction of required parking for ambulatory diagnostic or treatment facility (Use Group 4) contrary to ZR §36-21. Special Permit (§73-36) to permit a physical culture establishment (PCE) within a portion of the proposed building. C4-2 & C4-3 zoning districts.

PREMISES AFFECTED – 36-18 Main Street, Block 4971, Lot 16, Borough of Queens.

COMMUNITY BOARD #7Q

ACTION OF THE BOARD – Laid over to June 19, 2018, at 10 A.M., for continued hearing.

2017-235-BZ

APPLICANT – Snyder & Snyder LLP on behalf of T-Mobile Northeast LLC, for 111th Avenue LLC, owner; T-Mobile Northeast LLC, lessee.

SUBJECT – Application August 9, 2017 – 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.

PREMISES AFFECTED – 111-02 Sutphin Boulevard, Block 11965, Lot 188, Borough of Queens.

COMMUNITY BOARD #12Q

ACTION OF THE BOARD – Laid over to June 26, 2018, at 10 A.M., for continued hearing.

Carlo Costanza, Executive Director

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May 11, 2018

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Tuesday, May 1, 2018**

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Affecting Calendar Numbers:

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97-07-BZ	80-16 Cooper Avenue, Queens
233-07-BZ	203 East 86 th Street, Manhattan
677-53-BZ	61-28 Fresh Meadow Lane, Queens
101-92-BZ	66-98 East Burnside Avenue, Bronx
75-95-BZ	1635 Third Avenue, Manhattan
2016-4255-BZ	4801 Ocean Avenue, Brooklyn
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2017-292-BZ	1363 East 26 th Street, Brooklyn

DOCKETS

New Case Filed Up to May 1, 2018

2018-56-BZ

83 Coleridge Street, The premises is on Coleridge Street between Hampton Avenue and Shore Boulevard, Block 08729, Lot(s) 0050, 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). R3-1 zoning district. R3-1 district.

2018-57-BZ

24 West 40th Street, located on the south side of West 40th Street between 5th and 6th Avenues, Block 00841, Lot(s) 7502, Borough of **Manhattan, Community Board: 5**. Special Permit (§73-36) to permit the operation of a physical cultural establishment (Core Power Yoga) located on the second floor of an existing building contrary to ZR §32-10. C5-3 (MID) district. C5-3 (MID) district.

2018-58-BZ

1182 Broadway, Located on the east side of Broadway, between West 28th Street and West 29th Street, Block 00830, Lot(s) 0026, Borough of **Manhattan, Community Board: 5**. Special Permit (§73-36) to permit the legalization of a Physical Cultural Establishment (AKT In-Motion) on the second floor of an existing mixed-use building contrary to ZR §42-10. M1-6 (Madison Square North Historic District) M1-6 district.

2018-59-BZ

30-30 Northern Boulevard, Premises is located on the southern side of Northern Boulevard between 41st Avenue and 40th Avenue., Block 00239, Lot(s) 0060, Borough of **Queens, Community Board: 1**. Special Permit (§73-36) to permit the legalization of a Physical Cultural Establishment (Powerhouse Gym) on a portion of the ground floor of an existing commercial building contrary ZR §42-10. M1-5 zoning district. M1-5 district.

2018-60-BZ

511 Lexington Avenue, Located southeast corner of intersection of Lexington Avenue and E. 48th Street, Block 01302, Lot(s) 0051, Borough of **Manhattan, Community Board: 6**. Special Permit (§73-36) to permit the operation of a Physical Cultural Establishment (Crunch) in portions of the cellar and first floor of an existing 27 story commercial building §32-10. C6-6 and C6-4.5 (MID) Designated as an Individual Landmark Building. C6-6 district.

2018-61-BZ

620 Degraw Street, Located on the south side of Degraw Street between 3rd and 4th Avenues, Block 00427, Lot(s) 0021, Borough of **Brooklyn, Community Board: 6**. Special Permit (§73-36) to permit the operation of a Physical Cultural Establishment (Goldfish Swim School) within a portion of the first floor of an existing building contrary to ZR §42-10. M1-2 zoning district. M1-2 district.

2018-62-BZ

73-77 Sands Street, Sole Property on Block bound by Sands, Pearl, Jay and Prospect Streets, Block 00077, Lot(s) 0001, Borough of **Brooklyn, Community Board: 2**. Special Permit (§73-19) to permit the operation of a school (UG 3) (Brooklyn Laboratory Charter School) to be located on portions of the first, the second through fifth floors and part of the twelfth floor of an existing building contrary to ZR §42-10. M1-6 zoning district. M1-6 district.

2018-63-A

30 Columbia Heights, Located on Doughty Street to the north, Columbia Heights to the east, Squibb Park to the south, and Furman Street to the west, Block 00208, Lot(s) 0002, Borough of **Brooklyn, Community Board: 2**. Interpretative Appeal of a final determination of the New York City Department of Buildings, set forth in the ZRD1 denial dated April 2, 2018 (Control No. 46921), denying a request for confirmation that existing signs are non-conforming and may be continued as accessory signs, with changes to subject matter, structural alterations, reconstruction, and replacement permitted pursuant to Article V, Chapter 2 of the New York City Zoning Resolution. M2-1 zoning district. M2-1 district.

2018-64-BZ

725 Mobile Road, The premises is on a corner lot between Mobile Road and Reads Lane., Block 15553, Lot(s) 13 & 22, Borough of **Queens, Community Board: 14**. Variance (§72-21) to permit the construction of a House of Worship (UG 4) (Kehilas Bais Yisroel) contrary to ZR §24-111 (FAR); ZR §24-521 (maximum wall height); ZR §24-35(a) (side yard regulations); ZR §24-36 (rear yard); ZR §24-34 (front yard); and ZR §§25-31 & 25-32 (parking regulations). R2X zoning district. Companion Case BSA Calendar Number: 2018-65-A R2X district.

DOCKETS

2018-65-A

725 Mobile Road, The premises is on a corner lot between Mobile Road and Reads Lane., Block 15553, Lot(s) 13 & 22, Borough of **Queens, Community Board: 14**. Proposed construction of a House of Worship located within the bed of a mapped street contrary to Article III, Section 35 of the General City Law. R2X zoning district. Companion Case BSA Calendar Number: 2018-64-BZ R2X district.

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

CALENDAR

REGULAR MEETING MAY 22, 2018, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, May 22, 2018, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

SPECIAL ORDER CALENDAR

545-56-BZ

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

SUBJECT – Application June 27, 2017 – Amendment of a previously approved variance which permitted the operation of an Automotive Service Station (UG 16B). The amendment seeks to convert the existing automotive service bay to an accessory convenience store; Extension of Time to Obtain a Certificate of Occupancy which expired on July 28, 2016; Waiver of the Board's rules. C2-4/R5D zoning district.

PREMISES AFFECTED – 2001 Williamsbridge Road aka 1131 Neil Avenue, Block 4306, Lot 20, Borough of Bronx.

COMMUNITY BOARD #11BX

60-82-BZ

APPLICANT – Eric Palatnik, P.C., for BP Products North America, owner.

SUBJECT – Application July 20, 2016 – Extension of Term (§11-411) of a previously granted variance permitting the operation of an Automotive Service Station (UG 16B) which expired on July 7, 2016. C2-3/R7X zoning district.

PREMISES AFFECTED – 60-11 Queens Boulevard, Block 1338, Lot 1, Borough of Queens.

COMMUNITY BOARD #2Q

APPEALS CALENDAR

2017-282-A

APPLICANT – Law Office of Steven Simicich, for Lera Property Holdings, LLC, owner.

SUBJECT – Application May 22, 2018 – Proposed construction of three, two family detached buildings where one of the houses will not be fronting on a mapped street contrary to General City Law 36. R3X Special South Richmond District.

PREMISES AFFECTED – 148 Sprague Avenue, Block 7867, Lot 52, Borough of Staten Island.

COMMUNITY BOARD #3SI

2017-323-A

APPLICANT – Marianne Russo, for Kadri Capri, owner.
SUBJECT – Application December 20, 2017 – Proposed development of a one-family dwelling not fronting on a mapped street contrary to General City Law §36. R1-2 zoning district.

PREMISES AFFECTED – 108 Croak Avenue, Block 692, Lot 217, Borough of Staten Island.

COMMUNITY BOARD #2SI

REGULAR MEETING MAY 22, 2018, 1:00 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, May 22, 2018, 1:00 P.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

ZONING CALENDAR

190-15-BZ

APPLICANT – Francis R. Angelino, Esq., for Carmine Limited, owner.

SUBJECT – Application August 19, 2015 – Variance (§72-21) to propose a new six-story and bulkhead mixed building with ground floor commercial use and residential use on the upper floors located partially within a R6 zoning district and a C2-6 zoning district.

PREMISES AFFECTED – 51-57 Carmine Street, Block 582, Lot 35, Borough of Manhattan.

COMMUNITY BOARD #2M

2016-4273-BZ

APPLICANT – Akerman LLP, for S & M Enterprises, owner.

SUBJECT – Application October 25, 2016 – Variance (§72-21) to permit the legalization of an existing non-conforming replacement advertising sign based upon good-faith reliance. C1-9 zoning district.

PREMISES AFFECTED – 669 Second Avenue, Block 917, Lot(s) 21, 24, 30, 32, 34, Borough of Manhattan.

COMMUNITY BOARD #6M

CALENDAR

2017-287-BZ

APPLICANT – Eric Palatnik, P.C, for Rudolf Abramov, owner.

SUBJECT – Application October 27, 2017 – 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.

PREMISES AFFECTED – 113-03 – 113-11 Springfield Boulevard, Block 11231, Lot 246, Borough of Queens.

COMMUNITY BOARD #13Q

2017-296-BZ

APPLICANT – Laurent Fromigue – Caudalie Washington St LLC, for 817-33 Washington Street, LLC, owner; Caudalie USA LLC, lessee.

SUBJECT – Application November 9, 2017 – 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.

PREMISES AFFECTED – 817-33 Washington Street, Block 644, Lot 33, Borough of Manhattan.

COMMUNITY BOARD #2M

Carlo Costanza, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, MAY 1, 2018
10:00 A.M.**

Present: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.

SPECIAL ORDER CALENDAR

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 – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....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 term of a variance, previously granted by the Board; 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 January 31, 2017, March 28, 2017, and January 30, 2018, and then to decision on May 1, 2018; 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 8, Bronx, recommends approval of this application; and

WHEREAS, the subject site is located on the east side of Bailey Avenue, between Albany Crescent, Heath Avenue and Summit Place, partially in an R4A zoning district and partially in an R6 zoning district, in the Bronx; and

WHEREAS, the site has approximately 75 feet of frontage along Bailey Avenue, 65 feet of frontage along Heath Avenue, 10,544 square feet of lot area and is occupied by a parking lot; and

WHEREAS, the Board has exercised jurisdiction over the subject site since March 26, 1962, when, under BSA Calendar Number 1966-61-BZ, the Board granted a variance

to permit the extension of an existing multiple dwelling accessory parking lot for more than five motor vehicles for a term of ten (10) years, expiring March 26, 1973, on condition that a hedge 3 feet wide be planted along the Heath Avenue front just inside the fence, that the lot be paved with clean cinders or gravel treated with a binder and rolled for proper drainage, that proper bumpers be provided around the perimeter where cars are to be parked, that no signs be used except as called for by the Department of Licenses, that if any lighting is provided it be directed to the interior of the lot away from adjacent streets and properties, that if any retaining walls are required in connection with the subject site they be constructed by the owner of the subject site at the owner’s expense to the satisfaction of the Department of Buildings and that a certificate of occupancy be obtained within one (1) year, by March 26, 1963; and

WHEREAS, on April 18, 1978, under BSA Calendar Number 1966-61-BZ, the Board amended the variance so that the parking lot for 35 passenger motor vehicles accessory to the multiple dwellings on Lots 15 and 17 be changed to a public parking lot for a term of six (6) months, expiring October 18, 1978, on condition that a full width sidewalk be installed along Bailey Avenue frontage, that upon completion of the work required the applicant submit to the Board new photographs showing that the work has been completed further and that based upon the approval of this submission the Board will extend the term of the variance for an additional five (5) years; and

WHEREAS, on July 30, 1985, under BSA Calendar Number 1966-61-BZ, the Board granted an extension of term of five (5) years, expiring December 5, 1988, on condition that the parking lot and sidewalks be maintained clean and free of weeds at all times, that the fences on Heath Avenue and Bailey Avenue be 50 percent opaque and that a new certificate of occupancy be obtained within one (1) year, by July 30, 1986; and

WHEREAS, on March 23, 1999, under the subject calendar number, the Board granted an extension of term of ten (10) years, expiring March 23, 2009, on condition that fencing and screening be provided and maintained in accordance with the Board-approved plans, that landscaping be provided and maintained in accordance with the Board-approved plans, that all lighting be positioned down and away from nearby residential uses, that the subject site be maintained clean and free of graffiti, that the above conditions appear on the certificate of occupancy and that a certificate of occupancy be obtained within one (1) year, by March 23, 2000; and

WHEREAS, the term having expired, the applicant now seeks a waiver of the Board’s Rules of Practice and Procedure to allow the late filing of this application and an extension of term; and

WHEREAS, the applicant submits that the use has been continuous since expiration and that substantial prejudice would result without a waiver of the Board’s Rules of Practice and Procedure; and

WHEREAS, in response to questions from the Board

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at hearing, the applicant provided evidence of improved site conditions, including replaced fencing, perimeter landscaping and plantings, and demonstrated that lighting is directed away from residential uses; and

WHEREAS, the applicant also submitted an operational plan detailing the mission, hours of operation, staffing, fee structure and maintenance plan for the subject site; and

WHEREAS, the applicant provided evidence that parking spaces had been repainted with parking curbs installed and that the sidewalk had been repaired; and

WHEREAS, based upon its review of the record, the Board has determined that the requested waiver of the Board's Rules of Practice and Procedure 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 *wave* the Rules of Practice and Procedure and *reopen* and *amend* the resolution, dated March 23, 1999, so that as amended this portion of the resolution shall read: "to *permit* an extension of term of ten (10) years, expiring May 1, 2028; *on condition* that all work and site conditions shall conform to drawings filed with this application marked "Received April 25,2018"- Five (5) sheets; and *on further condition*:

THAT there shall be monthly parking only with no transient parking permitted;

THAT the subject site shall be maintained clean and free of debris and graffiti, including the area along Heath Avenue;

THAT landscaping, planting, surface paving and striping shall be maintained and replaced as necessary in accordance with the Board-approved plans;

THAT fencing and screening shall be provided and maintained in accordance with the Board-approved plans;

THAT all lighting shall be positioned down and away from nearby residential uses;

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 1, 2022;

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, May 1, 2018.

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

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Board's Rules of Practice and Procedure, an amendment and an extension of term of a special permit, previously granted by the Board; 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 May 1, 2018; and

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

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

WHEREAS, Borough President Melinda Katz submitted testimony in support of this application; and

WHEREAS, the subject site is located on the southeast corner of Cooper Avenue and 80th Street, in an M1-1 zoning district, in Queens; and

WHEREAS, the Board has exercised jurisdiction over the subject site since July 17, 2007, when, under the subject calendar number, the Board granted a special permit to allow the operation of a physical culture establishment ("PCE") on portions of the first and second floors of a building within a commercial mall complex for a term expiring December 31, 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 Friday, 6:00 a.m. to 9:00 p.m., and Saturday and Sunday, 8:00 a.m. to 7:00 p.m., that massages only be performed by New York State licensed massage therapists, that the above conditions appear on the certificate of occupancy, that Local Law 58/87 compliance be as reviewed and approved by DOB and that fire safety measures be installed and maintained as shown on

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the Board-approved plans; and

WHEREAS, the term having expired, the applicant now seeks a waiver of the Board's Rules of Practice and Procedure to permit the late filing of this application, an amendment to a condition of the Board's grant and an extension of term; and

WHEREAS, the applicant represents that there have been no changes to the floor plan or operator of the facility, New York Sports Club, as previously approved by the Board; and

WHEREAS, the applicant proposes to change the hours of operation as follows: 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 8:00 p.m.; and

WHEREAS, by letter dated April 19, 2018, the Fire Department states that it has no objection to this application, noting that the subject site is current with all applicable permits for the fire suppression system (standpipe, sprinkler and dry values) and fire alarm system, but that Public Assembly Application No. 402661794 must be amended to reflect an occupant load for the space of 538 persons; 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, based upon its review of the record, the Board has determined that the requested waiver of the Board's Rules of Practice and Procedure, amendment 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, so that as amended this portion of the resolution shall read: "to *permit* an extension of term of ten (10) years, expiring December 31, 2026, and an amendment to the hours of operation; *on condition* that all work and site conditions shall conform to drawings filed with this application marked "Received September 5, 2017"-Six (6) sheets; and *on further condition*:

THAT the term of this grant shall be limited to ten (10) years, expiring December 31, 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 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, 8:00 a.m. to 8:00 p.m.;

THAT massages shall only be performed by New York State licensed massage therapists;

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 1, 2022;

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 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, May 1, 2018.

233-07-BZ

APPLICANT – Rothkrug Rohkrug & Spector, LLP, for T-C The Colorado, LLC, owner; Pure 86th Street, Inc., lessee.

SUBJECT – Application November 14, 2017 – Extension of Term of a previously approved Special Permit (§73-36) permitting the operation physical culture establishment (Pure yoga studio) on the first floor, cellar, sub-cellar 1 and sub-cellar 2 in an existing 35-story mixed-use building. Which expires on February 12, 2018. C2-8A zoning district.

PREMISES AFFECTED – 203 East 86th Street, Block 1532, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #8M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

THE RESOLUTION –

WHEREAS, this is an application for an extension of term of a special permit, previously granted by the Board; and

WHEREAS, a public hearing was held on this application on May 1, 2018, after due notice by publication in *The City Record*, and then to decision on May 1, 2018; 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 this application; and

WHEREAS, the subject site is located on the northeast corner of East 86th Street and Third Avenue, in a C2-8A zoning district, in Manhattan; and

WHEREAS, the Board has exercised jurisdiction over the subject site since February 12, 2008, when, under the subject calendar number, the Board granted a special permit

MINUTES

for the operation of a physical culture establishment (“PCE”) on portions of the first floor, cellar, sub-cellar one and sub-cellar two of an existing 35-story mixed-use commercial and residential building for a term of ten (10) years, expiring February 12, 2018, 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 above conditions appear on the certificate of occupancy, that Local Law 58/87 be as reviewed and approved by the Department of Buildings and that fire safety measures be installed and maintained as shown on the Board-approved plans; and

WHEREAS, the term having expired, the applicant now seeks an extension; and

WHEREAS, the applicant represents that there have been no changes to the floor plan or operator of the facility, Pure Yoga, 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, based upon its review of the record, the Board has determined 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 12, 2008, so that as amended this portion of the resolution shall read: “to *permit* an extension of term of ten (10) years, expiring February 12, 2028; *on condition* that all work and site conditions shall conform to drawings filed with this application marked “Received January 18, 2018”- Seven (7) sheets; and *on further condition*:

THAT the term of this grant shall be for ten (10) years, expiring February 12, 2028;

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 a certificate of occupancy shall be obtained within four (4) years, by May 1, 2022;

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 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 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 1, 2018.

677-53-BZ

APPLICANT – Akerman LLP, for James Marchetti, owner.
SUBJECT – Application November 17, 2016 – Extension of Term (§11-411) of a previously granted Variance permitting the operation of a UG16 Auto Body Repair Shop (*Carriage House*) with incidental painting and spraying which expired on October 18, 2016; Extension of Time to Obtain a Certificate of Occupancy which expired on October 18, 2012. Waiver of the Rules.C2-2/R4 zoning district.
PREMISES AFFECTED – 61-28 Fresh Meadow Lane, Block 6901, Lot 48, Borough of Queens.

COMMUNITY BOARD #8Q

ACTION OF THE BOARD – Laid over to August 21, 2018, at 10 A.M., for continued hearing.

101-92-BZ

APPLICANT – Sheldon Lobel, P.C., for Portrem Realty Company, LLC, owner.
SUBJECT – Application December 2, 2016 – Extension of Term (§11-411) for the continued operation of the use of parking lot for non-commercial, non-transient parking which expired on October 26, 2013; Waiver of the Rules. C1-4/R8 zoning district.

PREMISES AFFECTED – 66-98 East Burnside Avenue, Block 2829, Lot 45, Borough of Bronx.

COMMUNITY BOARD #5BX

ACTION OF THE BOARD – Laid over to June 26, 2018, 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 91st 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 November 8, 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 June 19, 2018, at 10 A.M., for deferred decision.

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 June 26, 2018, at 10 A.M., for adjourned hearing.

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 June 26, 2018, at 10 A.M., for adjourned hearing.

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 44th Street, Block 702, Lot 57, Borough of Queens.

COMMUNITY BOARD #1Q

ACTION OF THE BOARD – Laid over to July 24,

2018, at 10 A.M., for continued hearing.

2017-232-A

APPLICANT – Land Planning & Engineering, for Neil Simon SHS Richmond Terrace, LLC, owner.

SUBJECT – Application August 4, 2017 – 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

PREMISES AFFECTED – 1632 Richmond Terrace, Block 187, Lot 42, Borough of Staten Island.

COMMUNITY BOARD #ISI

ACTION OF THE BOARD – Laid over to June 26, 2018, at 10 A.M., for continued hearing.

2017-276-A

APPLICANT – Eric Palatnik, P.C., for Frank McErlean, owner.

SUBJECT – Application October 4, 2017 – Proposed construction of a commercial building not fronting on a legally mapped street, contrary to General City Law 36. M3-1 zoning district.

PREMISES AFFECTED – 96 Industrial Loop, Block 7206, Lot 176, Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Laid over to June 19, 2018, at 10 A.M., for continued hearing.

ZONING CALENDAR

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 – Application Dismissed.

THE VOTE TO DISMISS –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated January 20, 2015, acting on Application No. 320597939 reads in pertinent part:

1. ZR25-23: Provide accessory parking spaces

MINUTES

per this ZR section equal to at least 50% of the number of dwelling units or obtain a waiver from the BSA under ZR73-46; and

WHEREAS, this is an application under ZR § 73-46 to permit, on a site located within an R6B zoning district, the waiver of accessory off-street parking spaces required for additional dwelling units created by conversions, contrary to ZR § 25-23; and

WHEREAS, a public hearing was held on this application on February 28, 2017, after due notice by publication in *The City Record*, with the continued hearings scheduled for May 16, 2017, and August 8, 2017, adjourned at the applicant's request and the administrative adjournment of a continued hearing scheduled for February 27, 2018, due to the applicant's failure to make any submission; and

WHEREAS, at the Executive Session held on February 26, 2018, Executive Session, the Board remarked that the administrative adjournment of the next day's hearing on this application marked the third consecutive adjournment of this application, that it would be the last adjournment granted by the Board and failure to submit materials in advance of the next scheduled hearing could result in the dismissal of the application for failure to prosecute; and

WHEREAS, the applicant's representative was observed to be in attendance at that Executive Session and to have heard the Board's remarks regarding potential dismissal; and

WHEREAS, a continued hearing was then set for May 1, 2018, with a submission date of April 11; and

WHEREAS, no submissions were made in advance of the hearing scheduled for May 1, 2018, and no one appeared at that hearing on the applicant's behalf; and

WHEREAS, accordingly, due to the repeated failure of the applicant and its representatives to 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. 25-15-BZ is hereby dismissed for failure to prosecute.

Adopted by the Board of Standards and Appeals, May 1, 2018.

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 3rd and 4th 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 August 7, 2018, at 10 A.M., for continued hearing.

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 August 7, 2018, at 10 A.M., for continued hearing.

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 182nd Street aka 2165-75 Southern Boulevard, Block 3111, Lot 59, Borough of Bronx.

COMMUNITY BOARD #2BX

ACTION OF THE BOARD – Laid over to July 17, 2018, at 10 A.M., for continued hearing.

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 5th Street, Block 15609, Lot Tentative 40, Borough of Queens.

COMMUNITY BOARD #14Q

ACTION OF THE BOARD – Laid over to August 7, 2018, at 10 A.M., for continued hearing.

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.

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COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to August 7, 2018, at 10 A.M., for adjourned hearing.

89-15-BZ

APPLICANT – Law Office of Jay Goldstein, for G & W Enterprises Inc., owner.

SUBJECT – Application April 21, 2015 – Variance (§72-21) to permit the construction of a 4-story, 4-family home contrary to §42-11. M1-1 zoning district.

PREMISES AFFECTED – 92 Walworth Street, Block 1735, Lot 16, Borough of Brooklyn.

COMMUNITY BOARD #3BK

ACTION OF THE BOARD – Laid over to July 17, 2018, at 10 A.M., for continued hearing.

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 August 7, 2018, at 10 A.M., for continued hearing.

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 19th Avenue, Block 5457, Lot 166, Borough of Brooklyn.

COMMUNITY BOARD #12BK

ACTION OF THE BOARD – Laid over to August 7, 2018, at 10 A.M., for adjourned hearing.

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

ACTION OF THE BOARD – Laid over to July 24, 2018, at 10 A.M., for adjourned hearing.

REGULAR MEETING

TUESDAY AFTERNOON, MAY 1, 2018

1:00 P.M.

Present: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.

ZONING CALENDAR

268-14-BZ

APPLICANT – Warshaw Burstein, LLP, for Kenfa Madison, LLC; Two Deer Group, LLC, owner.

SUBJECT – Application October 31, 2014 – Variance (§72-21) proposed enlargement of the existing Use Group 6, eating and drinking establishment at the subject site. Located within and R1-2 zoning district.

PREMISES AFFECTED – 231-06/10 Northern Boulevard, Block 8164, Lot(s) 22, 122, 30, 130, 43, 15, 230, Borough of Queens.

COMMUNITY BOARD #11Q

ACTION OF THE BOARD – Laid over to August 14, 2018, at 10 A.M., for postponed hearing.

2017-9-BZ

APPLICANT – Law Office of Jay Goldstein, for SL Utica LLC, owner; All My Children Daycare, Lessee.

SUBJECT – Application January 12, 2017 – 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.

PREMISES AFFECTED – 561-565 Utica Avenue, Block 4604, Lot 69, Borough of Brooklyn.

COMMUNITY BOARD #17BK

ACTION OF THE BOARD – Laid over to July 24, 2018, at 10 A.M., for continued hearing.

2017-291-BZ

APPLICANT – Law Office of Jay Goldstein for Yosef Rabinowitz, owner.

SUBJECT – Application November 2, 2017 – 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-

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47 (rear yard). R2 zoning district.
PREMISES AFFECTED – 1367 East 26th Street, Block
7662, Lot 17, Borough of Brooklyn.
COMMUNITY BOARD #14BK
ACTION OF THE BOARD – Laid over to July 24,
2018, at 10 A.M., for continued hearing.

2017-292-BZ
APPLICANT –Law Office of Jay Goldstein, for Baruch
Wieder, owner.
SUBJECT – Application November 2, 2017 – 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.
PREMISES AFFECTED – 1363 East 26th Street, Block
7662, Lot 19, Borough of Brooklyn.
COMMUNITY BOARD #14BK
ACTION OF THE BOARD – Laid over to July 24,
2018, at 10 A.M., for continued hearing.

Carlo Costanza, Executive Director

BULLETIN

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May 18, 2018

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Tuesday, May 8, 2018**

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DOCKETS

New Case Filed Up to May 8, 2018

BLANK

CALENDAR

REGULAR MEETING JUNE 5, 2018, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, June 5, 2018, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

SPECIAL ORDER CALENDAR

441-31-BZ

APPLICANT – Eric Palatnik, P.C., for Spartan Petroleum Corp., owner.

SUBJECT – Application October 27, 2017 – Extension of Term (§11-411) for the continued use of a Gasoline Service Station (*BP Amoco*) with accessory convenience store which expired on April 26, 2017. C2-2/R5 zoning district.

PREMISES AFFECTED – 7702 Flatlands Avenue, Block 8014, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #18BK

166-12-A, 166-12-AII and 107-13-A

APPLICANT – Steven Barshov, Esq., Sive, Paget & Riesel, P.C., for Sky East LLC, owner.

SUBJECT – Application April 9, 2018 – Request for a Re-hearing for an appeal seeking a reconsideration of a ruling that the subject property common law rights had vested and then by ruling that such its vested rights had been abandoned.

PREMISES AFFECTED – 638 East 11th Street, Block 393, Lot(s) 25, 26, 27, Borough of Manhattan.

COMMUNITY BOARD #1M

APPEALS CALENDAR

215-15-A

APPLICANT – Gerald J. Caliendo, RA, AIA, for Farhad Bokhour, owner.

SUBJECT – Application September 1, 2015 – Proposed construction of a two story two family dwelling (U.G. 2), located within the bed of a mapped street contrary to Article 3, Section 35, of the General City Law, within an R3A zoning district.

PREMISES AFFECTED – 144-14 181st Street, Block 13089, Lot 56, Borough of Queens.

COMMUNITY BOARD #12Q

REGULAR MEETING JUNE 5, 2018, 1:00 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, June 5, 2018, 1:00 P.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

ZONING CALENDAR

2017-247-BZ

APPLICANT – Law Office of Lyra J. Altman, for Eli Leshkowitz and Rachel Leshkowitz, owners.

SUBJECT – Application August 22, 2017 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area ratio and open space ratio (ZR 23-141); and less than the required rear yard (ZR 23-47). R2 zoning district.

PREMISES AFFECTED – 1367 East 24th Street, Block 7660, Lot 17, Borough of Brooklyn.

COMMUNITY BOARD #14BK

2017-294-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Theater Building Enterprise LLC, owner; Blink Myrtle Avenue, Inc., lessee.

SUBJECT – Application November 3, 2017 – 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.

PREMISES AFFECTED – 55-27 Myrtle Avenue, Block 3451, Lot 7, Borough of Queens.

COMMUNITY BOARD #5Q

2018-11-BZ

APPLICANT – Law Office of Jay Goldstein, for SM 1495 LLC, owner; Rumble Fitness LLC, lessee.

SUBJECT – Application January 26, 2018 – Special Permit (§73-36) to permit the operation of a physical cultural establishment (*Rumble Fitness*) within 5 stories and cellar of an existing building contrary to ZR §32-10. C1-9 zoning district.

PREMISES AFFECTED – 1495 3rd Avenue, Block 1530, Lot 3, Borough of Manhattan.

COMMUNITY BOARD #8M

CALENDAR

2018-92-BZ

APPLICANT – NYC Mayor's Office of Housing Recovery Operations (HRO)

SUBJECT – Application May 22, 2018 – Special Permit (§64-92) to waive bulk requirements for the reconstruction of homes damaged/destroyed by Hurricane Sandy for a property registered in the NYC Build it Back Program. Waiver of minimum required side yard (ZR 23-461). R4 zoning district.

PREMISES AFFECTED – 213 Bayside Avenue, Block 16340, Lot 50. Borough of Queens.

COMMUNITY BOARD #14Q

2018-93-BZ

APPLICANT – NYC Mayor's Office of Housing Recovery Operations (HRO)

SUBJECT – Application May 22, 2018 – 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 the minimum required front yard regulations of ZR 23-45 and ZR 64-A351, waiver of the minimum required side yard regulations of ZR 23-461 and ZR 64-A352. R4 zoning district.

PREMISES AFFECTED – 7 Bevy Court, Between Everett Avenue and Florence Avenue. Block 8925, Lot 266. Borough of Brooklyn.

COMMUNITY BOARD #15M

2018-94-BZ

APPLICANT – NYC Mayor's Office of Housing Recovery Operations (HRO)

SUBJECT – Application May 22, 2018 – 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 the minimum required front yard regulations of ZR 23-45 and ZR 64-A351, waiver of the minimum required side yard regulations of ZR 23-461 and ZR 64-A352. R4 zoning district.

PREMISES AFFECTED – 105 Dare Court, Between Bartlett Place and Cyrus Avenue. Block 8914, Lot 434. Borough of Brooklyn.

COMMUNITY BOARD #15BK

Carlo Costanza, Executive Director

MINUTES

**SPECIAL MEETING
TUESDAY MORNING, MAY 8, 2018
10:00 A.M.**

Present: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.

SPECIAL HEARINGS

2017-62-BZ

CEQR #17-BSA-103M

APPLICANT – Akerman, LLP, for 387 Park South LLC c/o Chicago Deferred Exchange, owner; Barry’s Bootcamp NYC, LLC, lessee.

SUBJECT – Application March 13, 2017 – 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.

PREMISES AFFECTED – 387 Park Avenue South, Block 883, 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, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated February 16, 2017, acting on Alteration Application No. 122773169, reads in pertinent part:

“Proposed ‘Physical Culture Establishment’ is not permitted As-Of-Right as per section ZR 32-10”;
and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to permit, partially in a C6-4A zoning district and partially in a C4-5A zoning district, the legalization of a physical culture establishment on a portion of the first floor of the subject building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on May 8, 2018, after due notice by publication in *The City Record*, and then to decision on the same date; and

WHEREAS, Vice-Chair Chanda performed and 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 northeast corner of Park Avenue South and East 27th Street, partially in a C6-4A zoning district and partially in a C4-5A zoning district, in Manhattan; and

WHEREAS, the subject site has approximately 99 feet of frontage along Park Avenue South, 167 feet of frontage along East 27th Street, 16,458 square feet of lot area and is occupied by a twelve-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

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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 5,469 square feet of floor area on the first floor, including reception, a fuel bar, a flex lab, a fitness area with benches, treadmills and weights, lockers, changing rooms, showers, laundry and a utility closet; and

WHEREAS, the PCE has been in operation as Barry's Bootcamp since October 2016, with the following hours of operation: 5:00 a.m. to 11:00 p.m. daily; and

WHEREAS, the applicant represents that the PCE use is consistent with the vibrant mixed-use area in which it is located, that the PCE use is fully contained within the envelope of an existing building and that the PCE use is compatible with the commercial, multiple-family, and mixed-use buildings in the vicinity of the subject site; and

WHEREAS, in addition, the applicant submits that sound attenuation measures, including a suspended, spring-isolated gypsum acoustic ceiling, insulated walls, columns and conduits and an isolated flooring system with a 1"-thick layer of acoustic rubber tile flooring, have been provided within the space so as to not disturb other tenants in the building; and

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

WHEREAS, the applicant states that the PCE provides classes and instructions 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 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 May 7, 2018, the Fire Department represents that it has no objection to this application; and

WHEREAS, in response to comments from the Board, the applicant provided notice of this application to tenants in 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 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 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. 17BSA103M, dated March 13, 2017; and

WHEREAS, the Board finds that the evidence in the record supports the findings required to be made under ZR §§ 73-36 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion; 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 without a special permit.

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 §§ 73-36 and 73-03 to *permit*, partially in a C6-4A zoning district and partially in a C4-5A zoning district, the legalization of a physical culture establishment on a portion of the first floor of the subject building, contrary to ZR § 32-10; *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked "Received May 4, 2018"-Five (5) sheets; and *on further condition*:

THAT this grant shall be limited to a term of ten (10) years, expiring October 31, 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 maintained 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

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space and the PCE shall be and remain fully sprinklered, as indicated on the Board-approved plans;

THAT sound attenuation shall be installed and 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 May 8, 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, May 8, 2018.

2017-130-BZ

CEQR #17-BSA-114Q

APPLICANT – Rothkrug Rothkrug & Spector, for 47-01 LASAL Associates, owner; Crossfit Sunnyside, lessee.

\SUBJECT – Application April 13, 2017 – Special Permit (§73-36) to permit the legalization of a physical culture establishment (*Crossfit Sunnyside*) within an existing commercial building. M1-1 zoning district.

PREMISES AFFECTED – 47-01 Barnett Avenue, Block 142, Lot 238, Borough of Queens.

COMMUNITY BOARD #2Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated March 20, 2017, acting on Alteration Application No. 420658595, reads in pertinent part:

“Proposed use, ‘physical culture or health establishment’, is not permitted as of right in M1-1 district”; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to permit, in an M1-1 zoning district, the legalization of a physical culture establishment occupying the entirety of the subject building; and

WHEREAS, a public hearing was held on this

application on May 8, 2018, after due notice by publication in *The City Record*, and then to decision on May 8, 2018; and

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

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

WHEREAS, the subject site is located on the north side of Barnett Avenue, between 43rd Street and 48th Street, in an M1-1 zoning district, in Queens; and

WHEREAS, the subject site has approximately 88 feet of frontage along Barnett Avenue, 39 feet of depth, 3,240 square feet of lot area and is occupied by a one-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

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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 3,240 square feet of floor area on the first floor, including a seating area, offices, restrooms, a stretching area with workout plates, a lifting area with weights, jerk boxes and medicine balls, rowers and storage; and

WHEREAS, the PCE has been in operation as CrossFit Sunnyside since October 2016, with the following hours of operation: Monday to Friday, 6:00 a.m. to 10:00 p.m., Saturday, 8:00 a.m. to 2:00 p.m., and Sunday, 9:00 a.m. to 3:00 p.m.; and

WHEREAS, the applicant represents that the PCE use is consistent with the vibrant area in which it is located and that the PCE use is fully contained within the envelope of an existing building; and

WHEREAS, in addition, the applicant submits that sound attenuation measures, including rubber mat flooring, have been provided within the space; and

WHEREAS, the Board finds that the PCE use is so located as not to 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; 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, by letter dated May 7, 2018, the Fire Department represents that it has no objection to this application and that providing a sprinkler system and a fire alarm system is not required for the subject building; and

WHEREAS, in response to the Board's comments at hearing, the applicant clarified that the PCE occupies the entirety of the subject building with no other tenants present; 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 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. 17BSA114Q, dated April 13, 2017; and

WHEREAS, the Board finds that the evidence in the record supports the findings required to be made under ZR §§ 73-36 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion; 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 without a special permit.

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 §§ 73-36 and 73-03 to *permit*, in an M1-1 zoning district, the legalization of a physical culture establishment occupying the entirety of the subject building; *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked "Received January 2, 2018"-Six (6) sheets; and *on further condition*:

THAT this grant shall be limited to a term of ten (10) years, expiring October 31, 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 maintained leading to the required exits and that pathways shall be maintained unobstructed, including from any gymnasium equipment;

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

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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 May 8, 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, May 8, 2018.

2017-299-BZ

CEQR No. 18-BSA-059Q

APPLICANT – Duane Morris LLP by Jon Popin, for Douglaston Shopping Center Owner LLC, owner.

SUBJECT – Application November 14, 2017– 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.

PREMISES AFFECTED – 242-02 61st Avenue, Block 8286, Lot 185, 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, Commissioner Sheta and Commissioner Scibetta.....5

Negative:0

THE RESOLUTION:

WHEREAS, the decision of the Department of Buildings (“DOB”), acting on Application No. 421397884 reads in pertinent part:

1. Proposed increase in the degree of a non-conforming shopping center located within an R4 Zoning District by the creation of 15,181 square feet of floor area for a UG 6 Hardware Store which shall result in the elimination of 101 shopping center parking spaces (of the required 1,265 shopping center parking spaces pursuant to prior variance, Cal #259-08-BZ) is contrary to Section 52-41 ZR. Referral to the BSA is required;
2. Proposed increase of [. . .] signage in connection with the change in use to a UG

6 Hardware Store within a non-conforming shopping center does not conform to the regulations of accessory signs applicable to a C1 District, contrary to Section 52-31 ZR. Referral to the BSA is required; and

WHEREAS, this is an application under ZR § 72-21 to permit, on a site located in an R4 zoning district, the enlargement of a pre-existing non-conforming commercial Use Group 6 building and an additional 718.1 square feet of accessory signage, contrary to ZR §§ 52-41 and 52-31; and

WHEREAS, a public hearing was held on this application on April 10, 2018, after due notice by publication in *The City Record*, with a continued hearing on May 8, 2018, and then to decision on that date; and

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

WHEREAS, Community Board 11, Queens, recommends approval of this application on condition that “Not A Truck Route” signage be added to the entrances of the nearby Cross Island Parkway, Grand Central Parkway, Marathon Parkway, Douglaston Parkway and Little Neck Parkway; and

WHEREAS, Queens Borough President Melinda Katz recommends approval of this application on condition that the applicant work with the New York City Department of Transportation to determine whether signage suggested by the Community Board is needed and where it should be located; and

WHEREAS, New York City Councilmember Barry S. Grodenchik submitted a letter in support of the subject application because it will enable the filling of a large vacancy in the decades-old shopping center located at the subject site and mitigate the threat that that vacancy has posed to surrounding businesses; and

WHEREAS, the Board was also in receipt of eight form letters of objection to the subject application raising issues with the reduction in parking spaces at the subject site, the potential for the proposal to increase traffic in the area and the potential for nuisance due to permitting the requested addition of accessory signage at the site; and

WHEREAS, the subject site is located on the south side of the intersection of Douglaston Parkway and 61st Avenue, in an R4 zoning district, in Queens; and

WHEREAS, the site has approximately 564,297 square feet of lot area and is occupied by the Douglaston Plaza Shopping Center, which consists of four buildings: (1) a one-story plus cellar and sub-cellar shopping center building developed principally to contain one large format department store but also previously occupied by a movie theater in the sub-cellar level (the “Main Building”); (2) a one-story building located at the sub-cellar level of the site occupied by a supermarket (the “Supermarket Building”); (3) a one-story building located on the sub-cellar level of the site occupied by local retailers; and (4) a one-story building located on the cellar level of the site occupied by an eating and drinking establishment; and

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WHEREAS, the applicant represents that the shopping center was built pursuant to plans approved prior to the 1961 Zoning Resolution and the designation of the surrounding area as an R4 zoning district and went into service in 1965 as a legal non-conforming use subject to Article V of the Zoning Resolution; and

WHEREAS, the Board has exercised jurisdiction over the subject site since October 19, 1982, when, under BSA Cal. No. 323-82-BZ, the Board granted a variance to permit the installation of a business sign in excess of the maximum permissible surface area and height above curb level regulations on condition that the sign not be illuminated later than 10 p.m.; and

WHEREAS, on January 4, 1983, under BSA Cal. No. 370-82-BZ, the Board granted a variance permitting the conversion of retail space in the Main Building to a seven-theater multiplex cinema (Use Group 8) for a term of fifteen (15) years, expiring January 4, 1998, on condition that a minimum of three security personnel be assigned at all times after 10:00 p.m. to direct incoming and exiting vehicular traffic along designated routes to minimize impacts on adjacent residential areas and to perform normal security functions in the general area; trailers be added to all film showings with appropriate graphics advising patrons of the proper exit routes for their vehicles; signs and screening be provided as indicated on plans; all movie showings cease no later than 12:00 midnight on weekdays and Sundays and 1:00 a.m. on Friday and Saturday evenings; the area surrounding the theaters be kept well-lit and free of debris and graffiti at all times; all lighting be directed away from adjacent residential areas; there be no showing of X-rated or pornographic films; all signs and screening be installed prior to the initial operation of the theaters; the door on the fence on 65th Avenue be kept closed and locked at sunset each evening to discourage theater patrons from parking on that street and entering the premises via that door; application to and approval from the Board be secured prior to any change in ownership or lease of the property or lessee of the seven cinema theater; an affidavit attesting to the continuing compliance with the terms and conditions of the variance be filed yearly with the Board and the Chairperson of Community Board 11, Queens, commencing one year from the grant of the application; and that all conditions appear on the certificate of occupancy; and

WHEREAS, on November 8, 1991, under BSA Cal. No. 335-91-BZY, the Board recognized a statutory vested right to complete construction at the site that had commenced prior to an amendment to the Zoning Resolution that rendered the development non-compliant and granted a two (2) year extension of time to complete construction, expiring June 30, 1993; and

WHEREAS, on June 2, 1998, under BSA Cal. No. 370-82-BZ, the Board amended the variance for the multiplex cinema and extended the term for an additional twenty (20) years, expiring January 4, 2018, on condition that all other aspects of the prior resolution be complied with in all respects and a new certificate of occupancy be

obtained within one (1) year, by June 2, 1999; and

WHEREAS, on May 16, 2000, October 16, 2001, November 18, 2003, under BSA Cal. No. 370-82-BZ, the Board reopened the variance to permit extensions of time to obtain a certificate of occupancy, the latest of which expired November 16, 2005, and was granted 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, by letter dated September 10, 2008, the Board approved a change in ownership of the property and a change in lessee of the multiplex theater, previously approved under BSA Cal. No. 370-82-BZ; and

WHEREAS, on July 14, 2009, under BSA Cal. No. 259-08-BZ, the Board granted a variance permitting the enlargement of the pre-existing non-conforming Supermarket Building contrary to ZR § 52-41 on condition that that building have a maximum floor area of 57,701 square feet and that there be a minimum total of 1,265 parking spaces for the shopping center; all signage comply with C1 zoning district parameters; the use of the building be limited to a Use Group 6 supermarket; that all lighting be directed away from residences; and that these conditions be stated on the certificate of occupancy; and

WHEREAS, on March 15, 2011, under BSA Cal. No. 259-08-BZ, the Board amended the resolution to increase the permitted surface area of accessory signage for the supermarket due to size of the supermarket being more than 57,000 square feet and the unique topography of the site, which results in limited sight lines and street visibility necessitating signage in excess of that permitted pursuant to C1 zoning district regulations; and

WHEREAS, the applicant now seeks a variance to permit the enlargement of non-conforming Use Group 6 space in Main Building by 15,181 square feet of floor area, contrary to ZR § 52-41, an increase in the degree of the subject zoning lot's non-conformance with accessory signage regulations to allow 702 square feet of additional accessory signage (for a total of 4,237 square feet of accessory signage on the zoning lot), contrary to ZR § 52-31, and the elimination of 101 of the shopping center's 1,265 total parking spaces (98 spaces will be eliminated from the sub-cellar, 11 parking spaces will be eliminated from the first floor and 8 parking spaces will be added to the cellar level), contrary to the resolution issued at the subject site under BSA Cal. No. 259-08-BZ, which required a minimum of 1,265 accessory parking spaces; and

WHEREAS, the applicant states, that, pursuant to ZR § 72-21(a), the obsolescence of the Main Building, particularly the sub-cellar level, creates 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 states that the steep slope of the property, in particular the presence of a hill rising several hundred feet above grade along the eastern lot line of the property that obstructs the eastern exposure of

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the Main Building; the development of the shopping center on the site as a multilevel structure with access to both its highest (first floor) and lowest (sub-cellar) levels from different streets; and the sub-cellar's location below and behind the cellar level parking platform, far below the grade of 61st Avenue and Douglaston Parkway results in the sub-cellar level being virtually invisible from both within the shopping center and from surrounding streets and, accordingly, adversely impacts its functionality for retail; and

WHEREAS, the applicant submits that use of the Main Building generally and its sub-cellar level in particular is further compromised by poor vehicular circulation and wayfinding on the site that makes the sub-cellar level difficult to find and the limited number of parking spaces available directly in front of its entrances and exits, conditions that are both due to the topography of the sloping lot and configuration of the shopping center's parking platforms and buildings resulting therefrom; the consolidation of the loading area for multiple levels of the Main Building at the rear of the sub-cellar level that makes scheduling deliveries and operating the berths efficiently and effectively difficult when the Main Building is occupied by multiple tenants; the inability to locate an additional loading area on the cellar level because of the lack of vehicular circulation space at the rear of the Main Building at this level and the poor loadbearing capacity of the cellar level, which hinders its ability to support the weight of truck deliveries; low floor to floor heights, the result of aligning the levels of the shopping center with street access points on the steeply sloped site; and column spans that are too narrow and a concrete slab in the sub-cellar with a loadbearing capacity too low to properly accommodate modern Use Group 6 uses—to wit, warehouse retail stores in which there is no distinction between sales and storage areas and merchandise is displayed in large vertical stacks; and

WHEREAS, the applicant submits that modern Use Group 6 uses, which have come into popularity since the construction of the shopping center several decades ago, also require floor to floor heights of at least 22 feet for display and merchandise storage purposes, column spans of at least 40 feet by 48 feet and a live load capacity of at least 150 pounds per square foot, but in the sub-cellar of the Main Building, the floor to floor height is 15'-8", the column grid is 24 feet by 28 feet and the live load capacity is 100 pounds per square foot; the sub-cellar is, thus, functionally obsolete and additional floor area is required to offset the volumetric limitations of the existing sub-cellar level and accommodate a modern Use Group 6 retailer; and

WHEREAS, the applicant underscores that the Main Building was developed to house a large department store, a retail format that has been significantly impacted by a changing retail climate and the rising cost of real estate and increasingly closing their stores located in shopping centers; and

WHEREAS, in April 2017, the most recent department store tenant of the Main Building vacated its space in the

Main Building citing poor sales, leaving approximately 50 percent of the building's floor area vacant; and

WHEREAS, notwithstanding the aforementioned deficiencies of the site and the Main Building, the applicant submits that the space is unlikely to be filled by another department store because of the subject shopping center's proximity to other, more successful retail corridors, some of which may already contain a location for that department store; and

WHEREAS, because the Main Building is a legal non-conforming building, uses within may be changed only to a use that conforms with the underlying R4 zoning district or a use listed in Use Group 6 pursuant to ZR § 54-34, but such uses, argues the applicant, typically rely on visibility from the street and pass-by traffic and look for spaces that are convenient and inviting to patrons, thus, the sub-cellar level of the Main Building, as currently configured, is sub-optimal for these uses; and

WHEREAS, the applicant has sought to fill the Main Building vacancy with multiple Use Group 6 tenants, including one home improvement center (Use Group 6 hardware store) solely located in the sub-cellar level; and

WHEREAS, the applicant submits that the deficiencies of the Main Building are less acutely felt by a home improvement center because such use relies less on impulse shoppers and being proximate to related retail uses; in addition, home improvement centers are destinations—that is, specifically sought out by their customers, which include people in various building trades—and thus do not rely on visibility from grade; and

WHEREAS, the applicant states that the most recent tenant of the sub-cellar, a multiplex consisting of seven theaters, a small café, a refreshment stand and video game area, has not been updated and is in substantially the same configuration as it was in 1983, is undersized as compared to contemporary movie theaters, that the physical constraints of the sub-cellar would not allow it to be renovated to install the stadium seating common to modern multiplexes and, even if it would, the larger stadium seats would further reduce the total capacity of the already undersized movie theater, thus the maintenance of a cinema use in this location is untenable; and

WHEREAS, with regards to signage, the applicant states that the topography of the site and configuration of buildings and parking level that resulted make wayfinding at the site particularly difficult and the maximum of 450 square feet of total signage permitted at the site pursuant to ZR § 52-31 insufficient for practical purposes; the applicant asserts that the existing 3,519 square feet of accessory signage at the site includes accessory signage located above grade at the cellar level of the Main Building identifying its former large format department store tenant, signage that was sufficient for that tenant at that time because they occupied the entire building, but now that the department store tenant has vacated and levels of the Main Building will be leased to multiple tenants, including one tenant located in the sub-cellar level only, additional accessory signage is

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required in light of the aforementioned unique site conditions that render the sub-cellar level virtually invisible; and ; and

WHEREAS, based on the foregoing, the Board finds that the obsolescence of the Main Building 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) the reconfiguration and renovation of all three levels of the Main Building to accommodate multiple Use Group 6 retail tenants in the recently vacated department store space on all three levels (the “AOR Scenario”) and (2) the subject proposal, including the occupation of the sub-cellar and additionally requested floor area by a single tenant, demonstrating that only the subject proposal would provide a reasonable return; and

WHEREAS, to wit, the financial analyses concludes that the AOR Scenario would generate a project loss of approximately 30.7 percent (\$67.6 million), while the subject proposal would yield a return of approximately 4.6 percent of the project cost (\$10.2 million); 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 subject shopping center has been an existing legal non-conforming use at this location for over 50 years, that occupancy of the Main Building with Use Group 6 retail uses, as proposed herein, is consistent with its historic use and that the full occupancy of the Main Building (facilitated by the herein requested enlargement that would enable the building to accommodate modern Use Group 6 uses and prevent tens of thousands of square feet of floor area from remaining vacant) is in the best interest of both the surrounding neighborhood and nearby businesses because it will maximize nearby residents’ access to a variety of goods and bring additional patrons to the site; and

WHEREAS, with regards to parking at the site, the applicant analyzed whether the occupancy of the sub-cellar with a single warehouse retail use, and removal of 101 parking spaces, would adversely impact the availability of parking space at the site and determined that during weekdays, 43 percent of all parking spaces at the shopping center would be utilized and during weekends, peak parking utilization would be 93 percent, therefore, the proposed action would not adversely impact the availability of parking spaces at the subject shopping center; and

WHEREAS, with regards to potential transportation impacts, the applicant represents that nearby intersections were analyzed and it was determined that, with the proposed, traffic operations would continue to operate at the existing or better levels of service during midday, afternoon and Saturday peak hours and three intersections experienced delays limited to several seconds on early weekday mornings, but such delays could be alleviated by time signal changes; and

WHEREAS, by memo dated May 8, 2018, the New York City Department of Transportation (“DOT”) corroborates the applicant’s representation that a traffic levels of service analysis was conducted for the weekday morning, midday, afternoon and Saturday midday peak hours at seven intersections along Douglaston Parkway, including three driveways that lead into the subject site, and the following project-related improvements were identified during the weekday morning and afternoon peak hours at three locations: (1) Douglaston Parkway and LIE North Service Road—reallocate one second of green time from westbound phase to northbound/southbound phase during the morning peak hour; (2) Douglaston Parkway and LIE South Service Road—modify offset from 10 to 8 second during the afternoon peak hour; and (3) Douglaston Parkway and 61st Avenue—modify offset from 50 to 52 second during the afternoon peak hour; and

WHEREAS, DOT further confirms that a parking accumulation analysis was conducted and it was determined that the projected parking demand would be accommodated within the shopping center and requests that six months prior to completion and operation of the enlarged shopping center, the applicant inform DOT of this fact in writing so that DOT may determine the feasibility and implementation of the proposed traffic improvements; and

WHEREAS, at hearing, the Board questioned whether there was an alternative truck circulation route to the Main Building that would avoid the southwestern corner of the site, at which the adjacent uses are residential, and not require trucks to drive around so many parked cars; and

WHEREAS, in response, the applicant’s parking engineer stated that the truck circulation route herein proposed is the existing truck route to the Main Building; that the adjacent residential units were constructed contemporaneously with the subject shopping center and, thus, those neighbors are accustomed to trucks circulating in the southwestern corner of the subject site; and that an alternative route circulating only within the northern half of the site is impossible because of insufficient turnaround space at the rear of the Main Building and narrow distance between columns in the parking levels that impedes the maneuverability of tractor trailers; and

WHEREAS, by letters dated April 3, 2018, the Fire Department alerted the Board to numerous violations and criminal summonses issued to the subject site in reference to the fire suppression system (standpipe and sprinkler) and fire alarm system and informed the Board that the applicant retained a contractor to initiate the repairs necessary to cure

MINUTES

those violations; and

WHEREAS, at the May 8 hearing, the Fire Department informed the Board that the applicant's contractor anticipated completing the work necessary to cure the outstanding violations and being ready for Fire Department inspection by August 31, 2018 and requested that such schedule be incorporated into this resolution as a condition of the Board's decision; the Fire Department additionally requested that, should all violations relating to the fire suppression not be cured by that time, the Board call the subject application in for a compliance hearing pursuant to § 1-12.8 of the Board's Rules of Practice and Procedure in September 2018; and

WHEREAS, with regards to the additional signage proposed, the applicant states that some of the newly proposed signage faces Douglaston Parkway or is buried below the sub-cellar level and is, thus, not visible from nearby residential buildings and others are indistinguishable from the existing large signage identifying other retailers in the subject shopping center; 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; 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 Environmental Assessment Statement Short Form CEQR No. 18BSA059Q, dated May 8, 2018; 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, DOT reviewed the subject proposal with regards to transportation and concluded that improvements

could be implemented at three intersections along Douglaston Parkway to ensure that the enlargement proposed herein would not adversely affect traffic operations in the area; and

WHEREAS, DOT additionally reviewed the subject proposal with regards to parking and concluded that the projected parking demand would be accommodated on-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

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 in an R4 zoning district, the enlargement of a pre-existing non-conforming commercial building (Use Group 6) and an additional 718.1 square feet of accessory signage, contrary to ZR §§ 52-41 and 52-31, *on condition* that all work will substantially conform to drawings filed with this application marked "Received May 8, 2018"-eighteen (18) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the subject site: a minimum of 387 parking spaces at the sub-cellar level, 511 parking spaces at the cellar level, a minimum of 266 parking space on the first floor level (a minimum of 1,164 total parking spaces); a maximum of 190,145 square feet of floor area on the sub-cellar level, 126,016 square feet of floor area on the cellar level and 11,680 square feet of floor area on the first floor level (a maximum of 327,841 square feet of total floor area); and a maximum total of 4,237.35 square feet of accessory signage, as indicated on the Board-approved plans;

THAT DOB shall confirm if placement of accessory signage located within the same zoning lot complies with applicable accessory signage regulations of the Zoning Resolution;

THAT the portion of the fence on the southern end of the site that backs onto adjacent residential rear yards shall be replaced;

THAT six (6) months prior to completion and operation of the enlarged shopping center, the applicant shall inform the New York City Department of Transportation of this fact in writing, at which time DOT will determine the feasibility and implementation of the proposed improvements;

THAT the dry valve system that serves the dry standpipe system, the dry standpipe system and the dry sprinkler system that serves the parking deck shall be installed, tested and inspected and signed off by Fire

MINUTES

Department by August 31, 2018, and failure to do so shall result in the hearing of this item on the Board's Compliance calendar, pursuant to §1-12.8 of the Board's Rules of Practice and Procedure, in September 2018;

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

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 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 8, 2018.

2018-17-BZ

APPLICANT – Fox Rothschild LLP, for Hylan Plaza 1339, LLC, owner; Fitness International, LLC, lessee.

SUBJECT – Application February 7, 2018 – Special Permit (§73-36) to permit the operation of a physical culture establishment (*LA Fitness*) to occupy 37,583 sq. ft. within a shopping center contrary to ZR §32-10. C4-1 zoning district.

PREMISES AFFECTED – 2600 Hylan Boulevard, Block 3969, Lot 1, 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 Sheta and Commissioner Scibetta.....5

Negative:0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated January 30, 2018, acting on New Building Application No. 520305928, reads in pertinent part:

“Proposed Physical Culture Establishment is not permitted as-of-right in a C4-1 zoning district per ZR 32-10”; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to permit, in a C4-1 zoning district, the operation of a physical culture establishment on the second floor of the subject building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on May 8, 2018, 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, Staten Island, recommends approval of this application; and

WHEREAS, the subject site is located on the north side of Ebbitts Street, between Hylan Boulevard and Mill Road, in a C4-1 zoning district, in Staten Island; and

WHEREAS, the subject site has approximately 711 feet of frontage along Hylan Boulevard, 1,189 feet of frontage along Ebbitts Street, 930 feet of frontage along Mill Road, 1,033,946 square feet of lot area and is being developed as a shopping center with three existing commercial buildings and the construction of three new commercial buildings; and

WHEREAS, the subject building will be a two-story commercial building located at the northwest corner of Ebbitts Street and Mill Road with the PCE proposed for a portion of the second floor; 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

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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 37,828 square feet of floor area on the second floor, including exercise areas for aerobics, functional training and cycling, a swimming pool, saunas, locker rooms and restrooms; and

WHEREAS, the PCE will operate as LA Fitness, with the following hours of operation: 24 hours per day, seven days per week; and

WHEREAS, the applicant represents that the PCE use is consistent with the vibrant commercial shopping center in which it is located and that the PCE use will be located on the second floor and fully contained within the envelope of the subject building; and

WHEREAS, in addition, the applicant submits that sound attenuation measures, including rubber flooring, a split isolation slab, a dense acoustical-arresting ceiling installed below overhead slabs and hung ceilings with acoustical ceiling tiles, will be provided within the space so as to not disturb adjacent retail uses; and

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

WHEREAS, the applicant states that the PCE will provide classes such as aerobics, cycling, step, yoga and other types of personal training, open areas for weight training and cardiovascular exercise and a swimming pool;

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 will be 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—will be installed in the entire PCE space; and

WHEREAS, by letter dated May 7, 2018, the Fire Department represents that it has no objection to this application; and

WHEREAS, in response to the Board's comments at hearing, the applicant clarified that the PCE use will be located entirely on the second floor 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 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 project is part of The Boulevard at Hylan Plaza project that is classified as a Type I action pursuant to 6 NYCRR Part 617.4; and

WHEREAS, the City Planning Commission, as lead agency of The Boulevard at Hylan Plaza application, has conducted an environmental review of a proposed PCE use of similar size to the proposed action before the Board and has documented relevant information about the project in the Final Environmental Impact Statement (FEIS) CEQR No. 17DCP031R, dated May 12, 2017; and

WHEREAS, an (E) designation (No. E-414) has been placed on the subject site for hazardous materials Phase I and Phase II testing protocol and window-wall attenuation and alternate ventilation; and

WHEREAS, the Board finds that the evidence in the record supports the findings required to be made under ZR §§ 73-36 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion.

Therefore it is Resolved, that the Board of Standards and Appeals does hereby *adopt* the findings of the Notice of Completion of the FEIS prepared by the City Planning Commission 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 C4-1 zoning district,

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the operation of a physical culture establishment on the second floor of the subject building, contrary to ZR § 32-10; *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked “Received April 3,2018”- Eight (8) sheets; and *on further condition*:

THAT this grant shall be limited to a term of ten (10) years, expiring May 8, 2028;

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 May 8, 2022;

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 8, 2018.

624-68-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for MMT Realty Associates LLC, owner.

SUBJECT – Application February 27, 2018 – Extension of Term of a Variance (§72-21) which permitted the operation of wholesale plumbing supply establishment (UG16) and stores and office (UG6) which expired on February 7, 2017; Extension of Time to obtain a Certificate of Occupancy which expired on February 7, 2013; Waiver of the rules. R3-2 zoning district.

PREMISES AFFECTED – 188-07/15 Northern Boulevard, Block 5364, Lot(s) 1, 5, 7, Borough of Queens.

COMMUNITY BOARD #11Q

ACTION OF THE BOARD – Laid over to August 14, 2018, at 10 A.M., for continued hearing.

308-79-BZ

APPLICANT – Klein Slowik PLLC, for St. George Tower & Grill Owners Corp., owner; St. George Health & Racquet Associates LLC, lessee.

SUBJECT – Application June 20, 2017 – Extension of Term of a previously approved Variance (§72-21) which permitted the operation of a Physical Cultural Establishment (*Eastern Athletic Club*) which expired on July 3, 2014; Waiver of the Rules. R7-1 (Limited Height Special Purpose District) (Brooklyn Heights Historic District).

PREMISES AFFECTED – 43 Clark Street aka 111 Hicks Street, Block 231, Lot 19, Borough of Brooklyn.

COMMUNITY BOARD #2BK

ACTION OF THE BOARD – Laid over to June 19, 2018, at 10 A.M., for continued hearing.

175-05-BZ

APPLICANT – Sheldon Lobel, P.C., for 18-24 Luquer Street Realty, LLC, owner.

SUBJECT – Application February 16, 2018 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) to construct a four-story multiple dwelling with accessory parking which expired on January 9, 2015; Waiver of the Rules. M1-1 zoning district.

PREMISES AFFECTED – 18-24 Luquer Street, Block 520, Lot 13, Borough of Brooklyn.

COMMUNITY BOARD #6BK

ACTION OF THE BOARD – Laid over to June 19, 2018, at 10 A.M., for continued hearing.

322-05-BZ

APPLICANT – Eric Palatnik, P.C., for Queens Jewish Community Council, owner.

SUBJECT – Application April 6, 2017 – Extension of Time to Complete Construction for a previously granted variance (§72-21) which permitted the enlargement of an existing two story home and the change in use to a community use facility (Queens Jewish Community Council), which expired on March 7, 2017. R4B zoning district.

PREMISES AFFECTED – 69-69 Main Street, Block 6642, Lot 1, Borough of Queens.

COMMUNITY BOARD #8Q

ACTION OF THE BOARD – Laid over to August 21, 2018, at 10 A.M., for continued hearing.

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18-09-BZ

APPLICANT – Klein Slowik PLLC, for West 54th Street LLC c/o ZAR Property, owner; Crunch LLC, lessee.

SUBJECT – Application August 28, 2017 – Extension of Term of a special permit (§73-36) for the continued operation of a physical culture establishment (*Crunch Fitness*) which expires on November 21, 2021; Amendment to permit the change in operator; Waiver of the Rules. C6-5 and C6-7 zoning district.

PREMISES AFFECTED – 250 West 54th Street, Block 1025, Lot 54, Borough of Manhattan.

COMMUNITY BOARD #5M

ACTION OF THE BOARD – Laid over to June 19, 2018, at 10 A.M., for continued hearing.

COMMUNITY BOARD #1M

ACTION OF THE BOARD – Laid over to July 17, 2018, at 10 A.M., for continued hearing.

Carlo Costanza, Executive Director

2016-4150-BZ

APPLICANT – Sheldon Lobel, P.C., for Courtwood Capital LLC, owner; Grandave Fitness Inc. (d/b/a L Train CrossFit), lessee.

SUBJECT – Application March 24, 2016 – Special Permit (§73-36) to permit a physical culture establishment (*CrossFit*) on the cellar, first floor and mezzanine of an existing building commercial building. C6-4A zoning district.

PREMISES AFFECTED – 667 Grand Street, Block 2781, Lot 29, Borough of Brooklyn.

COMMUNITY BOARD #1BK

ACTION OF THE BOARD – Laid over to August 14, 2018, at 10 A.M., for continued hearing.

2017-31-BZ

APPLICANT – Akerman, LLP for ROCK 34, Inc., owner.

SUBJECT – Application January 27, 2017 – Variance (§72-21) to permit the development of a three-story, three-family residential building on a narrow corner lot contrary to ZR §23-45 (front yard) and ZR §23-462 (a) (required side yards). R5 zoning district.

PREMISES AFFECTED – 107-17 34th Avenue, Block 1722, Lot 27, Borough of Queens.

COMMUNITY BOARD #3Q

ACTION OF THE BOARD – Laid over to July 17, 2018, at 10 A.M., for adjourned hearing.

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.

BULLETIN

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New Case Filed Up to May 15, 2018

2018-66-BZ

118 West 72nd Street, The premises is located on the south side of West 72nd Street between Columbus Avenue & Amsterdam Avenue, Block 01143, Lot(s) 0039, Borough of **Manhattan, Community Board: 7**. Special Permit (§73-36) to permit the legalization of the operation of a Physical Cultural Establishment (Dakota Personal Training and Pilates) with the cellar and first floor of an existing 13-story plus cellar building contrary to ZR §32-10. C4-6A (Upper West Side/Central Park West Historic District). C4-6A district.

2018-67-BZ

7406 Fifth Avenue, Located on the west side of Fifth Avenue between Bay Ridge Parkway and 74th Street, Block 05930, Lot(s) 0039, Borough of **Brooklyn, Community Board: 10**. Special Permit (§73-621) to permit the legalization of a one-story horizontal enlargement at the rear of an existing three-story and cellar mixed-use commercial and residential building. C1-3/R6B (Special Bay Ridge District) R6B/C1-3 district.

2018-68-A

90 Santina Drive, Located on the west side of Santina Drive distant 769.81' from the corner of Arbutus Avenue and Santina Drive, Block 06517, Lot(s) 0076, Borough of **Staten Island, Community Board: 5**. Proposed construction of 23 detached residences, not fronting on a legally mapped street, contrary to General City Law 36. R3-X South Richmond Special Purpose district. R3X district.

2018-69-A

84 Santina Drive, Located on the west side of Santina Drive distant 769.81' from the corner of Arbutus Avenue and Santina Drive, Block 06517, Lot(s) 0080, Borough of **Staten Island, Community Board: 5**. Proposed construction of 22 detached residences, not fronting on a legally mapped street, contrary to General City Law 36. R3-X South Richmond Special Purpose district. R3X district.

2018-70-A

78 Santina Drive, Located on the west side of Santina Drive distant 769.81' from the corner of Arbutus Avenue and Santina Drive, Block 06517, Lot(s) 81, Borough of **Staten Island, Community Board: 5**. Proposed construction of 22 detached residences, not fronting on a legally mapped street, contrary to General City Law 36. R3-X South Richmond Special Purpose district. R3X district.

2018-71-A

72 Santina Drive, Located on the west side of Santina Drive distant 769.81' from the corner of Arbutus Avenue and Santina Drive, Block 06517, Lot(s) 82, Borough of **Staten Island, Community Board: 5**. Proposed construction of 22 detached residences, not fronting on a legally mapped street, contrary to General City Law 36. R3-X South Richmond Special Purpose district. R3X district.

2018-72-A

66 Santina Drive, Located on the west side of Santina Drive distant 769.81' from the corner of Arbutus Avenue and Santina Drive, Block 06517, Lot(s) 83, Borough of **Staten Island, Community Board: 5**. Proposed construction of 22 detached residences, not fronting on a legally mapped street, contrary to General City Law 36. R3-X South Richmond Special Purpose district. R3X district.

2018-73-A

60 Santina Drive, Located on the west side of Santina Drive distant 769.81' from the corner of Arbutus Avenue and Santina Drive, Block 06517, Lot(s) 84, Borough of **Staten Island, Community Board: 5**. Proposed construction of 22 detached residences, not fronting on a legally mapped street, contrary to General City Law 36. R3-X South Richmond Special Purpose district. R3X district.

2018-74-A

54 Santina Drive, Located on the west side of Santina Drive distant 769.81' from the corner of Arbutus Avenue and Santina Drive, Block 06517, Lot(s) 85, Borough of **Staten Island, Community Board: 5**. Proposed construction of 22 detached residences, not fronting on a legally mapped street, contrary to General City Law 36. R3-X South Richmond Special Purpose district. R3X district.

2018-75-A

48 Santina Drive, Located on the west side of Santina Drive distant 769.81' from the corner of Arbutus Avenue and Santina Drive, Block 06517, Lot(s) 86, Borough of **Staten Island, Community Board: 5**. Proposed construction of 22 detached residences, not fronting on a legally mapped street, contrary to General City Law 36. R3-X South Richmond Special Purpose district. R3X district.

DOCKETS

2018-87-A

91 Santina Drive, Located on the west side of Santina Drive distant 769.81' from the corner of Arbutus Avenue and Santina Drive, Block 06517, Lot(s) 98, Borough of **Staten Island, Community Board: 5**. Proposed construction of 22 detached residences, not fronting on a legally mapped street, contrary to General City Law 36. R3-X South Richmond Special Purpose district. R3X district.

2018-88-A

97 Santina Drive, Located on the west side of Santina Drive distant 769.81' from the corner of Arbutus Avenue and Santina Drive, Block 06517, Lot(s) 99, Borough of **Staten Island, Community Board: 5**. Proposed construction of 22 detached residences, not fronting on a legally mapped street, contrary to General City Law 36. R3-X South Richmond Special Purpose district. R3X district.

2018-89-A

103 Santina Drive, Located on the west side of Santina Drive distant 769.81' from the corner of Arbutus Avenue and Santina Drive, Block 06517, Lot(s) 100, Borough of **Staten Island, Community Board: 5**. Proposed construction of 22 detached residences, not fronting on a legally mapped street, contrary to General City Law 36. R3-X South Richmond Special Purpose district. R3X district.

2018-90-A

101 Santina Drive, Located on the west side of Santina Drive distant 769.81' from the corner of Arbutus Avenue and Santina Drive, Block 06517, Lot(s) 101, Borough of **Staten Island, Community Board: 5**. Proposed construction of 22 detached residences, not fronting on a legally mapped street, contrary to General City Law 36. R3-X South Richmond Special Purpose district. R3X district.

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

CALENDAR

REGULAR MEETING JUNE 19, 2018, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, June 19, 2018, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

SPECIAL ORDER CALENDAR

240-55-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for DLC Properties, owner.

SUBJECT – Application January 24, 2018 – Request for a Re-Hearing pursuant to § 1-12.5 of the Board’s Rules for an application which was dismissed for lack of prosecution on November 21, 2017. The application seeks 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 C2-2/R6B & R4 zoning district.

PREMISES AFFECTED – 207-22 Northern Boulevard, Block 7305, Lot 19, Borough of Queens.

COMMUNITY BOARD #11Q

68-91-BZ

APPLICANT – Eric Palatnik, P.C., for MUKTI 223 LLC, owner.

SUBJECT – Application November 3, 2017 – Amendment (§11-412) of an approved variance which permitted the operation of an automotive service station (UG 16B) with accessory uses. Amendment seeks to permit the enlargement of the existing building and conversion from accessory repair bays to convenience store; the addition of a new storefront, two (2) canopies over the gasoline pump island, and modification of islands and gasoline pumps. R5D/C1-2 & R2A zoning district.

PREMISES AFFECTED – 223-15 Union Turnpike, Block 7780, Lot 1, Borough of Queens.

COMMUNITY BOARD #11Q

APPEALS CALENDAR

2017-58-A

APPLICANT – SBP 69 Street, LLC/Favor J. Smith, Esq., for SBP 69th Street, LLC, owner.

SUBJECT – Application March 2, 2017 – 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.

PREMISES AFFECTED – 7 E 69th Street, Block 1384, Lot 11, Borough of Manhattan.

COMMUNITY BOARD #8M

REGULAR MEETING JUNE 19, 2018, 1:00 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, June 19, 2018, 1:00 P.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

ZONING CALENDAR

2017-15-BZ

APPLICANT – Jeffrey A. Chester, Esq./Schoeman Updike Kaufman LLP, for Northeastern Conference of Seventh-Day Adventists, owner.

SUBJECT – Application January 18, 2017 – 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), ZR 24-35(b) side yard, ZR 24-33 permitted obstructions, and ZR 54-31, increasing the degree of noncompliance of an existing building. R8 zoning district.

PREMISES AFFECTED – 26-28 Edgecombe Avenue, Block 1960, Lot(s) 29 & 30, Borough of Manhattan.

COMMUNITY BOARD #10M

2017-201-BZ

APPLICANT – Law Office of Jay Goldstein, for The Cheder, owner.

SUBJECT – Application May 30, 2017 – 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) and 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), ZR §11-561 and ZR §25-31 (accessory off-street parking) and ZR §23-631

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(minimum distance between legally required windows and lot lines). R3-1 zoning district (Special Ocean Parkway District) and (Special Purpose Sub district (SOPD).

PREMISES AFFECTED –323 Elmwood Avenue, Block 6503, Lot 103, Borough of Brooklyn.

COMMUNITY BOARD #12BK

2017-267-BZ

APPLICANT – Law Offices of Vincent L. Petraro, PLLC, for Harbor Lights Enterprises, Inc., owner.

SUBJECT – Application September 13, 2017– 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.

PREMISES AFFECTED – 129-18 Newport Avenue, Block 16211, Lot 47 Borough of Queens.

COMMUNITY BOARD #14Q

2017-322-BZ

APPLICANT – Philip L. Rampulla, for MUY Brands, LLC, owner.

SUBJECT – Application December 20, 2017 – Special Permit (§73-243) to permit an accessory drive-through to a proposed eating and drinking establishment (UG 6) (*Taco Bell*) contrary to ZR §32-15. C1-2 Lower Density Growth Management Area.

PREMISES AFFECTED – 2259 Richmond Avenue, Block 2380, Lot 80, Borough of Staten Island.

COMMUNITY BOARD #2SI

Carlo Costanza, Executive Director

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**REGULAR MEETING
TUESDAY MORNING, MAY 15, 2018
10:00 A.M.**

Present: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.

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

ACTION OF THE BOARD – Application withdrawn from the compliance calendar.

THE VOTE TO WITHDRAW –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:0

THE RESOLUTION –

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 that all uses on the premises be removed; along the west, south and east lines, and along the portion of the street line of Northern Boulevard a woven wire fence of the chain link type on a masonry base to a total height of not less than 5'-6" be erected; 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 sizable 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 as shown along Northern Boulevard with suitable planting of suitable dense hedge type which need not exceed five feet in height; the entrance of the premises be by means of three curb cuts, one toward the easterly end, one toward the westerly end and one toward the center; usual servicing for the Chevrolet Agency may occur on site; one gasoline pump and one 550 gallon tank may be located within the building for the owner's use only; parking space permitted for a term of twenty (20) years be graded with clean gravel or steam cinders and treated with a binder and properly rolled; the areas in front of the building, to the east of the showroom, be properly planted; motor vehicle entrances to the building

be paved with concrete; the sidewalk and curbing around the premises be constructed or restored to the satisfaction of the Borough President; signs be restricted to permanent signs attached to the building as may be permitted in a local retail district; no roof signs or temporary signs; a neat sign be attached to the entrance stating, with reference to the parking proposed on the plot, that the use of such parking is for private use only and not for public parking; repairing be done by approved tools and under license issued by the Fire Commissioner for such repair work and servicing requiring license; the space below the general grade of the building that opens toward the west and proposed to be used for servicing be maintained with windows and required ventilation; the building be faced with light face brick on all sides; a system for the elimination of obnoxious gases be maintained, exhausting away from the residence district; and fire equipment be installed as the Fire Commissioner requires; 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 Cal. No. 415-55-BZ, the Board granted a variance to permit in a local retail and residence use district, at an existing auto showroom with service of new and used cars and trucks, car conditioning, storage and sale of parts with auto repairs as previously granted by the Board, and open parking, the erection of a one-story extension for car conditioning and roof parking extending into the residence portion of premises which would encroach on the required rear and side yards on condition that the work be done in accordance with drawings filed with the application and on further condition that the walls of the new extension above the grade of the lot be constructed of face brick; 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 an existing auto showroom and service station previously granted by the Board on condition that the building conform to plans filed with the application, that the elevations of the new extension including the concrete block screen shall be submitted to the Chairman of the Board for approval before being sent to the Department of Buildings, that the planting on Alameda Avenue and Hanford Street called for in the original grant be put in good condition and maintained; and a certificate of occupancy be obtained within one year; 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 May 11, 1965, under the subject calendar number, the Board granted a one year extension of

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time to obtain permits, complete construction and obtain a certificate of occupancy, expiring May 11, 1966; and

WHEREAS, on December 7, 1965, under the subject calendar number, the Board amended the resolution to state that, in the event the owner desires to redesign and rearrange the building, including a reduction in the floor area previously permitted, such changes are permitted on condition that the work be done in accordance with revised drawings submitted in connection with the application; and

WHEREAS, on January 4, 1967, under the subject calendar number, the Board granted a one year extension of time, until January 4, 1968, to complete construction and obtain a certificate of occupancy and an amendment of the resolution to permit the reduction in area and rearrangement of the building and the premises as shown on accompanying BSA-approved plans; and

WHEREAS, on January 16, 1968, under the subject calendar number, the Board granted a one year extension of time, until January 4, 1969, to complete construction in view of the applicant's statement that a building permit had been obtained and work was in progress; and

WHEREAS, by letter dated August 30, 1991, the Board approved interior alterations, including raising the elevation of the floor by 4 feet, and the widening of a rear entrance by 4 feet at the eastern end of the existing building (from 5 feet to 9 feet); and

WHEREAS, on November 4, 2013, the applicant filed an applicant for an amendment of the variance granted under the subject calendar number to enlarge the existing showroom and add a parking deck to the existing auto dealership; and

WHEREAS, the applicant failed to respond to the Board's requests for additional information or make any progress towards bring the site into compliance with the conditions of the Board's previous grants over the course of nearly three years of public hearings, including seven hearings scheduled but subsequently adjourned at the applicant's request, and, on April 25, 2017, the application was dismissed for failure to prosecute on April 25, 2017, and, on the same date, the Board made a motion to hold a compliance hearing, pursuant to § 1-12.8 of the Board's Rules of Practice and Procedure, which was scheduled for September 12, 2017; and

WHEREAS, in particular, the Board noted that the premises was plagued with excess signage, parking on the sidewalks, a temporary trailer and landscaping insufficient to buffer the commercial use from neighboring residential uses; and

WHEREAS, a public hearing with regards to compliance was held on September 12, 2017, after due notice to the owner of record and applicant of record, with continued hearings on January 23, 2018, and May 15, 2018, and then to decision on May 15, 2018; and

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

WHEREAS, the applicant planted a total of 16 trees along Hanford Street and Alameda Avenue and installed additional landscaping to buffer the site and its commercial use from its residential neighbors; installed bollards along the Northern Boulevard frontage of the site to discourage parking on the sidewalks; removed excess pylon signage; and removed the temporary trailer; and

WHEREAS, with regards to a 10 foot wide planting strip along the southeastern lot line of the subject site shared with an adjacent residential property required pursuant to previously approved plans, the applicant states that the space, though owned by the applicant, is utilized with the applicant's consent by the residential neighbor as a driveway and for storage and the neighbor prefers the continuation of this use; and

WHEREAS, the applicant provided an affidavit read, understood and agreed to by the residential neighbor to that effect; and

WHEREAS, the Board acknowledges that the requirement of a 10 foot wide planting strip at that location was proposed as a benefit to that neighbor and concedes the neighbor's preference for the maintenance of that area as-is; 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 is withdrawn from the Compliance Calendar; *on condition*:

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, May 15, 2018.

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

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

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THE RESOLUTION –

WHEREAS, this is an application for an extension of term of a variance, previously granted by the Board; and

WHEREAS, a public hearing was held on this application on January 30, 2018, after due notice by publication in *The City Record*, with a continued hearing on March 20, 2018, and then to decision on May 15, 2018; and

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

WHEREAS, Community Board 7, Queens, recommends approval of this application on condition that motion-sensor lighting be added to the building's exterior to stay lit from sunset to 12:00 a.m. and that the residential streets not be used for overflow parking; and

WHEREAS, Borough President Melinda Katz submitted testimony in support of this application on condition that vehicles not be parked or stored on the nearby residential streets or sidewalks and that the subject site and sidewalks be well maintained and clean and free of debris; and

WHEREAS, the Auburndale Improvement Association submitted testimony, citing concerns with the parking or standing of vehicles on the sidewalk, with maneuverability within the boundaries of the subject site, with the retaining wall at the rear of the site and with the absence of street trees; and

WHEREAS, the subject site is located on the northeast corner of Northern Boulevard and 165th Street, in an R2 (C1-2) zoning district, in Queens; and

WHEREAS, the Board has exercised jurisdiction over the subject site since October 7, 1997, when, under the subject calendar number , the Board granted a variance to permit a car rental facility with outdoor storage of rental cars (Use Group 8) located in a portion of a one-story commercial building for a term of ten (10) years, expiring October 7, 2007, on condition that screening and fencing be maintained in accordance with the Board-approved plans, that signage be limited in accordance with the Board-approved plans, that there be no parking on the sidewalks or double parking of rental cars in front of or adjacent to the subject site, that there be no vacuuming, washing or other preparing of vehicles at the subject site and the outdoor lot be used exclusively for the parking of cars, that the above conditions appear on the certificate of occupancy and that a certificate of occupancy be obtained within one (1) year, by October 7, 1998; and

WHEREAS, on January 12, 2010, the Board granted an extension of term of ten (10) years, expiring October 7, 2017, on condition that signage comply with C1 zoning district regulations, that a “no left turn” sign be installed on the subject site in accordance with the Board-approved plans, that all landscaping be provided and maintained in accordance with the Board-approved plans, that the subject site be maintained free of debris and graffiti, that the above conditions appear on the certificate of occupancy and that a new certificate of occupancy be obtained by July 12, 2010;

and

WHEREAS, the term of the variance having expired, the applicant now seeks an extension; and

WHEREAS, in response to community concerns, the Board directed the applicant to provide a detailed operational plan to address lighting, maintenance and parking issues at the subject site; and

WHEREAS, in response to questions from the Board, the applicant states that the retaining wall is the property of the adjacent site and that there are 17 spaces available for rental vehicles and three parking spaces for customers; and

WHEREAS, the applicant further states that a replacement street tree application has been submitted; and

WHEREAS, based upon its review of the record, the Board has determined 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 October 7, 1997, as amended through January 12, 2010, so that as amended this portion of the resolution shall read: “to *permit* an extension of term of ten (10) years, expiring October 7, 2027; *on condition* that all work and site conditions shall conform to drawings filed with this application marked “Received May 15, 2018”-Four (4) sheets; and *on further condition*:

THAT the term of this grant shall be for ten (10) years, expiring October 7, 2027;

THAT security cameras shall be installed to monitor the parking lot and the interior office space 24 hours per day, seven days per week;

THAT an attendant shall monitor both the parking lot and sidewalk area in front of the subject site during normal business hours to ensure that parking is left available to returning customers and to ensure no vehicle parks on the curb or stops on the sidewalks while driving into the subject site; in the event this does happen, the vehicle shall be removed immediately;

THAT the timer setting on the parking lot's light shall be adjusted so that one security light shall remain on throughout the night;

THAT three parking spaces be reserved for customer parking in order to ensure that customers park within the fenced lot on the subject site;

THAT the hours of operation shall be limited as follows: 7:30 a.m. to 6:00 p.m., Monday to Friday, and 9:00 a.m. to 1:00 p.m., Saturday and Sunday;

THAT landscaping shall be maintained on a monthly basis, or as needed, whichever is more frequent; such maintenance shall include keeping the subject site free and clean of all debris and removing weeds from the subject site as well as atop the retaining wall;

THAT lighting shall be provided by the existing light fixtures on the subject site;

THAT lighting shall be adjusted throughout the year so as to turn lights on prior to sunset and turn lights off shortly after sunrise;

THAT lighting shall be maintained by regularly

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checking the functionality of the equipment and based upon employee feedback working at the facility on a daily basis;

THAT lighting repairs shall be made as quickly as possible;

THAT signage shall comply with C1 zoning district regulations;

THAT a “no left turn” sign shall be maintained on the subject site in accordance with the Board-approved plans;

THAT all landscaping shall be provided and maintained in accordance with the Board-approved plans;

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

THAT screening and fencing shall be maintained in accordance with the Board-approved plans;

THAT signage shall be limited in accordance with the Board-approved plans;

THAT there shall be no parking on the sidewalks or double parking of rental cars in front of or adjacent to the subject site;

THAT there shall be no vacuuming, washing or other preparing of vehicles at the subject site and the outdoor lot be used exclusively for the parking of cars;

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 15, 2022;

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, May 15, 2018.

180-05-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for TCAM Core Property Fund Operating LP, owner; Equinox 85th 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 85th Street) Block 1531, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #8M

ACTION OF THE BOARD – Application Withdrawn Without Prejudice.

THE VOTE TO WITHDRAW –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:0

THE RESOLUTION –

WHEREAS, this is an application for an amendment to a special permit, granted pursuant to ZR § 73-36, and an extension of the term of the same, which expired on February 28, 2016; and

WHEREAS, a public hearing was held on this application on March 21, 2017, after due notice by publication in *The City Record*, with continued hearings on September 12, 2017, and January 9, 2018, and then to decision on May 15, 2018; and

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

WHEREAS, the subject site is located on the northeast corner of Third Avenue and East 85th Street, partially within a C2-8A zoning district and partially within an R8B zoning district, in Manhattan; and

WHEREAS, the site has approximately 77 feet of frontage along Third Avenue, 125 feet of frontage along East 85th Street and is occupied by a four-story plus basement commercial building known as the Yorkville Bank Building and designated by the New York City Landmarks Preservation Commission as an individual landmark; and

WHEREAS, the Board has exercised jurisdiction over the subject site since February 28, 2006, when, under the subject calendar number, the Board granted a special permit, pursuant to ZR § 73-36, legalizing a physical culture establishment (“PCE”) with a total floor area of 26,666 square feet, located on all floors of the four-floor plus mezzanine and basement commercial building contrary to ZR § 32-10, for a term of ten (10) years, expiring February 28, 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 PCE’s 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 all massages be performed only by practitioners with valid and current New York State massage licenses; that the conditions appear on the certificate of occupancy, that a certificate of occupancy be obtained within one year of the grant; that fire safety measures, including a sprinkler system, be installed and maintained; that an interior fire alarm system be provided; that the Department of Buildings (“DOB”) review the rear yard encroachment and confirm that it is a permitted obstruction in the R8B portion of the lot; and that the owner take appropriate remedial action, as directed by DOB, if DOB determines that the encroachment is unlawful; and

WHEREAS, the previous term having expired, the applicant seeks an extension of the term for an additional ten (10) years as well as an amendment to change the hours of

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operation; and

WHEREAS, a portion of the subject lot and the subject PCE are located within an R8B zoning district, where the PCE special permit is not available, and, in hearing, the Board questioned whether the Board had authority to grant the special permit application; and

WHEREAS, the Board notes that, pursuant to ZR § 77-11, on a zoning lot existing on December 15, 1961, divided by a boundary between districts in which different uses are permitted, the use regulations applicable to the district in which more than 50 percent of the lot area of the zoning lot is located may apply to the entire zoning lot, provided that the greatest distance from the mapped district boundary to the lot line of the zoning lot in the district in which less than 50 percent of its area is located, measured perpendicular to the mapped district boundary, does not exceed 25 feet; and

WHEREAS, however, a Zoning Lot Description and Ownership Statement was recorded in the Office of the City Register of the City of New York against the subject site on May 5, 2006, (Document ID 2006020100489002) describing the subject site was, along with Tax Lots 45, 46, 47, 48 and 4 on Block 1531 a single zoning lot; and

WHEREAS, on September 19, 2006, a second Zoning Lot Description and Ownership Statement was recorded against the subject site (Document ID 2006091401180002) describing the subject site and Tax Lots 4, 6, 43, 45, 46, 47 and 48 on Block 1531 as a single zoning lot (the "Zoning Lot"); and

WHEREAS, prior to the merger of the subject lot with adjacent tax lots, ZR § 77-11 permitting the extension of the PCE use into the portion of the zoning lot located within an R8B zoning district, but, because the Zoning Lot was created subsequent to December 15, 1961, and the distance from the district boundary line to the lot line of the Zoning Lot is now greater than 25 feet, ZR § 77-11 is inapplicable to the subject site and a use permitted in the portion of the lot located in a C2-8A zoning district cannot be applied to the entire zoning lot; and

WHEREAS, ZR § 77-12 states that whenever a zoning lot is divided by a boundary between districts in which different uses are permitted and the provisions of ZR § 72-11 do not apply, the applicable use regulations for each district shall apply except as provided in ZR §§ 73-42 or 73-52; and

WHEREAS, neither ZR § 73-42, which permits the expansion of a conforming use into a district where such use is not permitted, nor ZR § 73-52, which permits modifications to zoning lots divided by district boundaries where the zoning lot existed in single ownership on December 15, 1961, are applicable at the subject site and, thus, the applicable use regulations for C2-8A zoning districts and R8B zoning districts apply to the respective portions of the subject lot located in each of those zoning districts pursuant to ZR § 77-12 and the subject PCE is not permitted in the portion of the subject building located in an

R8B zoning district; and

WHEREAS, accordingly, the Board questioned its authority to grant this applicant and extend the term of the PCE which occupies a portion of a building located in an R8B zoning district, where the PCE special permit is not available pursuant to ZR § 73-36; and

WHEREAS, the applicant requested withdrawal of this application and represents that an application for a variance at the subject site will be pursued instead; and

WHEREAS, the request for withdrawal was made prior to the close of the public hearing on this application, thus, pursuant to § 1-12.2 of the Board's Rules of Practice and Procedure, the Board may permit withdrawal of the application 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, May 15, 2018.

45-08-BZ

APPLICANT – Rampulla Associates Architects, for 65 Androvetta Street, LLC, owner.

SUBJECT – Application April 25, 2018 – Extension Time to Complete Construction of Variance (§72-21) to construct a new four-story, 81-unit age restricted residential facility which expired on May 19, 2017. M1-1 (Area M), SRD & SGMD zoning district.

PREMISES AFFECTED – 55 Androvetta Street, Block 7407, Lot(s) 1, 80, 82 (Ten. 1), 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 Sheta and Commissioner Scibetta.....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 time to complete construction; and

WHEREAS, a public hearing was held on this application on May 15, 2018, after due notice by publication in *The City Record*, and then to decision on the same date; and

WHEREAS, the Board has exercised jurisdiction over the subject site since May 19, 2009, when, under the subject calendar number, the Board granted a variance to permit a three-story residential building (Use Group 2) restricted to adults aged 55 and over, with 81 dwelling units, cellar-level community facility use and 81 accessory parking spaces on condition that the following be the parameters of the building: a floor area of 75,952 square feet (0.61 FAR), a street wall height of 39'-0" and a total building height of 39'-0", that the occupancy of the building be limited to

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persons 55 years of age or older, in accordance with applicable provisions of the Housing for Older Persons Act requirements, that all other Housing for Older Persons Act requirements be complied with for the life of the building, that the above conditions be listed on the certificate of occupancy, that a Builder's Pavement Plan be filed and approved by the Department of Transportation prior to the issuance of a building permit, that administrative certifications be obtained from the City Planning Commission as required by ZR §§ 107-64 (removal of trees), 107-65 (modification of topography) and 107-23 (school seats) prior to the issuance of a building permit, that the issuance of a building permit be conditioned on securing approval by the Department of Health ("DOH") of a sewer pump station and force main and by the Department of Environmental Protection ("DEP") of the latter as well as of a storm water discharge plan, that issuance of a building permit be conditioned on the issuance by the Department of Environmental Conservation ("DEC") of a Freshwater Wetlands Adjacent Area Permit for the exaction of Kreisler Street, that 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 Project, the applicant or its successor be conditioned on the issuance of Notices to Proceed from the Landmarks Preservation Commission ("LPC") and DEP, that the issuance of any building permit for further construction on the subject site be conditioned on the securing of a Notice of Objection or a Notice of Satisfaction from DEP, as applicable, and either a Notice of No Objection after field Work, or a Notice of No Objection, as applicable, from the LPC, that all fencing and landscaping be installed and maintained as indicated on the Board-approved plans and that the issuance of a temporary certificate of occupancy be conditioned on the issuance of a Final Notice of Satisfaction by the LPC and a Notice of Satisfaction from DEP; and

WHEREAS, on August 13, 2013, under the subject calendar number, the Board granted an extension of time to complete construction, expiring May 19, 2017; and

WHEREAS, the time to complete construction having expired, the applicant now seeks an extension of time and a waiver of the Board's Rules of Practice and Procedure to allow the late filing of this application; and

WHEREAS, based upon its review of the record, the Board has determined that the requested waiver of the Board's Rules of Practice and Procedure and extension of time to complete construction are appropriate with certain conditions as set forth below.

Therefore it is Resolved, that the Board of Standards and Appeals does hereby *waive* the Rules of Practice and Procedure and *reopen* and *amend* the resolution, dated May 19, 2009, as amended through August 13, 2013, so that as amended this portion of the resolution shall read: "to permit an extension of time to complete construction of four (4) years, expiring May 19, 2021; *on condition* that all work, site conditions and operations shall conform to the Board-

approved plans; and *on further condition*:

THAT the following shall be the parameters of the building: a floor area of 75,952 square feet (0.61 FAR), a street wall height of 39'-0" and a total building height of 39'-0";

THAT the occupancy of the building shall be limited to persons 55 years of age or older, in accordance with applicable provisions of the Housing for Older Persons Act requirements;

THAT all other Housing for Older Persons Act requirements shall be complied with for the life of the building;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a Builder's Pavement Plan shall be filed and approved by the Department of Transportation prior to the issuance of a building permit;

THAT administrative certifications shall be obtained from the City Planning Commission as required by ZR §§ 107-64 (removal of trees), 107-65 (modification of topography) and 107-23 (school seats) prior to the issuance of a building permit;

THAT the issuance of a building permit shall be conditioned on securing approval by the Department of Health of a sewer pump station and force main and by the Department of Environmental Protection of the latter as well as of a storm water discharge plan;

THAT issuance of a building permit shall be conditioned on the issuance by the Department of Environmental Conservation of a Freshwater Wetlands Adjacent Area Permit for the exaction of Kreisler Street;

THAT 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 Project, the applicant or its successor shall be conditioned on the issuance of Notices to Proceed from the Landmarks Preservation Commission and DEP;

THAT the issuance of any building permit for further construction on the subject site shall be conditioned on the securing of a Notice of Objection or a Notice of Satisfaction from DEP, as applicable, and either a Notice of No Objection after field Work, or a Notice of No Objection, as applicable, from the LPC;

THAT all fencing and landscaping shall be installed and maintained as indicated on the Board-approved plans;

THAT the issuance of a temporary certificate of occupancy shall be conditioned on the issuance of a Final Notice of Satisfaction by the LPC and a Notice of Satisfaction from DEP;

THAT a certificate of occupancy shall be obtained within four (4) years, by May 15, 2022;

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

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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 15, 2018.

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 38th Street, Block 5295, Lot(s) 52 & 109, 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, Commissioner Sheta and Commissioner Scibetta.....5

Negative:0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated March 26, 2016, acting on Alteration Application No. 3202269925, reads in pertinent part:

“Proposed maximum Floor Area Ratio (FAR), Community Facility, is contrary to ZR 24-11”

“Proposed maximum Lot Coverage, Community Facility, is contrary to ZR 24-11”

“Proposed Rear Yards, Community Facility, is contrary to ZR 24-36”

“Proposed Rear Yards Equivalent, Community Facility, is contrary to ZR 24-382”

“Proposed Base Height of Front wall, Community Facility, is contrary to ZR 23-633 / 24-522”

“Proposed Building Height, Community Facility, is contrary to ZR 23-633”

“Proposed Initial setback of Front wall, Community Facility, is contrary to ZR 23-633(b)”; and

WHEREAS, this is an application for a waiver of the Board’s Rules of Practice and Procedure, an amendment of a variance, previously granted by the Board, to permit a five-story, with cellar and subcellar, community-facility building for use as a school that does not comply with zoning regulations for floor area, lot coverage, rear yards, rear yard equivalent, base height, building height and initial setback, contrary to ZR §§ 24-11, 24-36, 24-382, 23-633,

24-522, 23-633, and an extension of time to complete construction; 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 22, 2017, November 14, 2017, January 30, 2018, and March 20, 2018, and then to decision on May 15, 2018; 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, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the north side of 38th Street and south side of 37th Street, between 12th Avenue and 13th Avenue, partially in an M1-2/R6B zoning district and partially in an M1-2/R6A zoning district, in the Special Mixed Use District – 12, in Borough Park in Brooklyn; and

WHEREAS, the site has approximately 160 feet of frontage along 38th Street, 160 feet of frontage along 37th Street, 200 feet of depth, 31,706 square feet of lot area and is occupied by a community-facility building under construction; and

WHEREAS, the Board has exercised jurisdiction over the subject site since March 16, 2010, when, under the subject calendar number, the Board granted a variance to permit a five-story community-facility building for use as a school that does not comply with applicable use regulations on condition that the following shall be the bulk parameters of the proposed building: five stories, a floor area of 99,200 square feet (4.1 FAR), a lot coverage of 80 percent, a total height of 60’-0”, and a rear yard with a minimum depth of 15’-0”, as reflected on the Board-approved plans; that any change in the use, occupancy, or operator of the school requires review and approval by the Board; that no commercial catering use shall take place on site; that no temporary or permanent Certificate of Occupancy shall be issued by DOB or accepted by the applicant or successor until DEP shall have issued a Notice of Satisfaction; that 30 dBA of window-wall noise attenuation shall be provided in the proposed building; and

WHEREAS, on December 6, 2011, the Board amended the variance to allow the addition of a subcellar, changes to the interior layout of the cellar, first floor and fifth floor and bulk modifications to the proposed building on condition that the following be the bulk parameters of the proposed building: five stories, a maximum floor area of 102,360 square feet (4.25 FAR), a maximum lot coverage of 83 percent, a maximum base height of 55’-0” with a setback of 10’-0” above the base height, a maximum total height of 70’-0”, and a rear yard with a minimum depth of 15’-0”, as illustrated on the BSA-approved plans; and

WHEREAS, the time to complete construction having expired, the applicant now seeks a waiver of the Board’s Rules of Practice and Procedure to allow the late filing of this application, an amendment and an extension of time to

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complete construction; and

WHEREAS, the applicant seeks to expand the subject site to include Lot 52, increasing the lot area of the subject site from approximately 24,056 square feet to approximately 31,076 square feet; and

WHEREAS, the applicant now proposes to develop a five-story building with a total floor area of 114,954 square feet (3.62 FAR), lot coverage of 73 percent, a base height of 55'-0", total height of 70'-0", a rear yard of 50'-0", a rear yard equivalent of 50'-0" and an initial setback of 10'-0" at the fifth floor; and

WHEREAS, the applicant states that the requested modifications are necessary to accommodate the programmatic needs of a school; and

WHEREAS, in support of this contention, the applicant submits that the subcellar will include a lunch room and kitchen; the cellar will include a multipurpose room, to be used as a banquet hall (Use Group 9) in the evenings, kitchen and lobbies; the mezzanine will include mechanical space; the first floor will include classrooms, an arts-and-crafts room and Head Start offices; the second floor will include preschool classrooms, first- and second-grade classrooms, special-education rooms, a library and a resource room; the third floor will include classrooms, computer rooms, special-education rooms, a library and a resource room; the fourth floor will include classrooms, computer rooms, special-education rooms, a library and a resource room; and the fifth floor will include a study hall, classrooms and resource rooms; and

WHEREAS, in response to questions from the Board, the applicant amended the drawings to reflect (E) designation requirements, show proposed curb cuts, proposed use of Lot 109 as parking for cars and bus drop offs, the addition of a wheelchair lift, calculations for safe areas, clarification as to the dual use of the cellar for use as an accessory multipurpose room and a banquet hall in Use Group 9; and

WHEREAS, the applicant also made revisions to the proposed parking plans to accommodate bus drop offs and parking for 15 cars during the day and valet parking of 38 cars during the evening on Lot 109; the parking of 5 buses and valet parking for 26 cars at 1138 36th Street; and valet parking for 55 cars at 1147 37th Street; and

WHEREAS, in response to questions from the Board about the massing of the proposed building, the applicant revised the proposed building to reflect a setback with a depth of 10 feet at the fifth floor and submitted evidence that illegally installed steel within the 10-foot setback had been removed; and

WHEREAS, the applicant represents that an automatic fire alarm and sprinkler system will be installed throughout the building and connected to an FDNY-approved central station; and

WHEREAS, the applicant submitted a detailed security plan including a door and hardware schedule, a door signage plan, a security fixtures plan and an egress routes plan; and

WHEREAS, by letter dated September 30, 2017, the Department of Housing Preservation and Development ("HPD") states that it consents to the use of Lot 109 as a bus drop off for students attending the subject school and valet parking for events held in the evening in the subject building; and

WHEREAS, by letter dated April 11, 2017, the Department of Transportation's School Safety Unit states that it has no objections to this application so long as it is notified of the school's opening to determine if traffic safety improvements or parking regulation changes are necessary; and

WHEREAS, by letter dated April 24, 2018, the Fire Department states that it has no objection to this application; and

WHEREAS, the Board conducted an environmental review of the underlying action and documented relevant information about the project in the Final Environmental Assessment Statement ("EAS") CEQR No. 09BSA006K, dated July 10, 2008; and

WHEREAS, the applicant provided the Board with a Technical Memorandum dated August 4, 2017, updating the July 10, 2008 EAS; the Technical Memorandum states that neither the project nor the proposed modification thereto would result in any significant adverse environmental impact; and

WHEREAS, by letter dated August 14, 2017, the Department of Environmental Protection states that it finds the July 2017 Remedial Closure Report acceptable and that it has no objection to the issuance of any permits by DOB; and

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

WHEREAS, the Board notes that the amendments proposed, pertaining to floor area, lot coverage, rear yards, rear yard equivalent, base height, building height and initial setback, relate solely to the use of the subject building by a school (Use Group 3) and are unrelated to any use of the cellar and mezzanine by a banquet hall (Use Group 9); and

WHEREAS, based upon its review of the record, the Board has determined that the requested waiver of the Board's Rules of Practice and Procedure, amendment and extension of time to complete construction are appropriate with certain conditions as set forth below.

Therefore it is Resolved, that the Board of Standards and Appeals does hereby *waive* the Rules of Practice and Procedure and *reopen* and *amend* the resolution, dated March 16, 2010, as amended through December 6, 2011, so that as amended this portion of the resolution shall read: "to *permit* a five-story, with cellar and subcellar, community-facility building for use as a school that does not comply with zoning regulations for floor area, lot coverage, rear yards, rear yard equivalent, base height, building height and initial setback, contrary to ZR §§ 24-11, 24-36, 24-382, 23-633, 24-522, 23-633, and an extension of time to complete construction of four (4) years, expiring May 15, 2022; *on*

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condition that all work and site conditions shall conform to drawings filed with this application marked “Received April 26, 2018”-Twenty-one (21) sheets; and *on further condition*:

THAT no activities of the banquet hall shall be permitted in the main school lobby, the lunch room or the cellar other than those areas specifically labeled in the cellar and mezzanine level as Use Group 9 on the Board-approved plans;

THAT the bulk parameters of the building shall be as follows: a total floor area of 114,954 square feet (3.62 FAR), lot coverage of 73 percent, a base height of 55’-0”, total height of 70’-0”, a rear yard of 50’-0” and 0’-0”, a rear yard equivalent of 50’-0” and an initial setback of 10’-0” at the fifth floor, as indicated on the Board-approved plans;

THAT this site is the subject of Board of Standards and Appeals Calendar Number 187-08-BZ;

THAT any changes to the proposed project shall require prior approval by the Board of Standards and Appeals;

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 15, 2022;

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, May 15, 2018.

247-08-BZ

APPLICANT – Eric Palatnik, P.C., for 3454 Star Nostrand LLC, owner.

SUBJECT – Application March 25, 2016 – Extension of Term of a previously approved Special Permit (§73-243) to permit the operation of an accessory drive-thru facility to an eating and drinking establishment (Popeye’s), which expired on May 12, 2014; Waiver of the Rules. C1-2/R4 zoning district.

PREMISES AFFECTED – 3454 Nostrand Avenue, Block 7362, Lot 10, 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 Sheta and

Commissioner Scibetta.....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 term of a special permit, previously granted by the Board; and

WHEREAS, a public hearing was held on this application on February 27, 2018, after due notice by publication in *The City Record*, with continued hearings on May 15, 2018, 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 15, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the west side of Nostrand Avenue, between Gravesend Neck Road and Avenue V, in an R4 (C1-2) zoning district, in Brooklyn; and

WHEREAS, the site has approximately 49 feet of frontage along Nostrand Avenue, 52 feet of frontage along Gravesend Neck Road, 6,567 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 May 12, 2009, when, under the subject calendar number, the Board granted a special permit for the operation of an accessory drive-through facility in connection with an as-of-right eating or drinking establishment (Use Group 6) for a term of five (5) years, expiring May 12, 2014, on condition that the site be maintained free of debris and graffiti, that parking and queuing space for the drive-through be provided as indicated on the Board-approved plans, that all landscaping or buffering be maintained as indicated on the Board-approved plans, that exterior lighting be directed away from adjacent residential uses, that the above conditions appear on the certificate of occupancy and that signage conform with the underlying C1 zoning district regulations; and

WHEREAS, the term having expired, the applicant now seeks a waiver of the Board’s Rules of Practice and Procedure to permit the late filing of this application and an extension of term; and

WHEREAS, the applicant states that the drive-through facility has not had an undue adverse impact on residences within the immediate vicinity and that adequate buffering between the drive-through facility is in place; and

WHEREAS, the applicant submits that visual screening and sound attenuation are provided, including a noise-barrier wall system with a height of six feet along the perimeter of the site to the south and west, dense plantings with widths of at least four feet and heights of four feet have been maintained along the south and southwest perimeter and setbacks separate adjacent residences from the drive-through facility; and

WHEREAS, the applicant submitted evidence that sound levels from the menu board are within an appropriate range; and

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WHEREAS, the applicant submits that exterior lighting has been directed away from adjacent residences and that signage complies with C1 zoning district regulations; and

WHEREAS, the applicant states that the hours of operation are as follows: the dining room is open from 10:00 a.m. to 12:00 a.m., Sunday to Thursday, and 10:00 a.m. to 1:00 a.m., Friday and Saturday; and the drive through is open 10:00 a.m. to 1:00 a.m., Sunday to Thursday, and 10:00 a.m. to 2:00 a.m., Friday and Saturday; and

WHEREAS, in response to questions from the Board, the applicant submits that the door to the refuse area will be reinstalled; 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, based upon its review of the record, the Board has determined that the requested waiver of the Board's Rules of Practice and Procedure 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 *waive* the Rules of Practice and Procedure and *reopen* and *amend* the resolution, dated May 12, 2009, so that as amended this portion of the resolution shall read: "to *permit* an extension of term of five (5) years, expiring May 12, 2019; *on condition* that all work and site conditions shall conform to drawings filed with this application marked "Received April 24, 2018"-Five (5) sheets; and *on further condition*:

THAT the term of this grant shall be for five (5) years, expiring May 12, 2019;

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

THAT parking and queuing space for the drive-through shall be provided as indicated on the Board-approved plans;

THAT all landscaping or buffering be maintained as indicated on the Board-approved plans;

THAT exterior lighting be directed away from adjacent residential uses;

THAT signage shall conform with the underlying C1 zoning 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 May 15, 2022;

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, May 15, 2018.

933-28-BZ

APPLICANT – Gerard J. Caliendo, R.A., AIA, for RB Auto Repair/Roger Budhu, owner.

SUBJECT – Application October 16, 2015 – Extension of Term, Amendment & Waiver (11-413) for an extension of the term of a variance which permitted the operation of an automotive repair facility and gasoline service station (UG 16) and an Amendment for the legalization of the enlargement with an insulated corrugated metal enclosure. R5 zoning district.

PREMISES AFFECTED – 125-24 Metropolitan Avenue, Block 9271, Lot 4, Borough of Queens.

COMMUNITY BOARD #9Q

ACTION OF THE BOARD – Laid over to July 17, 2018, at 10 A.M., for postponed hearing.

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 47th Avenue, Block 5559, Lot 75, Borough of Queens.

COMMUNITY BOARD #11Q

ACTION OF THE BOARD – Laid over to July 24, 2018, at 10 A.M., for adjourned hearing.

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 149th Street, Block 2623, Lot 140, Borough of Bronx.

COMMUNITY BOARD #1BX

ACTION OF THE BOARD – Laid over to June 26, 2018, at 10 A.M., for continued hearing.

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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 May 22, 2018, at 10 A.M., for continued hearing.

40-06-BZ

APPLICANT – MP Design and Construction/Maria Maloney, for UDR 10 Hanover-LLC-Constantine Koukoulis, owner; 10 Hanover Sq Gym, LLC-Alex Reznik-Senior MGM Dir, lessee.

SUBJECT – Application June 9, 2017 – Extension of Term of a previously approved Special Permit (§73-36) which permitted the operation of a Physical Culture Establishment (Goldman-Sachs) on the cellar and sub-cellar levels in a 21-story mixed-use building which expired on August 22, 2016; Amendment to permit the change in operator to (Complete Body) and a change in hours of operation; Waiver of the Rules. C5-5 (LM) zoning district

PREMISES AFFECTED – 10 Hanover Sq (aka 4-12 Hanover Sq. 110-124 Pearl St, 76-88 Water Street), Block 31, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #1M

ACTION OF THE BOARD – Laid over to June 26, 2018, at 10 A.M., for continued hearing.

65-13-BZ

APPLICANT – Eric Palatnik, P.C., for Israel Rosenberg, owner.

SUBJECT – Application October 27, 2017 – Amendment of a previously approved Variance (§72-21) which permitted the construction of a three-story multiple dwelling (Use Group 2), contrary to ZR §42-00. The amendment seeks to permit an on-site parking space at the cellar level contrary to the previous Board approval. M1-1 & M1-2/R6A Special Mixed MX-4 district.

PREMISES AFFECTED – 123 Franklin Avenue, Block 1899, Lot 9, Borough of Brooklyn.

COMMUNITY BOARD #3BK

ACTION OF THE BOARD – Laid over to May 22, 2018, at 10 A.M., for continued hearing.

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

ACTION OF THE BOARD – Appeal denied.

THE VOTE TO GRANT –

Affirmative:.....0

Negative: Chair Perlmutter, Vice-Chair Chanda and Commissioner Ottley-Brown.....4

Abstain: Commissioner Sheta.....1

THE RESOLUTION –

WHEREAS, the Notice of Sign Registration Rejection of the Brooklyn Borough Commissioner, dated September 12, 2016, acting on DOB-Issued Sign Identification No. 30023701, OAC No. 1018 (the “Final Determination”), reads in pertinent part:

The Department of Buildings is in receipt of additional documentation submitted in response to the Notice of Rescission Letter from the Sign Enforcement Unit and in connection with the application for registration of the above-referenced sign. Unfortunately, we find this documentation inadequate to support the registration of the sign and as such, the sign is rejected from registration.

The sign was registered with a surface area of 1820 sq. ft. Thus, compliance with ZR 42-55(c)(1) is required. On February 2, 2016, we received various aerial photographs in support of your registration claim. This documentation is insufficient proof that the sign structure complies with the provisions of ZR 42-55(c)(1). We note that the sign structure does not appear in the 1951, 1961, 1968, or 1970 photos that were submitted; and

WHEREAS, this is an appeal for interpretation under ZR § 72-11 and New York City Charter § 666(6)(a) as to whether a sign at the subject location complies with ZR § 42-55(c)(1); and

WHEREAS, a public hearing was held on this appeal on August 8, 2017, after due notice by publication in *The City Record*, with a continued hearing on January 9, 2018, and then to decision on May 15, 2018; and

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

WHEREAS, the subject site is an interior through lot located on the west side of Prince Street, between Concord Street and Tillary Street, in a C6-2 zoning district, in

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Brooklyn; and

WHEREAS, the premises were located in an M1-1 zoning district until August 19, 2003, when they were rezoned to be within a C6-2 zoning district; and

WHEREAS, the site has approximately 86 feet of frontage along Prince Street, 67 feet of frontage along Gold Street and is occupied by 13-story building; and

WHEREAS, an indirectly illuminated advertising sign is located on a structure rising above the parapet wall at the eastern façade of the existing building, fronting Prince Street, at a height of 125 feet from curb to the top of both the sign and the sign structure, both of which measure 26 feet high by 70 feet long and have an area of 1,820 square feet (the “Signage”); and

WHEREAS, the Signage is located 203 feet from and within view of the Brooklyn Queens Expressway (the “BQE”), an arterial highway as designated in Appendix H of the Zoning Resolution; and

WHEREAS, this appeal is brought on behalf of Lamar Advertising of Penn, LLC, an outdoor advertising sign company registered with the City of New York (OAC # 1018) and lessee of the Signage (the “Appellant”); and

WHEREAS, the Department of Buildings (the “Department” or “DOB”) was represented by counsel seeking affirmance of the Final Determination and denial of this appeal; and

PROCEDURAL HISTORY

WHEREAS, as a registered outdoor advertising company, the Appellant is required to submit an inventory of signs it operates that are located within 900 feet and within view of an arterial highway designated as such in Appendix H of the Zoning Resolution; and

WHEREAS, because the Signage is located within 900 feet of an arterial highway, the BQE, it was required to be included in the Applicants sign inventory; and

WHEREAS, by correspondence dated August 13, 2009, in accordance with Chapter 49 of Title 1 of the Rules of the City of New York (“Rule 49”), a representative for the Appellant submitted an inventory of its signage and requested that DOB recognize the legal non-complying and non-conforming status of the Signage pursuant to ZR § 52-83; and

WHEREAS, in connection with that request, the representative provided: (1) the property profile of the premises on DOB’s Building Information System (“BIS”) indicating three electric sign (“ES”) applications on April 26, 1980 (ES No. 93-30-042880), April 28, 1980 (ES No. 93-30-04288), and in 1985 (ES No. 162-85); (2) a copy of the page from the DOB Docket Book describing ES application No. 162-85 as filed against the subject block and lot to “Rehabilitate existing sign”; and (3) a 2009 survey confirming that that the Signage is located 203 feet from the BQE and, thus, not within 200 feet of it; and

WHEREAS, the Appellant additionally provided DOB with a May 23, 1978, photograph of the premises evidencing a sign located at the roof of the eastern frontage of the premises fronting Prince Street; and

WHEREAS, DOB initially issued an approval notice for the Signage and assigned it Sign Identification Number 30023701, but by letter dated August 5, 2013, DOB provided a Notice of Sign Identification Number Rescission alerting the Appellant that the Department had conducted additional research in connection with the registration application for the Signage and requested “demonstrat[ion] that such sign maybe properly registered at its current surface area within 45 days of this notice or such sign shall be subject to enforcement”; and

WHEREAS, by letter dated November 6, 2013, Appellant’s representative responded to the notice, referencing documents previously submitted to DOB—including the reference to ES 93-30, the May 23, 1978 photograph of the premises and the DOB Docket Book log entry describing an application for the rehabilitation of the Signage—and including an additional photograph of the site from July 1968 purporting to show compliance of the Signage with ZR § 42-55(c) and that the Signage was, thus, properly registered; and

WHEREAS, by communication with DOB dated February 2, 2016, representatives of the Appellant additionally provided copies of photographs from November 1958, March 1961 and July 1970 purportedly confirming the presence of the Signage at the premises and noted, additionally, that per the November 1958 photo, the Signage existed at the premises during the period of construction of the BQE; and

WHEREAS, on September 12, 2016, DOB issued the Final Determination; and

WHEREAS, on October 11, 2016, the Appellant filed the subject appeal; and

APPLICABLE SECTIONS OF THE ZONING RESOLUTION

WHEREAS, pursuant to ZR § 32-63, advertising signs are prohibited in a C6-2 zoning district; and

WHEREAS, with regards to signs located in M1 zoning districts, the prior zoning designation of the subject site, ZR § 42-55(a) through (c) read as follows:

42-55

Additional Regulations for Signs Near Certain Parks and Designated Arterial Highways

M1 M2 M3

In all districts, as indicated, the provisions of paragraphs (a), (b) and (c), or paragraph (d) of this Section, shall apply for *signs*¹ near designated arterial highways or certain *public parks*.

(a) Within 200 feet of an arterial highway or a *public park* with an area of one-half acre or more, *signs* that are within view of such arterial highway or *public park* shall be subject to the following provisions:

(1) no permitted *sign* shall exceed 500

1 Words in italics are terms defined in Section 12-10 of the New York City Zoning Resolution.

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- square feet of *surface area*; and
- (2) no *advertising sign* shall be allowed; nor shall an existing *advertising sign* be structurally altered, relocated or reconstructed.
- (b) Beyond 200 feet from such arterial highway or *public park*, the *surface area* of such *signs* may be increased one square foot for each linear foot such sign is located from the arterial highway or *public park*.
- (c) The more restrictive of the following shall apply:
 - (1) any *advertising sign* erected, structurally altered, relocated or reconstructed prior to June 1, 1968, within 660 feet of the nearest edge of the right-of-way of an arterial highway, whose message is visible from such arterial highway, shall have legal *non-conforming use* status pursuant to Section 52-83 (Non-conforming Advertising Signs), to the extent of its size existing on May 31, 1968; or
 - (2) any *advertising sign* erected, structurally altered, relocated or reconstructed between June 1, 1968, and November 1, 1979, within 660 feet of the nearest edge of the right-of-way of an arterial highway, whose message is visible from such arterial highway, and whose size does not exceed 1,200 square feet in *surface area* on its face, 30 feet in height and 60 feet in length, shall have legal *non-conforming use* status pursuant to Section 52-83, to the extent of its size existing on November 1, 1979. All *advertising signs* not in conformance with the standards set forth herein shall terminate; and

WHEREAS, ZR § 52-83 states in relevant part: 52-83

Non-Conforming Advertising Signs

In all *Manufacturing Districts*, or in C1, C2, C4, C5-4, C6, C7 or C8 Districts, except as otherwise provided in Sections 32-66 or 42-55 (Additional Regulations for Signs Near Certain Parks and Designated Arterial Highways), any *non-conforming advertising sign* except a *flashing sign* may be structurally altered, reconstructed or replaced in the same location and position, provided that such structural alteration, reconstruction or replacement does not result in:

- (a) the creation of a new *non-conformity* or an increase in the degree of *non-conformity* of such *sign*;
 - (b) an increase in the *surface area* of such *sign*;
- or

- (c) an increase in the degree of illumination of such *sign*; and

WHEREAS, an “advertising sign” is defined in ZR § 12-10 as “a *sign* that directs attention to a business, profession, commodity, service or entertainment conducted, sold or offered elsewhere than upon the same *zoning lot* and is not *accessory* to a *use* located on the *zoning lot*”; and

WHEREAS, “accessory” has the same meaning as “accessory use,” which pursuant to ZR § 12-10,

- (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 either in 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, a “non-conforming” use is defined, in ZR § 12-10, as “any lawful *use*, whether of a *building or other structure* or of a *zoning lot*, which does not conform to any one or more of the applicable *use* regulations of the district in which it is located, either on December 15, 1961, or as a result of any subsequent amendment thereto”; and

DISCUSSION

WHEREAS, Appellant argues that the Signage was legally established at the subject site prior to June 1, 1968, and asserts that DOB has been provided with documentation sufficient to establish that the Signage is a legal non-conforming use—to wit, references to a 1980 electric sign permit (ES 93-30) and photographs of the area from November 1958, March 1961, July 1968, July 1970 and May 23, 1978, purporting to show the Signage present at the premises; and

WHEREAS, additionally, the Appellant asserts that there has not been a discontinuance of the advertising use of the Signage for two or more years and that the Signage predates the construction of the BQE, the nearby arterial highway that renders ZR § 42-55 applicable at the site and appearing in the November 1958 photograph as under construction, thus, the Signage is grandparented, need not comply with ZR § 42-55(c)(1) and should be analyzed in terms of its compliance with the non-arterial highway signage regulations (that is, sign regulations generally applicable in an M1 zoning district); and

WHEREAS, alternatively, the Appellant suggests that the grandparenting provisions of ZR § 42-55(c) were intended to create a mechanism through which to legalize advertising signs unlawfully erected pursuant to permits issued for accessory signs—a regular advertising industry practice dating back to the 1940s—and, therefore, ZR § 42-55(c)(1) does not apply at the subject site because the

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Signage was not erected unlawfully pursuant to accessory sign permits; and

WHEREAS, as a further alternative, if ZR § 42-55 is, indeed, applicable at the subject site, the Appellant suggests that the Signage, located within 660 feet of the BQE, has been present at the premises since prior to June 1, 1968, and, thus, is a legal-non-conforming use to the extent of its size on May 31, 1968, pursuant to ZR § 42-55(c)(1); and

WHEREAS, in the course of their prosecution of this appeal, the Appellant provided excerpts from the Appellant's 2003 Billboard Lease Agreements for the Signage and a 2011 Ground Lease for Outdoor Advertising Space as additional evidence establishing the legal non-conforming status of the Signage; and

WHEREAS, DOB states that to the extent that the Signage existed at the premises prior to August 19, 2003, when the site was rezoned from an M1-1 zoning district to a C6-2 zoning district, ZR § 42-552 does apply at the subject site and prohibits the Signage, having 1,820 square feet of surface area, from being located within 2023 feet of the BQE; and

WHEREAS, while ZR § 42-55(c)(1) confers legal non-conforming status, pursuant to ZR § 52-83, to advertising signs located within 660 feet of an arterial highway that existed prior to June 1, 1968, to the extent of their size as of May 31, 1968, DOB argues that the evidence provided by the Appellant does not support Appellant's conclusion that an advertising sign of any size, let alone one with 1,820 square feet of surface area, existed at the premises on May 31, 1968, thus, the Signage is unable to qualify as a legal non-conforming use pursuant to ZR § 42-55(c)(1); and

WHEREAS, specifically, DOB points to the November 1958 and March 1961 photographs submitted by the Appellant, which show the subject premises, but no evidence of signage at and projecting above the parapet on the eastern façade of the building, as the Signage does today; in addition, other photographs of the premises submitted by the Appellant (from July 1968, July 1970 and May 23, 1978) were taken *after* May 31, 1968, and, thus, cannot be relied upon to establish the existence and dimensions of any sign at the premises on, or even prior to, May 31, 1968; and

WHEREAS, DOB notes that the May 23, 1978, photograph shows the Signage on a structure sitting on the parapet and rising above the building roof, but asserts that that photograph, having been taken nearly a decade after the

applicable date, provides no evidence that the Signage was erected prior to June 1, 1968; and

WHEREAS, DOB additionally states that other documentation submitted by the Appellant to DOB in support of the legal non-conforming status of the Signage was insufficient pursuant to subparagraph (d)(15)(b) of Rule 49-15, which provides a list of documents acceptable as evidence of the existence and size of a non-conforming sign included in a sign inventory; and

WHEREAS, Rule 49-15(d)(15) reads as follows:

(15) With respect to each sign that has been identified in the sign inventory as a non-conforming sign, the following additional information shall be included with the registration application:

a. [...]

b. Evidence that the non-conforming sign existed and the size of the sign that existed as of the relevant date set forth in the Zoning Resolution to establish its lawful status. Acceptable evidence may include permits, sign-offs of applications after completion, photographs and leases demonstrating that the non-conforming use existed prior to the relevant date. Affidavits, Department cashier's receipts and permit application without other supporting documentation are not sufficient to establish the non-conforming status of a sign. The submitted evidence must specifically establish the non-conforming aspect of the sign. For example, where evidence is submitted to establish that a sign is a non-conforming advertising sign, proof that the sign was erected, but that does not establish that it was advertising, will not be sufficient.

[. . .]; and

WHEREAS, DOB submits that the Appellant only provided references to 1980s ES permit *applications*, specifically evidence that applications for such permits were made, not necessarily that they were issued, and provided neither issued permits nor ES permit application sign-offs, either of which would explicitly comply with Rule 49-15(d)(15)(b); and

WHEREAS, additionally, like the 2003 and 2011 leases, DOB states that references to permit applications made in the 1980s do not "[e]vidence that the non-conforming sign existed and the size of the sign that existed *as of the relevant date*" (emphasis added) as required under Rule 49-15(d)(15)(b), which is June 1, 1968; and

WHEREAS, finally, DOB points out that the 2011 ground lease states that it is "limited to the ground space immediately below the sign structure to be erected" at the site, indicating that the sign structure was not present on the building at the time the lease was executed, and that the evidence presented by the Appellant fails to address whether the signage established at the site prior to June 1, 1968, was accessory—that is, related to the principal use on the zoning

2 Prior to the addition of ZR § 42-55 to the Zoning Resolution on February 27, 2001, ZR § 42-53 regulated advertising signs in Manufacturing districts and contained the same limitations with regards to advertising signs located proximate to an arterial highway or public park.

3 DOB consistently states that the Signage is located 202 feet from the BQE while the Appellant assert that the Signage is 203 feet away. The Board made no determination as to the precise distance of the Signage from the BQE and references the distances cited by the parties only to accurately reflect their arguments.

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lot, clearly incidental to the principal use on the zoning lot and either in the same ownership as the principal use or operated and maintained substantially for the benefit or convenience of the owners, occupants, employees, customers, or visitors of the principal use—or advertising, which it is required to be for ZR § 42-55(c)(1) to be applicable; and

WHEREAS, in response, the Applicant concedes that the sign depicted in the May 23, 1978, photograph is not the same signage that appears in the November 1958 photograph and that the Signage “is not configured in the same manner as that depicted in the pre-1978 photographs,” but insists that the building at the site had signage wrapping around all four of its sides at its parapet wall since at least 1958, that the pre-1978 photographs “reveal signage wrapping around all sides at the top of the building,” and that the square footage of that signage around the parapet, in the aggregate, was greater than the 1,820 square feet of the current Signage; and

WHEREAS, additionally, the Applicant asserts that advertising signage established at the premises could be structurally altered, reconstructed or replaced pursuant to ZR § 42-55(c)(1) and still be eligible for legal non-conforming status provided that it was structurally altered, reconstructed or replaced prior to June 1, 1968; and

WHEREAS, DOB agrees that the July 1970 photograph evidences an assemblage of words approximating a sign along the parapet of the building (generally, the “Parapet Type”), but asserts that that photograph, taken more than two years after the relevant date, does not provide evidence that the Signage as it exists today—that is, on a free-standing sign structure attached to the parapet and projecting over the roof—was present at the site prior to June 1, 1968; and

WHEREAS, even if the Parapet Type existed prior to June 1, 1968, and qualified as a legal non-conforming use pursuant to ZR § 42-55(c)(1), a conclusion for which DOB states there is no evidence, DOB submits that it could only be altered, reconstructed or replaced in the same location and position, meaning the parapet wall, pursuant to ZR § 52-83, and since the Signage as it presents today is not in the same location and position as the Parapet Type, it does not qualify as a legal non-conforming sign pursuant to ZR §§ 42-55(c)(1) and 52-83; and

WHEREAS, in response, the Appellant submits that a 1940 tax photo of the premises depicts the Parapet Type as a sign for J. Arthur Kennedy & Sons Inc. (“Kennedy”), a warehouse and stevedore business; that Kennedy is listed as having a business presence at the subject site in the 1950 Brooklyn telephone directory; that Kennedy is not listed at the premises in either the 1957 or 1967 Brooklyn telephone directory; and that the text on the parapet in 1958, which the Appellant asserts is visible in the November 1958 photograph, is for Kennedy, thus, the Board should conclude that a sign for Kennedy at the premises in 1950 was accessory to Kennedy’s tenancy, but when Kennedy left the premises—potentially as early as 1957, as late as 1967 and,

in either event, prior to June 1, 1968—the Kennedy Parapet Type became an advertising sign; and

WHEREAS, the Appellant notes that the dates of the referenced Brooklyn telephone directories are significant because they are all prior to May 31, 1968, thus establishing that the Parapet Type was an advertising sign erected prior to June 1, 1968, and is entitled to legal non-conforming use to the extent of size on May 31, 1968; and

WHEREAS, the Appellant further argues that the current position of the Signage resulted from a structural alteration, reconstruction or replacement of the pre-1968 Parapet Type that was consistent with ZR § 52-83 because the Signage is in the same location and position as the Parapet Type—the Signage remains “at and above the parapet” and “at the top of the building” as the Parapet Type was—and the current Signage contains less surface area than the Parapet Type; and

CONCLUSION

WHEREAS, pursuant to ZR § 12-10, a “non-conforming use” is one that “does not conform to any one or more of the applicable *use* regulations of the district in which it is located, either on December 15, 1961, or as a result of any subsequent amendment thereto”; and

WHEREAS, if the Signage existed at the subject site while the site was within an M1-1 zoning district and prior to the completion of the BQE, the amendment of Appendix H to the Zoning Resolution designating the BQE as an “arterial highway” rendered the Signage “non-conforming” because the Signage was larger than the maximum surface area permitted at the subject site pursuant to ZR § 42-55(b) (previously ZR § 42-53), a use regulation applicable in M1-1 zoning districts; and

WHEREAS, in order for the Signage to have *legal* non-conforming status, however, either ZR § 42-55(c)(1) or (c)(2) must apply; and

WHEREAS, the Board finds no indication in the text of ZR § 42-55(c) (or ZR § 42-53) that limits its applicability to those advertising signs unlawfully erected pursuant to permits for accessory signs, as the Appellant suggests; and

WHEREAS, additionally, the Board finds that ZR § 42-55(c)(2) is inapplicable in this case because the surface area of the Signage exceeds 1,200 square feet; and

WHEREAS, accordingly, to succeed in this appeal, the Appellant must submit evidence sufficient to show that the Signage was (1) erected, structurally altered, relocated or reconstructed prior to June 1, 1968, (2) within 660 feet of the nearest edge of the right-of-way of an arterial highway with a message visible from such arterial highway, pursuant to ZR § 42-55(c)(1); and

WHEREAS, the parties concede that the Signage is located within 660 feet of the nearest edge of the right-of-way of an arterial highway, in this case, the BQE, thus, the only question for the Board is whether the Signage was erected, structurally altered, relocated or reconstructed prior to June 1, 1968, and, if so, the size of the Signage on May 31, 1968; and

WHEREAS, the Board has reviewed the materials

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submitted by the Appellant in support of its argument and finds that it fails to support Appellant's argument that any advertising sign, let alone the Signage specifically, was erected, structurally altered, reconstructed or replaced at the site prior to June 1, 1968; and

WHEREAS, the Board finds that the photographs of the premises from November 1958, March 1961 and July 1968 fail to show any advertising sign at the premises, particularly at the eastern façade of the existing building, fronting Prince Street, the same location as the Signage; and

WHEREAS, the Board discovered a 1934 photograph of the premises in which text on the parapet refers to "The Thomas & Norris Co. Corrugated Paper," a company that appears to have had a factory at the premises, and, though the Board disagrees that the Parapet Type is sufficiently legible in the November 1958, March 1961 and July 1968 photographs to discern its precise content, the Board credits the Appellant's assertion that the Parapet Type existed at the site prior to 1968; and

WHEREAS, the Board finds, however, that the Parapet Type, to the extent that it was a sign, was accessory to a principal use of the site, not an advertising sign and, thus, cannot be grandparented pursuant to ZR § 42-55(c), which relates only to advertising signs; and

WHEREAS, the Board finds the Appellant's argument that the Parapet Type, which Appellant concedes was accessory to Kennedy's occupancy at the site in 1950, was converted to an advertising sign prior to 1968 to be unsupported by the evidence because nothing was submitted with regards to what the Parapet Type read in 1968, rather the Appellant simply assumes that the Parapet Type continued to refer to Kennedy long after Kennedy allegedly vacated the premises; and

WHEREAS, the Board acknowledges that text is suggested, but illegible, on the eastern face, at least, of the parapet wall in the July 1970 photograph, but notes that that text is located directly on the building's parapet, not on a freestanding sign structure attached to the parapet like the current Signage, and is located in a different position and has different dimensions than the Signage presently at the premises; and

WHEREAS, the Board notes that the first photograph provided by the Appellant that shows the Signage on a structure that starts at the parapet and rises above the roof of the premises, as the Signage does today, is dated May 23, 1978, nearly a decade after the date on which the Signage is required to have existed in order to qualify for legal non-conforming use status pursuant to ZR § 42-55(c)(1); and

WHEREAS, additionally, the Board agrees with DOB that the 21st century leases and references to 1980s ES permit applications provided by the Appellant fail to establish the existence of the any signage at the premises at all prior to June 1, 1968, let alone the Signage in its current location and at its current dimensions, and that none of the proof submitted is conclusive with regards to whether a sign, if so erected, was an advertising sign *prior to* June 1, 1968; and

WHEREAS, with regards to the ES permit applications, in particular, the Board finds that it is impossible to conclude from the references provided that the permits were issued or signed-off, if the permit applications were specifically related to the Signage rather than another sign or signs located elsewhere on the subject building and too late in time to prove that a sign of any kind was present anywhere on the subject building prior to June 1, 1968; and

WHEREAS, the Board disagrees with the Appellant's assertion that the "alteration, reconstruction or replacement" that resulted in the Signage's current configuration complied with ZR § 52-83 because the Signage is not located on the parapet, as the Parapet Type was, instead it is located on a freestanding sign structure that sits *on top of* the parapet and it is indirectly illuminated, whereas the Parapet Text is not alleged to have ever been illuminated, directly or indirectly; and

WHEREAS, thus, even if the Board were to find that the Parapet Type was a legal non-conforming advertising sign under ZR § 42-55(c)(1), the Signage as it appears today is in a different location, in a different position and more illuminated than the Parapet Type contrary to ZR § 52-83 and, therefore, the Signage would not qualify as a legal non-conforming advertising sign; and

WHEREAS, additionally, because the Board finds that no advertising sign was erected, structurally altered, relocated or reconstructed at the premises prior to June 1, 1968, the Board cannot reach the question of the size of that sign on May 31, 1968; and

WHEREAS, the Board has considered all of the Appellant's remaining arguments on appeal and finds them to be without merit; and

Therefore, it is Resolved, that the determination of the Department of Buildings, dated September 12, 2016, acting on DOB-Issued Sign Identification No. 30023701, OAC No. 1018 shall be and hereby is *upheld* and that this appeal shall be and hereby is *denied*.

Adopted by the Board of Standards and Appeals, May 15, 2018.

102-15-A

APPLICANT – Eric Palatnik, P.C., for Kathleen Spezio, owner.

SUBJECT – Application May 11, 2015 – Proposed enlargement of a building located partially within the bed of mapped unbuilt street, pursuant Article 3 Section 35 of the General City Law and waiver under ZR 72-10-(g) . R3-2/SRD zoning district.

PREMISES AFFECTED – 1088 Rossville Avenue, Block 7067, Lot 1, Borough of Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Laid over to June 26, 2018, at 10 A.M., for continued hearing.

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257-15-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for ESL8 Properties LLC, owner.

SUBJECT – Application November 18, 2015 – Proposed construction within the bed of a mapped street is contrary to Article 3 Section 35 of the General City Law and related bulk waivers under ZR 72-01-(g). R3-2(NA-1) zoning district.

PREMISES AFFECTED – 1221 Forest Hill Road, Block 1965, Lot 59, Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Laid over to July 17, 2018, at 10 A.M., for continued hearing.

2017-5-A thru 2017-7-A

APPLICANT – Eric Palatnik, P.C., for Cetka Mersimovski, owner.

SUBJECT – Application January 6, 2017 – 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.

PREMISES AFFECTED – 620A, 620B, 620C Sharrots Road, Block 7400, Lot 40, Borough of Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Laid over to July 17, 2018, at 10 A.M., for continued hearing.

2017-193-A thru 2017-199-A

APPLICANT – Eric Palatnik, P.C., for Frank McErlean, owner.

SUBJECT – Application May 26, 2017 – 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.

PREMISES AFFECTED – 9, 10, 11, 12, 14, 15, and 17 Tulepo Court, Block 2260, Lot(s) 4, 10, 60, 62, 64, 66, 68, Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Laid over to July 17, 2018, at 10 A.M., for continued hearing.

2017-234-A

APPLICANT – Rothkrug Rothkrug & Spector LLP

SUBJECT – Application August 8, 2017 – Proposed construction of a self-storage facility not fronting a legally mapped street contrary to General City Law 36. M1-1 zoning district.

PREMISES AFFECTED – 266 Wild Avenue, Block 2645, Lot 1, Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Laid over to June 26, 2018, at 10 A.M., for continued hearing.

2017-254-A thru 2017-255-A

APPLICANT – Eric Palatnik, P.C., for Ottavio Savo, owner.
SUBJECT – Application August 28, 2017 – Proposed construction of a one-family home not fronting a legally mapped street contrary to General City Law 36. R3X/SRD zoning district.

PREMISES AFFECTED – 115 and 117 Arbutus Avenue, Block 6523, Lot(s) 24, 27, Borough of Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Laid over to May 22, 2018, at 10 A.M., for continued hearing.

ZONING CALENDAR

2016-4262-BZ

CEQR #17-BSA-023M

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 – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, and Commissioner Sheta.....4

Negative:0

Abstain: Commissioner Scibetta.....1

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated September 2, 2016, acting on Alteration Application No. 121371256, reads in pertinent part:

“Proposed Physical Culture Establishment . . . is not permitted pursuant to ZR 32-10”; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to permit, in a C6-2A zoning district, the legalization of a physical culture establishment on the second and third floors of the subject building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on May 23, 2017, after due notice by publication in *The City Record*, with continued a hearing on February 13, 2018, and then to decision on May 15, 2018; and

WHEREAS, Commissioner Ottley-Brown and former 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

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of Church Street, between Franklin Street and White Street, in a C6-2A zoning district, in Manhattan; and

WHEREAS, the subject site has approximately 25 feet of frontage along Church Street, 75 feet of depth, 1,875 square feet of lot area and is occupied by a five-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 subject PCE occupies approximately 2,500 square feet of floor area as follows: 1,300 square feet of floor area on the second floor, including a reception area, a yoga studio, a restroom and a locker room with showers, and 1,200 square feet of floor area on the third floor, used for a yoga studio, restrooms and a locker room with showers; and

WHEREAS, the PCE has been in operation as Lyons Den Power Yoga since 2013, with the following hours of operation: 5:30 a.m. to 9:00 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 use is consistent with the vibrant commercial area in which it is located, that the PCE use is fully contained within the envelope of an existing building, that the PCE use will not create congestion in front of the subject building and that no weights, heavy equipment or loud music are involved in the operation of the subject PCE; and

WHEREAS, in addition, the applicant submits that sound attenuation measures, including a sound limiter on the PCE's music system and two layers of sheetrock on the ceiling, have been provided within the space so as to not disturb other tenants in the building; and

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

WHEREAS, the applicant states that the PCE provides classes, instruction and programs for 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

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satisfactory; and

WHEREAS, the applicant submitted evidence that the PCE is fully sprinklered; and

WHEREAS, by letter dated May 10, 2018, the Fire Department states that it has no objection to this application on condition that the closet constructed in the exit passageway at the third floor be removed, that all doors along the exit passageway on the second and third floors be self-closing fire-rated doors to remain in the closed position at all times with door stoppers to be removed, that access to the fire escape remain unobstructed at all times and that Class 2-A fire extinguishers be installed on the second and third floors within the PCE to remain visible and accessible at all times; 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 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-023M, dated October 3, 2016; and

WHEREAS, on October 31, 2016, the New York City Landmarks Preservation Commission issued a Certificate of No Effect to permit interior alterations at the second and third floors, including the demolition and construction of non-bearing partitions and finishes, as well as plumbing and electrical work; and

WHEREAS, the Board finds that the evidence in the record supports the findings required to be made under ZR §§ 73-36 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion; 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 without a special permit.

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 §§ 73-36 and 73-03 to *permit*, in a C6-2A zoning district, the legalization of a physical culture establishment on the second and third floors of the subject building, contrary to ZR § 32-10; *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked "Received February 28, 2017"-Nine (9) sheets; and *on further condition*:

THAT this grant shall be limited to a term of ten (10) years, expiring May 15, 2028;

THAT the closet constructed in the exit passageway at the third floor shall be removed;

THAT all doors along the exit passageway on the second and third floors shall be self-closing fire-rated doors to remain in the closed position at all times with door stoppers to be removed;

THAT access to the fire escape shall remain unobstructed at all times;

THAT Class 2-A fire extinguishers shall be installed on the second and third floors within the physical culture establishment to remain visible and accessible at all times;

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 maintained leading to the required exits and that pathways shall be maintained unobstructed, including from any gymnasium equipment;

THAT the PCE shall remain fully sprinklered;

THAT sound attenuation shall be maintained in the PCE;

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 15, 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, May 15, 2018.

2016-4271-BZ

CEQR #17-BSA-029K

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 – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Sheta.....4

Negative:0

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Abstain: Commissioner Scibetta.....1

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated September 30, 2016, acting on Alteration Application No. 321195194, reads in pertinent part:

“The proposed FAR . . . exceeds the maximum permitted . . . ; contrary to ZR 23-142.”

“The proposed lot coverage . . . exceeds the maximum permitted . . . ; contrary to ZR 23-142.”

“The proposed open space . . . is less than the minimum required . . . ; contrary to ZR 23-142.”

“Proposed Side Yard is Contrary to ZR 23-461(a)”; 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 two-family detached residence that does not comply with zoning regulations for floor area ratio, lot coverage, open space and side yards, contrary to ZR §§ 23-142 and 23-461; and

WHEREAS, a public hearing was held on this application on July 18, 2017, after due notice by publication in *The City Record*, with continued hearings on February 13, 2018, and April 17, 2018, and then to decision on May 15, 2018; 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 northeast corner of Hampton Avenue and Amherst Street, in an R3-1 zoning district, in Brooklyn; and

WHEREAS, the subject site has approximately 44 feet of frontage along Hampton Avenue, 100 feet of frontage along Amherst Street, 4,367 square feet of lot area and is occupied by an existing two-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 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

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

WHEREAS, the applicant proposes to convert the subject building to a single-family residence and enlarge the existing residence from 1,951 square feet of floor area (0.63 FAR) to 4,117 square feet of floor area (0.94 FAR), increase lot coverage from 34 percent to 41 percent, decrease open space from 67 percent to 60 percent and maintain the existing side yards with depths of 3'-0" and 25'-6"; and

WHEREAS, the applicant states that, at the subject site, floor area may not exceed 2,183 square feet (0.50 FAR) under ZR § 23-142, lot coverage may not exceed 35 percent under ZR § 23-142, open space must be a minimum of 65 percent under ZR § 23-142 and side yards must have minimum widths of five feet for a total width of 13 feet under ZR § 23-461; and

WHEREAS, the applicant represents that the proposed building as enlarged is consistent with the built character of the neighborhood; and

WHEREAS, in support of this contention, the applicant surveyed single- and two-family residences in the surrounding area, finding that there are 28 residences with an FAR of 0.9 or greater and there are 23 residences with lot coverage of 40 percent or greater; and

WHEREAS, the applicant also submitted a height study, a photographic streetscape montage, a contextual streetscape illustration, a study of neighborhood architectural styles and a photographic neighborhood study demonstrating that the proposed building will fit in with the built conditions of the surrounding area; and

WHEREAS, based upon its review of the record and inspections of the subject site and surrounding neighborhood, the Board finds that the proposed building as enlarged will not alter the essential character of the neighborhood or district in which the subject building is located, nor impair the future use or development of the surrounding area; and

WHEREAS, in response to the Board's questions at hearing, the applicant amended the drawings to reflect that adequate amounts of existing building material will be retained and to reduce the massing of the proposed building by revising the design of the front, reducing attic space and decreasing the building height; and

WHEREAS, at hearing, the applicant represented that the proposed building will comply with all regulations applicable in flood zones, compliance with which will be as reviewed and approved by the Department of Buildings, and the Board reiterates that no flood-related regulations have been waived 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 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 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. 17BSA029K, dated November 3, 2016; and

WHEREAS, the Board finds that the evidence in the record supports the findings required to be made under ZR §§ 73-622 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion.

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 §§ 73-622 and 73-03 to *permit*, in an R3-1 zoning district, the enlargement of an existing two-family detached residence that does not comply with zoning regulations for floor area ratio, lot coverage, open space and side yards, contrary to ZR §§ 23-142 and 23-461; *on condition* that all work and site conditions shall conform to drawings filed with this application marked "Received April 27, 2018"-Eleven (11) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: a maximum of 4,117 square feet of floor area (0.94 FAR), a maximum lot coverage of 41 percent, a minimum of 60 percent of open space and side yards with minimum depths of 3'-0" and 25'-6", as illustrated on the Board-approved plans;

THAT removal of existing joists or perimeter walls in excess of that shown on the Board-approved plans shall void the special permit;

THAT flood regulations, including Article 6, Chapter 4, of the Zoning Resolution and Appendix G of the New York City Building Code, as applicable, shall be complied with as reviewed and 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 15, 2022;

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 15, 2018.

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2017-54-BZ

CEQR #17-BSA-097K

APPLICANT – Law Office of Lyra J. Altman, for Hadasa Mendelsohn & Marcus Mendelsohn, owners.

SUBJECT – Application February 23, 2017 – 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.

PREMISES AFFECTED – 1215-1217 East 28th Street, Block 7646, Lot 39, 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 Sheta and Commissioner Scibetta.....5

Negative:0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated January 25, 2017, acting on Alteration Application No. 321422108, reads in pertinent part:

1. Proposed FAR exceeds the maximum permitted FAR . . . contrary to ZR 23-141.
2. Proposed open space ratio is less than the minimum required . . . contrary to ZR 23-141.
3. Proposed rear yard is less than the required . . . contrary to ZR 23-47; 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 residence that does not comply with zoning regulations for floor area ratio, open space ratio and rear yards, contrary to ZR §§ 23-141 and 23-47; and

WHEREAS, a public hearing was held on this application on March 20, 2018, after due notice by publication in *The City Record*, with a continued hearing on May 15, 2018, 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 14, Brooklyn, recommends approval of this application; and

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

WHEREAS, the subject site has approximately 60 feet of frontage along East 28th Street, 100 feet of depth, 6,000 square feet of lot area and is occupied by an existing two-story, with cellar, two-family 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.

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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 residence, as contemplated in ZR § 73-622; and

WHEREAS, the applicant proposes to convert the existing two-family residence to single-family use and to enlarge from 2,978 square feet of floor area (0.50 FAR) to 6,025 square feet of floor area (1.0 FAR), decrease open space from 4,355 square feet (146 OSR) to 3,309 square feet (55 OSR) and decrease the depth of the rear yard from 45'-3" to 24'-6" at the first story and 25'-10" at the second story; and

WHEREAS, the applicant states that, at the subject site, floor area may not exceed 3,000 square feet (0.5 FAR) under ZR § 23-141, there must be a minimum of 4,500 square feet of open space (150 OSR) under ZR § 23-141 and rear yards must have minimum depths of 30 feet under ZR § 23-47; and

WHEREAS, the applicant represents that the proposed building as enlarged is consistent with the built character of the neighborhood; and

WHEREAS, in support of this contention, the applicant surveyed single- and two-family residences in the surrounding area, finding that there are 12 residences with at least 1.0 FAR and that there are 10 residences with open space ratios less than or equal to 55 percent; and

WHEREAS, the applicant submitted a rear yard study indicating that at least 37 percent of the subject block has non-complying rear yards and that 12 residences have rear yard depths of 24'-6" or less, and the applicant notes that there are 35 garages or sheds located in rear yards on the subject block, including in the rear yards of the residences immediately adjacent to the subject site; and

WHEREAS, the applicant also submitted a building width study, photographic streetscape montage, a radius diagram and a photographic neighborhood study demonstrating that the proposed building will fit in with the built conditions of the surrounding area; and

WHEREAS, based upon its review of the record and inspections of the subject site and surrounding neighborhood, the Board finds that the proposed building as enlarged will not alter the essential character of the neighborhood or district in which the subject building is located, nor impair the future use or development of the

surrounding area; and

WHEREAS, in response to questions from the Board at hearing, the applicant revised the drawings to indicate that sufficient amounts of existing building will be retained during construction, reduced the perimeter wall height and total height of the proposed 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 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. 17BSA097K, dated February 23, 2017; and

WHEREAS, the Board finds that the evidence in the record supports the findings required to be made under ZR §§ 73-622 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion.

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 §§ 73-622 and 73-03 to *permit*, in an R2 zoning district, the enlargement of an existing residence that does not comply with zoning regulations for floor area ratio, open space ratio and rear yards, contrary to ZR §§ 23-141 and 23-47; *on condition* that all work and site conditions shall conform to drawings filed with this application marked "Received May 15, 2018"-Twenty-one (21) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: floor area shall be limited to 6,025 square feet (1.00 FAR), there shall be at least 3,309 square feet of open space (55 OSR) and the rear yard shall have minimum depths of 24'-6" at the first story and 25'-10" at the second story, as illustrated on the Board-approved plans;

THAT removal of existing joists or perimeter walls in excess of that shown on the Board-approved plans shall void the special permit;

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 15, 2022;

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, May 15, 2018.

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 67th Street, Block 5760, Lot 70, Borough of Brooklyn.

COMMUNITY BOARD #10BK

ACTION OF THE BOARD – Laid over to May 22, 2018, at 10 A.M., for continued hearing.

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 July 17, 2018, at 10 A.M., for adjourned hearing.

2017-56-BZ

APPLICANT – Rampulla Associates Architects, LLP, for Block 853, LLC, owner.

SUBJECT – Application February 24, 2017 – 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. R1-2 zoning district. R1-2 Lower Density Growth Management Area.

PREMISES AFFECTED – 1321 Richmond Road, Block 853, Lot(s) 91 & 93, Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Laid over to July 24, 2018, at 10 A.M., for continued hearing.

2017-192-BZ

APPLICANT – Greenberg Traurig, LLP, for Fort Hamilton, LLC, owner.

SUBJECT – Application May 26, 2017 – 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.

PREMISES AFFECTED – 5402-5414 Fort Hamilton Parkway/1002-1006 54th Street, Block 5673, Lot(s) 42 & 50, Borough of Brooklyn.

COMMUNITY BOARD #12BK

ACTION OF THE BOARD – Laid over to July 17, 2018, at 10 A.M., for continued hearing.

REGULAR MEETING

TUESDAY AFTERNOON, MAY 15, 2018

1:00 P.M.

Present: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.

ZONING CALENDAR

2016-4265-BZ

APPLICANT – Law Office of Fredrick A. Becker, for 25 Bleecker Street, LLC, owner.

SUBJECT – Application October 6, 2016 – Variance (§72-21) to permit the development of a six-story and penthouse structure containing commercial retail (UG 6) on the first and cellar floors contrary to ZR §42-14(D)(2)(B) and residential (UG 2) in the upper floors contrary to ZR §42-10. The proposed rear yard does not comply with ZR §§43-26 & 43-27. M1-5B (NOHO Historic District) zoning district.

PREMISES AFFECTED – 25 Bleecker Street, Block 529, Lot 54, Borough of Manhattan.

COMMUNITY BOARD #2M

ACTION OF THE BOARD – Laid over to May 22, 2018, at 10 A.M., for continued hearing.

2016-4275-BZ

APPLICANT – Gerald J. Caliendo, R.A., AIA, for Joseph G. Ciampa/Ciampa North Co., owner; Push Fitness Club, lessee.

SUBJECT – Application October 31, 2016 – Special Permit (§73-36) to permit the legalization of a physical cultural establishment (*Push Fitness Club*) located on the first floor, basement and mezzanine levels of the existing commercial building contrary to ZR §42-10. M1-1 zoning district.

PREMISES AFFECTED – 132-15 14th Avenue, Block 4012, Lot(s) 45 & 30, Borough of Queens.

MINUTES

COMMUNITY BOARD #7Q

2017-149-BZ

APPLICANT – Sheldon Lobel, P.C., for Willard J. Price Associates LLC, owner.

SUBJECT – Application May 15, 2017 – 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.

PREMISES AFFECTED – 510 Quincy Street & 651-671 Gates Avenue, Block 1811, Lot 19, Borough of Brooklyn.

COMMUNITY BOARD #3BK

2017-209-BZ

APPLICANT – Eric Palatnik, P.C., for Yoel Zigelbaum, owner.

SUBJECT – Application June 9, 2017 – 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.

PREMISES AFFECTED – 1622 East 29th Street, Block 679, Block 8, Borough of Brooklyn.

COMMUNITY BOARD #15BK

2017-304-BZ

APPLICANT – Simons & Wright LLC, for 160 17th Street, LLC, owner; Brooklyn Prospect Charter School, lessee.

SUBJECT – Application November 21, 2017 – 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.

PREMISES AFFECTED – 160 17th Street, Block 630, Lot 22, Borough of Brooklyn.

COMMUNITY BOARD #7BK

Carlo Costanza, Executive Director

BULLETIN

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June 1, 2018

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Tuesday, May 22, 2018**

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634-84-BZ	2501-2509 Avenue K, aka 3211 Bedford Avenue, Brooklyn
60-90-BZ	525 Forest Avenue, Staten Island
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DOCKETS

New Case Filed Up to May 22, 2018

2018-91-BZ

78-80 Leonard Street, The premises is located on Leonard Street between Church Street and Broadway, Block 00173, Lot(s) 7503, Borough of **Manhattan, Community Board: 1.** Special Permit (§73-36) to operate a physical culture establishment (Crunch Fitness) within an existing building. C6-2A zoning district. C6-2A district.

2018-92-BZ

213 Bayside Avenue, Located 181.00' easterly of the corner formed by the intersection of Roxbury Blvd and Bayside Avenue., Block 16340, Lot(s) 0050, 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.

2018-93-BZ

7 Bevy Court, Located between Everett Avenue and Florence Avenue, Block 08925, Lot(s) 0266, 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.

2018-94-BZ

105 Dare Court, Located between Bartlett Place and Cyrus Avenue, Block 08914, Lot(s) 0434, 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.

2018-95-BZ

120 Avenue M, The premises is located on Avenue M between East 2nd Street and McDonald Avenue, Block 06564, Lot(s) 0001, Borough of **Brooklyn, Community Board: 12.** Variance (§72-21) to permit the development of a four-story educational institution (UG 3) (HASC Center) contrary to ZR §23-142 (floor area and lot coverage), ZR §23-45 (front yard), ZR §23-631 (height and setback), ZR §23-632 (side setback), and ZR §25-31 (parking). C2-3/R5 Special Ocean Parkway District. R5/C2-3 district.

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

CALENDAR

REGULAR MEETING JUNE 26, 2018, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, June 26, 2018, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

SPECIAL ORDER CALENDAR

530-32-BZ

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

SUBJECT – Application March 23, 2018 – Amendment (§§11-412 & 11-413) of a previous granted variance to legalize a change in use of a portion of the ground floor of the existing building, from a UG9 banquet hall to UG6 supermarket, and to permit a minor interior enlargement in commercial floor area. C1-3/R6 zoning district.

PREMISES AFFECTED – 1029 Brighton Beach Avenue, Block 8709, Lot 60, Borough of Brooklyn.

COMMUNITY BOARD #13BK

55-01-BZ

APPLICANT – Judith M. Gallent, Esq., for 568 Broadway Property LLC, owner.

SUBJECT – Application March 21, 2017 – Extension of Term of a previously granted Special Permit (§73-36) which permitted the operation of a Physical Cultural Establishment (Bliss Spa) located on portions of the second and third floors of an eleven-story mixed use building which expired on April 1, 2017. M1-5B zoning district (SoHo Cast Iron Historic District).

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

COMMUNITY BOARD #2M

254-13-BZ

APPLICANT – Law Offices of Marvin B. Mitzner LLC, for Lisjen Realty Inc., owner.

SUBJECT – Application March 29, 2018 – Amendment of a previously approved Variance (§72-21) permitting a development contrary to floor area (§23-141(a)), dwelling units (§23-22), lot coverage (§23-141(a)), front yard (§23-45(a)), side yard (§23-462(a)), and building height (§23-631(b)) regulations. The amendment seeks to increase the height of the elevator bulkhead contrary to the previously approved plans. R3-2 zoning district.

PREMISES AFFECTED – 2881 Nostrand Avenue, Block 7691, Lot 91, Borough of Brooklyn.

COMMUNITY BOARD #18BK

APPEALS CALENDAR

2016-4473-A

APPLICANT – Law Offices of Marvin B. Mitzner LLC, for 72-74 E. 3rd Street Condo Corp., owner.

SUBJECT – Application December 30, 2016 – 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.

PREMISES AFFECTED – 72-74 East 3rd Street, Block 444, Lot 7501, Borough of Manhattan.

COMMUNITY BOARD #3M

REGULAR MEETING JUNE 26, 2018, 1:00 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, June 26, 2018, 1:00 P.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

ZONING CALENDAR

2017-131-BZ

APPLICANT – Sheldon Lobel, P.C., for Congregation Divrei Yoel, owner.

SUBJECT – Application April 18, 2018 – 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 §§24-36 & 23-47 (Required Rear Yards), and ZR 23-33(b) permitted obstructions in rear yard. R7A zoning district.

PREMISES AFFECTED – 77-85 Gerry Street, Block 2266, Lot(s) 46,47,48,49, Borough of Brooklyn.

COMMUNITY BOARD #1BK

2017-298-BZ

APPLICANT – Jay A Segal, Greenberg Traurig LLP, for 14 White Street Owner LLC, owner.

SUBJECT – Application November 9, 2017 – 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.

PREMISES AFFECTED – 14 White Street, Block 191, Lot 8, Borough of Manhattan.

COMMUNITY BOARD #1M

CALENDAR

2018-12-BZ

APPLICANT – Jay Goldstein, Esq., for 241 Bedford Associates LLC, owner; Flywheel Sports Inc., lessee.

SUBJECT – Application January 26, 2018 – Special Permit (§73-36) to permit the legalization of a physical cultural establishment (*Flywheel*) within a portion of the first floor of an existing building contrary to ZR §42-10. M1-2/R6B Greenpoint-Williamsburg Anti-Harassment District.

PREMISES AFFECTED – 173 N 3rd Street, (156 N 4th Street), Block 2352, Lot 9, Borough of Brooklyn.

COMMUNITY BOARD #1BK

2018-18-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Garichi LLC, owner.

SUBJECT – Application February 7, 2018 – Re-instatement (§11-411) of a previously approved variance permitted retail uses which expired on June 18, 2001; Amendment (§11-411) to permit the enlargement of one of the existing buildings; Waiver of the Board’s Rules. R5 zoning district.

PREMISES AFFECTED – 2250 Linden Boulevard, Block 4359, Lot(s) 1, 6, Borough of Brooklyn.

COMMUNITY BOARD #5BK

2018-28-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 130-20 Farmers LLC, owner; Blink Farmers Boulevard, Inc. lessee.

SUBJECT – Application February 21, 2018 - Special Permit (§73-36) to permit the operation of a physical cultural establishment (*Blink Fitness*) to operate within a new commercial building to occupy a portion of the first floor and the entire second floor contrary to ZR §32-10. C2-3/R5D zoning district.

PREMISES AFFECTED – 130-20 Farmers Boulevard, Block 12542, Lot 3, Borough of Queens.

COMMUNITY BOARD #12Q

2018-41-BZ

APPLICANT – Jay Goldstein, Esq., for David Janklowicz, owner.

SUBJECT – Application March 16, 2018 – Special Permit (§73-622) to permit the enlargement of a one family home contrary to ZR §23-141 (FAR and Open Space); ZR §23-461 (a) (side yard) and ZR §23-47 (rear yard). R2 zoning district.

PREMISES AFFECTED – 1238 East 29th Street, Block 7646, Lot 60, Borough of Brooklyn.

COMMUNITY BOARD #14BK

Carlo Costanza, Executive Director

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**REGULAR MEETING
TUESDAY MORNING, MAY 22, 2018
10:00 A.M.**

Present: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.

SPECIAL HEARINGS

393-59-BZ

APPLICANT – Sheldon Lobel, P.C., for Peter Ciardullo, owner; Richard Finkelstein, lessee.

SUBJECT – Application January 5, 2016 – Extension of Term (11-411) for an extension of term of the previously granted variance to a convenience store, pump island and metal canopies for a term of ten years which expired January 15, 2012 and a waiver of the Rules.

PREMISES AFFECTED – 1945 Bartow Avenue aka 2801 Edison Avenue, Block 4800, Lot 29, Borough of Bronx.

COMMUNITY BOARD #12BX

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....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 term of a variance, previously granted by the Board; and

WHEREAS, a public hearing was held on this application on March 27, 2018, after due notice by publication in *The City Record*, and then to decision on May 22, 2018; and

WHEREAS, Commissioner Ottley-Brown performed an inspection of the site and surrounding neighborhood; and

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

WHEREAS, the Board has exercised jurisdiction over the subject site since January 5, 1960, when, under the subject calendar number, the Board granted a variance to permit for a term of fifteen (15) years, expiring January 5, 1975, the construction and maintenance of a gasoline service station, with accessory motor vehicle repair shop using hand tools only, non-automatic car wash, office and sales and parking of cars awaiting service, on condition that the two floodlight towers be eliminated, that the brand sign be stationary with non-flashing illumination and not be more than ten square feet in area, that the trees along Edson Avenue be planted between the sidewalk and the curb and that the door to the men’s toilet be moved so that the entrance to the toilet is from the interior of the building; and

WHEREAS, on May 3, 1960, under the subject calendar number, the Board amended to variance so that the easterly curb cut on Bartow Avenue be measured from a perpendicular to the Bartow Avenue building line, that the accessory building be relocated into the corner of the lot and that the stationary, non-flashing illuminated sign at the intersection not project more than four feet beyond the building line and be of a type and size shown on the Board-approved plans; and

WHEREAS, on March 18, 1975, under the subject calendar number, the Board granted an extension of term of ten (10) years, expiring March 18, 1985, on condition that two trees be planted along Edson Avenue in compliance with the Board’s resolution and in accordance with the rules and regulations of the Department of Parks and that a new certificate of occupancy be obtained; and

WHEREAS, on June 25, 1995, under the subject calendar number, the Board granted an extension of term of ten (10) years, expiring March 18, 1995, 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 June 25, 1986; and

WHEREAS, on September 12, 1995, under the subject calendar number, the Board amended the variance to remove a portion of the existing building, create a convenience store and attendant’s area in the remaining portion, install a new steel canopy over four new concrete pump islands with MPG pumps and delete the condition that two trees be planted along Edson Avenue and granted an extension of term of ten (10) years, expiring March 18, 2005, on condition that curb cuts comply with the Board-approved plans and that a new certificate of occupancy be obtained within one (1) year, by September 12, 1996; and

WHEREAS, on November 12, 2002, under the subject calendar number, the Board granted an extension of term of ten (10) years, expiring January 15, 2012, on condition that there be no sale of vehicles at the subject site at any time, that there be no parking on the sidewalk, that the site be maintained graffiti-free at all times, that all signage comply with regulations applicable in C2 zoning districts and that the above conditions appear on the certificate of occupancy; and

WHEREAS, the term having expired, the applicant now seeks an extension and a waiver of the Board’s Rules of Practice and Procedure to permit the late filing of this application; and

WHEREAS, by letter dated August 4, 2011, the New York State Department of Environment Conservation states that it has closed NYSDEC Spill Case No. 9510442 and that all existing monitoring wells associated with said spill case should be properly closed; and

WHEREAS, in response to questions posed by the Board at hearing, the applicant provided photographic evidence indicating continuity of use, removed excess signage, submitted a light-spread diagram and amended the drawings to reflect the presence of an ice box at the subject

MINUTES

site; and

WHEREAS, based upon its review of the record, the Board has determined that the requested waiver of the Board's Rules of Practice and Procedure 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 *waive* the Rules of Practice and Procedure and *reopen* and *amend* the resolution, dated January 5, 1960, as amended through November 12, 2002, so that as amended this portion of the resolution shall read: "to *permit* an extension of term of ten (10) years, expiring January 15, 2022; *on condition* that all work and site conditions shall conform to drawings filed with this application marked "Received May 22, 2018"-Six (6) sheets; and *on further condition*:

THAT there shall be no parking of vehicles on the sidewalk or in such a manner as to obstruct pedestrian or vehicular traffic;

THAT curb cuts shall comply with the Board-approved plans;

THAT there shall be no sale of vehicles at the subject site at any time;

THAT the site shall be maintained graffiti-free at all times;

THAT all signage shall comply with regulations applicable in C2 zoning districts;

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 15, 2022;

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, May 22, 2018.

634-84-BZ

CEQR #02-BSA-021K

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 – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Sheta.....4

Negative:0

Abstain: Commissioner Scibetta.....1

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings ("DOB"), dated May 5, 2016, acting on Alteration Application No. 321358295, reads in pertinent part:

1. Creates non-compliance with respect to floor area by exceeding the allowable floor area ratio and is contrary to section 24-11 of the zoning resolution.
2. Creates non-compliance with respect to the lot coverage and open space and is contrary to section 24-11 of the zoning resolution.
3. Creates non-compliance with respect to parking by not meeting the minimum requirements of section 25-31 of the zoning resolution; and

WHEREAS, this is an application for an amendment of a variance, previously granted by the Board, to permit the enlargement of an existing community-facility building that does not comply with zoning regulations for floor area, lot coverage, open space and parking, contrary to ZR §§ 24-11 and 25-31; and

WHEREAS, a public hearing was held on this application on October 3, 2017, after due notice by publication in *The City Record*, with continued hearings on December 12, 2017, and May 15, 2018, and then to decision on May 22, 2018; and

WHEREAS, Vice-Chair Chanda and Commissioner Ottley-Brown 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 northeast corner of Avenue K and Bedford Avenue, in an R2 zoning district, in Brooklyn; and

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WHEREAS, the Board has exercised jurisdiction over the subject site since December 19, 1972, when, under BSA Calendar Number 610-72-A, on Lot 8, the Board granted an administrative appeal to permit a change of occupancy of the first floor from a one family and dentist's office to a house of worship; and

WHEREAS, on January 29, 1974, under BSA Calendar Number 477-73-A, on Lot 8, the Board granted an administrative appeal superseding the prior appeal to permit the change of the first floor and cellar from a one family and dentist's office to a house of worship and meeting room; and

WHEREAS, on March 12, 1985, under the subject calendar number, on Lot 8, the Board granted a variance to permit a two-story, with cellar, community-facility building with less than the required front yard and without the required parking on condition that existing street trees be safeguarded during construction and maintained thereafter, that smoke detectors be installed in the cellar and that the above conditions appear on the certificate of occupancy; and

WHEREAS, the applicant proposes to increase the lot area of the subject site and to construct a two-story, with cellar, enlargement to the existing building that increases the floor area from 3,300 square feet (0.55 FAR) to 9,430 square feet (0.94 FAR), increases lot coverage from 58 percent to 64 percent, maintains the existing front yard depth of 7'-8" along Bedford Avenue, decreases the existing front yard depth of 15'-2" to 15'-0" along Bedford Avenue for the proposed enlargement, increases side yards from 7'-7" to 8'-0" and 8'-2" to 8'-6" for the proposed enlargement and maintain no parking spaces; and

WHEREAS, the applicant represents that, at the subject site, floor area may not exceed 5,000 square feet (0.5 FAR) under ZR § 24-11, lot coverage may not exceed 60 percent under ZR § 24-11, front yards must have depths of at least 15'-0" under ZR § 24-34, side yards must have depths of 8'-0" under ZR § 24-35, and 47 parking spaces are required under ZR § 25-31; and

WHEREAS, the applicant submits that the enlargement is required by the programmatic needs of the existing house of worship located at the subject site because of the size of the congregation, the frequency of religious services, educational programming and accessibility; and

WHEREAS, the applicant states that the house of worship does not propose to lease, license or grant any other permission to use the subject building for the operation of a business engaged in serving food or beverages for functions, occasions or events; and

WHEREAS, the applicant states that the proposed enlargement would not increase traffic because the enlargement proposed would incorporate services currently provided in an off-site building to be relocated to the subject site; and

WHEREAS, in response to questions from the Board, the applicant clarified the occupancy of the subject building, clarified the height of elevator and stair bulkheads, added materials to the elevations and clarified the sound-attenuation measures proposed; and

WHEREAS, the applicant further proposes to add dense shrubbery and wrought-iron fencing around the subject site and removed a series of doors leading to the side yard; and

WHEREAS, the Board conducted an environmental review of the underlying action and documented relevant information about the project in the Final Environmental Assessment Statement ("EAS") CEQR No. 02-BSA-021K, dated May 18, 2018; and

WHEREAS, by correspondence dated May 18, 2018, the New York City Landmarks Preservation Commission represents that it has reviewed this application for architectural and archeological significance and has no objection to this application; and

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

WHEREAS, based upon its review of the record, the Board has determined 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 December 19, 1972, as amended through March 12, 1985, so that as amended this portion of the resolution shall read: "to *permit* to increase the lot area of the subject site and to construct a two-story, with cellar, enlargement to the existing building; *on condition* that all work and site conditions shall conform to drawings filed with this application marked "Received May 22, 2018"-Twenty-Two (22) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: a maximum floor area of 9,430 square feet (0.94 FAR); a minimum lot coverage of 64 percent; front yards with minimum depths of 7'-8" along Bedford Avenue for the proposed enlargement and 15'-0" along Bedford Avenue for the proposed enlargement; side yards with minimum depths of 8'-0" and 8'-6" for the proposed enlargement and no parking spaces, as indicated on the Board-approved plans;

THAT existing street trees shall be safeguarded during construction and maintained thereafter;

THAT smoke detectors shall be maintained in the cellar;

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 22, 2022;

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

MINUTES

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 22, 2018.

60-90-BZ

APPLICANT – Michael DeRuvo, R.A., for Nissim Kalev, owner.

SUBJECT – Application June 9, 2016 – Extension of Term of a previously granted Special Permit (§73-211) for the continued use of a Gasoline Service Station (Citgo) and Automotive Repair Shop which expired on February 25, 2016; Waiver of the Rules. C2-1/R3X zoning district.

PREMISES AFFECTED – 525 Forest Avenue, Block 148, Lot 29, Borough of Staten Island.

COMMUNITY BOARD #ISI

ACTION OF THE BOARD – Application Dismissed.

THE VOTE TO DISMISS –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....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 special permit, previously granted by the Board pursuant to ZR § 73-211, which expired on February 26, 2016; and

WHEREAS, a public hearing was held on this application on March 27, 2018, after due notice by publication in *The City Record*, with a continued hearing on May 22, 2018, and then to decision on that date; and

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

WHEREAS, Commissioner Ottley-Brown performed an inspection of the subject site and surrounding area; and

WHEREAS, the subject site is located on the north side of Forest Avenue, between Davis Avenue and North Mada Avenue, in an R3X (C2-1) zoning district, on Staten Island; and

WHEREAS, the site has approximately 117 feet of frontage along Forest Avenue, 13,126 square feet of lot area and is occupied by an automotive service station and eight accessory parking spaces; and

WHEREAS, the Board has exercised jurisdiction over the subject site since May 25, 1937, when, under BSA Cal. No. 385-36-BZ, the Board granted a variance to permit the extension of an existing gasoline selling station on condition that the plot shall not exceed in depth 84 feet on the easterly lot line and 99 feet on the westerly lot line; that the existing building be removed; that the accessory building be located at least 55 feet back from the street line of Forest Avenue; that the accessory building not exceed one-story in height and be arranged for car washing room, lubricating room, office and accessory stores and be constructed of fireproof materials except that the roof beams, roof boarding, window frames and

sash, door frames and doors may be of wood, provided the ceiling throughout is fire-retarded in accordance with the rules of the Board and the roof is weather surfaced with non-flammable materials and the boiler room is enclosed in fireproof material and enterable only from the exterior of the building; that the design of the accessory building be in accordance with the front elevation drawing and be constructed on all sides of Colonial red face brick with stone or stained brick trimmings with natural cement or white mortar joints and trim painted and maintained cream colored; that the portion of the plot to the north of the accessory building be cement paved or paved with Coprovia or blue stone properly bound and rolled except for areas for planning along the side lot lines and in the center along the street line of Forest Avenue, which areas shall be planted with suitable shrubbery and other plant material and be maintained at all times; that these areas shall be protected with concrete curbing; that gasoline pumps be erected as indicated on revised plans, no pumps to be erected nearer than 20 feet from the street building line of Forest Avenue, these pumps to be erected and spaced in three islands; that there be no more than two entrances to the premises, one on either side of the center planted island at the street line; that advertising be restricted to the illuminated globes of the pumps and permanent flat signs attached to the front of the accessory building and to a post standard within the building line near the center of the property for supporting a sign advertising only the brand of gasoline on sale and permitting the sign to extend beyond the building line for a distance of not more than 5 feet, excluding all temporary signs and roof signs; that the balance of the premises not paved be covered with cracked blue stone; that there be erected on the interior side lot lines a substantial woven wire or painted wood jacket fence to be continued from the front of the accessory building to either side of the lot line with a gate on either side; that additional planting be maintained at the corners and toward the center of the accessory building at the front; that all materials on any additional installation of tanks be new material; that no portable gasoline tanks be used on or from the premises; that no repairing of cars shall be carried on and no parking of cars other than those being serviced; and that all permit be obtained and all work completed within one year, by May 25, 1938; and

WHEREAS, on February 26, 1991, under the subject calendar number, the Board granted a special permit, pursuant to ZR § 73-211, permitting an enlargement in lot area and improvement of the existing automotive service station for a term of ten (10) years, expiring February 26, 2001, on condition that plantings be maintained and replaced as needed and conditions appear on the certificate of occupancy; and

WHEREAS, on October 5, 2010, under the subject calendar number, the Board waives its Rules of Practice and Procedure and amended the resolution to extend the term of the special permit for a period of fifteen (15) years, expiring February 26, 2016, on condition that all conditions from the prior resolution not specifically waived by the Board remain in effect; and

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WHEREAS, the previous term having expired, the applicant seeks the subject relief, including a waiver of § 1-07.3(b)(2) of the Board's Rules of Practice and Procedure to permit the filing of this application less than two (2) years after the expiration of the term; and

WHEREAS, the subject application was filed with the Board on June 9, 2016, and a Notice of Comments was issued by Board Staff on August 1, 2016; and

WHEREAS, no response to the Notice of Comments was received by the Board within a year and a letter, dated September 6, 2017, was sent to the applicant at the address indicated on the application informing them that failure to respond within 30 days would result in dismissal of the application (the "Dismissal Warning Letter"); and

WHEREAS, no submission was received by the Board in response to the Dismissal Warning Letter and, by letter dated October 10, 2017, the application was dismissed; and

WHEREAS, by letter dated October 12, 2017, the applicant requested a 30 day extension of time to respond to the Notice of Comments, stating that the Dismissal Warning had been sent to an email address that is infrequently used and was, thus, received too late; and

WHEREAS, the extension of time was granted, the applicant provided a response to the Notice of Comments by submission dated November 16, 2017, and an initial hearing was subsequently scheduled for February 13, 2018; and

WHEREAS, by letter dated February 12, 2018, the applicant requested that that hearing be postponed because of an unforeseen accident that prevented the applicant from attending the hearing or finding anyone to appear in their place; and

WHEREAS, the initial hearing was postponed to March 27, 2018, but the applicant did not appear at that hearing and, instead, sent a representative to take notes; and

WHEREAS, a continued hearing was scheduled for May 22, 2018, and the applicant was required to submit responses to the Board's comments from the March 26, 2018 executive session by May 2, 2018; and

WHEREAS, no submission was received by the Board by May 2, 2018, and the applicant did not appear at the May 22 hearing; and

WHEREAS, due to the repeated failure of the applicant to submit materials in support of this application, the application must be dismissed in its entirety.

Therefore, it is Resolved, that the application filed under BSA Cal. No. 60-90-BZ is hereby dismissed for failure to prosecute and the special permit granted at the subject site under the subject calendar number, pursuant to ZR § 73-211, has lapsed, effective February 26, 2016.

Adopted by the Board of Standards and Appeals, May 22, 2018.

65-13-BZ

APPLICANT – Eric Palatnik, P.C., for Israel Rosenberg, owner.

SUBJECT – Application October 27, 2017 – Amendment of a previously approved Variance (§72-21) which permitted the construction of a three-story multiple dwelling (Use Group 2), contrary to ZR §42-00. The amendment seeks to permit an on-site parking space at the cellar level contrary to the previous Board approval. M1-1 & M1-2/R6A Special Mixed MX-4 district.

PREMISES AFFECTED – 123 Franklin Avenue, Block 1899, Lot 9, Borough of Brooklyn.

COMMUNITY BOARD #3BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings ("DOB"), dated October 12, 2017, acting on New Building Application No. 320704519, reads in pertinent part:

"ZR 42-00 The proposed use group 2A is not permitted as of right, BSA approved the use and bulk under BSA Calendar #65-13-BZ"

"ZR 73-41 Proposed parking space requires BSA approval because it was not approved under the BSA Calendar #65-13-BZ"; and

WHEREAS, this is an application for an amendment of a variance, previously granted by the Board, to permit one parking space within the proposed building; and

WHEREAS, a public hearing was held on this application on March 6, 2018, after due notice by publication in *The City Record*, with a continued hearing on May 15, 2018, and then to decision on May 22, 2018; and

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

WHEREAS, Community Board 3, Brooklyn, recommends disapproval of this application, citing concerns with curb cuts and the location of the parking space within the building; and

WHEREAS, the subject site is located on the east side of Franklin Avenue, between Park Avenue and Myrtle Avenue, partially in an M1-1 zoning district and partially in an M1-2/R6A zoning district in the Special Mixed Use District, in Brooklyn; and

WHEREAS, the site has approximately 38 feet of frontage along Franklin Avenue, 123 feet of depth, 4,613 square feet of lot area and is occupied by a three-story, with cellar, residential building under construction; and

WHEREAS, the Board has exercised jurisdiction over the subject site since March 24, 2015, when, under the subject calendar number, the Board granted a variance to

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permit the construction of a three-story multiple dwelling (Use Group 2) on condition that that the following be the bulk parameters of the building: a maximum floor area of 8,991 square feet (1.95 FAR), five dwelling units, a minimum lot coverage of 65 percent, a minimum rear yard depth of 36'-0", and a maximum building height of 38'-0", as indicated on the BSA-approved plans; that the layouts of the dwelling units be as reviewed and approved by DOB; that all DOB and related agency application(s) filed in connection with the authorized use and/or bulk be signed off by DOB and all other relevant agencies by March 24, 2019; and that a permit not be issued for any grading, excavation, foundation or other permit which involves soil disturbance until, pursuant to the Restrictive Declaration, the LPC has issued to DOB, as applicable, either a Notice of No Objection, Notice to Proceed, Notice of Satisfaction, or Final Notice of Satisfaction; and

WHEREAS, the applicant proposes to add an enclosed parking space, accessed by a curb cut, to the proposed building in the cellar; and

WHEREAS, the applicant submitted a financial feasibility study indicating that the proposed addition of a parking space would produce no change to the economic viability of the proposed building because overall development costs would remain constant with the slight cost increase from site preparation for access to the parking space to be offset by cost savings associated with producing a smaller amount of finished interior residential space in the cellar and because the added value expected from the parking space would be offset by the reduction in building-wide residential amenity area in the cellar; and

WHEREAS, the applicant submits that that the proposed curb cut is lawful and states that an objection from DOB related to the curb cut has been resolved; and

WHEREAS, in response to concerns raised by Community Board 3, the Board notes that nothing herein shall be deemed to waive any regulation specifically pertaining to the proposed curb cut or parking space, and DOB must ensure that the proposed curb cut and parking space comply with the Zoning Resolution, with the New York City Construction Codes and with all other applicable regulations; and

WHEREAS, in response to questions from the Board at hearing, the applicant revised the plans to remove the internal staircase from the residential unit on the first floor to the cellar; and

WHEREAS, by letter dated August 6, 2015, the New York City Landmarks Preservation Commission ("LPC") issued a Notice of No Objection, which states that it concurs with the findings of the End of Fieldwork Memorandum dated July 30, 2015, stating that no significant archaeological resources were recovered during archaeological testing and recommending that no further archaeological work is needed for the site, but noting that the final archaeological report shall be reviewed and approved by LPC prior to the issuance of any temporary or permanent certificate of occupancy; and

WHEREAS, based upon its review of the record, the Board has determined 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 March 24, 2015, so that as amended this portion of the resolution shall read: "to *permit* one parking space within the proposed building; *on condition* that all work and site conditions shall conform to drawings filed with this application marked "Received May 18, 2018"-Ten (10) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area of 8,991 square feet (1.95 FAR), five dwelling units, a minimum lot coverage of 65 percent, a minimum rear yard depth of 36'-0", and a maximum building height of 38'-0", as indicated on the Board-approved plans;

THAT the layouts of the dwelling units shall be as reviewed and approved by the Department of Buildings;

THAT all Department of Buildings and related agency application(s) filed in connection with the authorized use and/or bulk shall be signed off by the Department of Buildings and all other relevant agencies by May 22, 2022;

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 22, 2022;

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

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

THAT 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 22, 2018.

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551-37-BZ

APPLICANT – Eric Palatnik, P.C., for 91-23 LLC, owner.
SUBJECT – Application March 11, 2016 – Amendment (§11-413) to permit a change in use from an Automotive Repair Facility (UG 16B) to Automobile Sales (UG 16B). R1-2 zoning district.

PREMISES AFFECTED – 233-02 Northern Boulevard, Block 8166, Lot 20, Borough of Queens.

COMMUNITY BOARD #11Q

ACTION OF THE BOARD – Laid over to July 24, 2018, at 10 A.M., for continued hearing.

436-53-BZ

APPLICANT – Sheldon Lobel, P.C., for RNA Turnpike Realty LLC, owner.

SUBJECT – Application January 13, 2016 – Extension of Term (§11-411) of a variance permitting the operation of an Automotive Service Station (UG 16B) which expired on February 24, 2014; Amendment (§11-412) to permit the enlargement of the existing building and to permit the conversion of the repair bays to an accessory convenience store; Waiver of the Rules. R3-2 zoning district.

PREMISES AFFECTED – 141-50 Union Turnpike, Block 6634, Lot 34, Borough of Queens.

COMMUNITY BOARD #8Q

ACTION OF THE BOARD – Laid over to July 17, 2018, at 10 A.M., for continued hearing.

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 August 14, 2018, at 10 A.M., for adjourned hearing.

334-78-BZ

APPLICANT – Eric Palatnik, P.C., for 9123 LLC, owner.
SUBJECT – Application March 18, 2016 – Extension of Term of a previously approved Variance (§72-21) which permitted the operation of an Automotive Repair Facility (UG 16B) which expired on October 4, 2008; Amendment to permit changes to interior partitions and signage; Waiver of the Rules. R1-2 zoning district.

PREMISES AFFECTED – 233-20 Northern Boulevard, Block 8166, Lot 25, Borough of Queens.

COMMUNITY BOARD #11Q

ACTION OF THE BOARD – Laid over to July 24, 2018, at 10 A.M., for continued hearing.

138-87-BZ

APPLICANT – Carl A. Sulfaro, Esq., for Philip Cataldi Trust #2, owner.

SUBJECT – Application August 3, 2017 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of car rental facility (UG 8C) which expired on January 12, 2013; Amendment to permit changes to the interior layout and to the exterior of the building; Waiver of the Rules. C2-2/R2 zoning district.

PREMISES AFFECTED – 218-36 Hillside Avenue, Block 10678, Lot 14, Borough of Queens.

COMMUNITY BOARD #13Q

ACTION OF THE BOARD – Laid over to July 24, 2018, at 10 A.M., for adjourned hearing.

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 3rd Avenue, Block 980, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #6BK

ACTION OF THE BOARD – Laid over to July 24, 2018, at 10 A.M., for adjourned hearing.

545-56-BZ

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

SUBJECT – Application June 27, 2017 – Amendment of a previously approved variance which permitted the operation of an Automotive Service Station (UG 16B). The amendment seeks to convert the existing automotive service bay to an accessory convenience store; Extension of Time to Obtain a Certificate of Occupancy which expired on July 28, 2016; Waiver of the Board's rules. C2-4/R5D zoning district.

PREMISES AFFECTED – 2001 Williamsbridge Road aka 1131 Neil Avenue, Block 4306, Lot 20, Borough of Bronx.

COMMUNITY BOARD #11BX

ACTION OF THE BOARD – Laid over to July 24, 2018, at 10 A.M., for continued hearing.

60-82-BZ

APPLICANT – Eric Palatnik, P.C., for BP Products North America, owner.

SUBJECT – Application July 20, 2016 – Extension of Term (§11-411) of a previously granted variance permitting the

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operation of an Automotive Service Station (UG 16B) which expired on July 7, 2016. C2-3/R7X zoning district.

PREMISES AFFECTED – 60-11 Queens Boulevard, Block 1338, Lot 1, Borough of Queens.

COMMUNITY BOARD #2Q

ACTION OF THE BOARD – Laid over to August 21, 2018, at 10 A.M., for continued hearing.

APPEALS CALENDAR

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 – Application withdrawn without prejudice.

THE VOTE TO WITHDRAW –

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

Adopted by the Board of Standards and Appeals, May 22, 2018.

2017-254-A thru 2017-255-A

APPLICANT – Eric Palatnik, P.C., for Ottavio Savo, owner.

SUBJECT – Application August 28, 2017 – Proposed construction of a one-family home not fronting a legally mapped street contrary to General City Law 36. R3X/SRD zoning district.

PREMISES AFFECTED – 115 and 117 Arbutus Avenue, Block 6523, Lot(s) 24, 27, 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 Sheta and Commissioner Scibetta.....5
Negative:0

THE RESOLUTION –

WHEREAS, the decisions of the Deputy Borough Commissioner, dated July 25, 2017, acting on Application

Nos. 520251067 and 520251076 read 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 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, a public hearing was held on this application on March 6, 2018, after due notice in *The City Record*, with continued hearings on May 15, 2018 and May 22, 2018, and then to decision on May 22, 2018; and

WHEREAS, Commissioner Ottley-Brown performed an inspection of the site and surrounding neighborhood; and

WHEREAS, Community Board 3, Staten Island, recommended disapproval of the subject application and, in the supplement to their recommendation report raised concerns regarding the location of parking spaces, their likelihood to prompt illegal parking on the private road and overdevelopment of the immediate area; and

WHEREAS, the subject lots are two of a total of four lots reapportioned from Former Tax Lot 24, located on the eastern side of Arbutus Avenue, between Christine Court and Denise Court, in an R3X zoning district and the Special South Richmond Development District, on Staten Island; and

WHEREAS, the subject lots are vacant and separated from Arbutus Avenue by Tax Lots 25 and 26, have no frontage on Arbutus Avenue and are accessed from Arbutus Avenue by a proposed 30 foot wide easement; and

WHEREAS, Tax Lot 27 has approximately 52,294 square feet of lot area and Tax Lot 24 has approximately 17,450 square feet of lot area; and

WHEREAS, the applicant seeks the subject relief to develop each of Tax Lot 24 and 27 with one two-family residence that do not front directly upon a legally mapped street; and

WHEREAS, the applicant submits that the proposed dwellings will comply with all zoning regulations applicable in the subject zoning district, including those relating to planting, landscaping and parking; and

WHEREAS, in particular, three off-street parking spaces are provided for each of the two-family residences (a two-car tandem parking garage and one exterior parking space on Tax Lot 27 and a one-car garage and two exterior tandem parking spaces on Tax Lot 24) in compliance with ZR § 25-22(b); and

WHEREAS, in addition, the site requires certifications from the New York City Planning Commission with regards to school seats, subdivision and designated open space, but any modification to the proposal necessary to obtain those certifications will require an amendment to this grant; and

WHEREAS, the Office of the Borough President of Staten Island states, per letter to the Board dated February 8, 2018, that Arbutus Avenue, from the north side of Hyland

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Boulevard to the south side of Amboy Road, has a record width of 50 feet and was the subject of an Opinion of Dedication, dated March 8, 1985, for a width of between 18 feet and 37 feet; and

WHEREAS, the subject lots are located approximately 991 feet southeast of Amboy Road, a mapped and improved street; and

WHEREAS, by letter dated May 19, 2016, the Fire Department states that it has no objection to the subject proposal on condition that the proposed dwellings be fully sprinklered, that signage stating "FDNY Grass Surface Supports Apparatus" be installed as indicated on the FDNY-approved plan with dimensions and layout in accordance with Fire Code Section 503.2.7.2.1, and that there shall be no parking anytime anywhere along the entire length of the apparatus access road beginning at Arbutus Avenue and No Parking signs shall be posted on both sides of the roadway approximately every 75 feet in accordance with Fire Code Section 503.2.7.2.1; and

WHEREAS, the Board echoed the Community Board's concern regarding the applicant's choice to provide tandem parking spaces leading to residents opting to park instead, for convenience sake, within the designated easement area, but recognized that tandem parking is permitted as-of-right; and

WHEREAS, the applicant provided a draft Homeowners Agreement Declaration, to be filed against Tax Lots 25 and 26, which front Arbutus Avenue, in addition to the subject lots that obligates the Arbutus Woods Homeowners Association Inc. to, *inter alia*, maintain the 30 foot wide access easement/fire apparatus access road from Arbutus Avenue and post signage on either side of the easement indicating that no parking is permitted; and

WHEREAS, the applicant additionally submitted a restrictive declaration, to be filed against the subject lots, incorporating the Fire Department's conditions, including the prohibition of parking along the fire apparatus road, referencing the Homeowners Agreement Declaration and highlighting the obligation to maintain the 30 foot wide access easement/fire apparatus access road from Arbutus Avenue in a good state of repair; and

WHEREAS, the filing of both the Homeowners Agreement Declaration and restrictive declaration prior to the issuance of any certificate of occupancy for the subject lots has been incorporated as a condition to this approval; and

WHEREAS, by letter dated April 30, 2018, the New York City Department of Environmental Protection ("DEP") states that, based on agency maps, there are 12 inch diameter and 20 inch diameter City water mains and an 18 inch diameter sanitary sewer in Arbutus Avenue at the subject location and that no existing water mains, existing or future sewers are crossing the existing lot; DEP further states that the proposed sanitary and storm for the subject development will be discharged as per the Certified Site Connection Proposal ID #6290, dated August 14, 2017, the proposed water connection will be discharged as per Internal Water Main IWR-24/17, and all sanitary, storm and water connections will be maintained by the Homeowners Association and will not be

maintained by the City of New York and, based on those conditions, DEP has no objections 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 decision of the DOB dated July 25, 2017, acting on DOB Application Nos. 520251067 and 520251076, 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 February 9, 2018"-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 proposed dwellings shall be fully sprinklered;

THAT signage stating "FDNY Grass Surface Supports Apparatus" shall be installed as indicated on the FDNY-approved plan with dimensions and layout in accordance with Fire Code Section 503.2.7.2.1;

THAT there shall be no parking anytime anywhere along the entire length of the apparatus access road beginning at Arbutus Avenue and No Parking signs shall be posted on both sides of the roadway approximately every 75 feet in accordance with Fire Code Section 503.2.7.2.1;

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 against Tax Lots 24 and 27 substantially conforming to the form and substance of the following:

DECLARATION made this _____, by OTTAVIO SAVO, hereinafter referred to as the "Declarant," with a principal office at 953 Edgegrove Avenue, Staten Island NY, 10309.

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 6523 Lots 24 and 27 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. 2017-254-A and 2017-255-A, Block 6523 Lots 27 and 24, to appeal the decisions of the [Staten Island] 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.

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BSA CAL. NUMBER	BLOCK NUMBER	LOT NUMBER	ADDRESS	DOB JOB NUMBER
2017-254-A	6523	27	115 Arbutus Avenue	520251067
2017-255-A	6523	24	117 Arbutus Avenue	520251076

; 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 [two] 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 restrictions of the FDNY's letter of "no objection" on May 19, 2016, and that such compliance shall be subject to enforcement by the Fire Commissioner.

- *The proposed buildings must be fully sprinklered;*
- *Signage shall be installed as indicated on the approved plan stating: "FDNY Grass Surface Supports Apparatus." The sign dimensions and layout shall be in accordance with Fire Code Section 503.2.7.2.1;*
- *There shall be NO PARKING ANYTIME anywhere along the entire length of the apparatus access road beginning at Arbutus Avenue. No Parking Signs shall be posted on both sides of the roadway approximately every 75 feet in accordance with Fire Code 503.2.7.2.1.*

FURTHER, in consideration of BSA approval to allow the proposed construction of [two] family residences not fronting on a legally mapped street, contrary to General City Law 36, Declarant does hereby declare an intent to form a Homeowners' Agreement ("HOA"), file the HOA with the State of New York, and consents to the creation of an HOA being a condition of the BSA's approval.

FURTHER, in consideration of BSA approval to allow the proposed construction of [two] 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 in good working order;*
- c) *Assuring that street lights operate during*

hours of darkness;

- d) *Replacing street lights 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.*

This declaration may not be modified, amended or terminated without the prior written consent of the BSA;

1. 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;
2. Failure to comply with the terms of this declaration may result in the revocation of the building permit or Certificate of Occupancy as well as any other authorization or waiver granted by the BSA; and
3. 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

THAT prior to an issuance of a certificate of occupancy, including a temporary certificate of occupancy, a Homeowners Agreement Declaration of Covenants, Restrictions, Easements, Charges and Liens shall be filed against Tax Lots 27 and 24 obligating the Arbutus Woods Homeowners Association, Inc. to, *inter alia*, maintain the 30 foot wide access easement/fire apparatus access road, draining system sewers, and/or storm sewer pipes, drywells and detention tanks; maintain, repair and replace the access easement/fire apparatus road water main, paving, curbs, signage, grass-pavers, lighting and fire hydrants and any utilities in connection therewith; and post No Parking Signs approximately every 75 feet in accordance with the New York City Fire Code;

THAT the recording information for the restrictive declaration and Homeowners Agreement Declaration shall be referenced on all certificates of occupancy, including temporary certificates of occupancy;

THAT the proposed sanitary and storm for the subject development shall be discharged as per the Certified Site Connection Proposal ID #6290, dated August 14, 2017;

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THAT the proposed water connection shall be discharged as per Internal Water Main IWR-24/17;

THAT all sanitary, storm and water connections shall be maintained by the Homeowners Association and will not be maintained by the City of New York;

THAT any modifications to the proposal required in order to obtain school seat, subdivision and/or designated open areas certifications from by the New York City Planning Commission shall require an amendment to this grant;

THAT a certificate of occupancy shall be obtained within four (4) years, by May 22, 2022;

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 22, 2018.

2017-103-A

APPLICANT – Law Office of Steven Simicich, for Lera Property Holdings, LLC, owner.

SUBJECT – Application April 7, 2017 – 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
PREMISES AFFECTED – 3924 Victory Boulevard, Block 2620, Lot 126, Borough of Staten Island.

COMMUNITY BOARD #2SI

THE VOTE TO CLOSE HEARING –

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

ACTION OF THE BOARD – Laid over to June 5, 2018, at 10 A.M., for decision, hearing closed.

2017-218-A

APPLICANT – Law Office of Steven Simicich, for Leonard Censi, owner.

SUBJECT – Application June 20, 2017 – Proposed single family detached residential building which is within the unbuilt portion of the mapped street, contrary to General City Law 35. R3A zoning district.

PREMISES AFFECTED – 35 Howe Street, Block 302, Lot 19, Borough of Staten Island.

COMMUNITY BOARD #1SI

ACTION OF THE BOARD – Laid over to June 5, 2018, at 10 A.M., for continued hearing.

2017-282-A

APPLICANT – Law Office of Steven Simicich, for Lera Property Holdings, LLC, owner.

SUBJECT – Application May 22, 2018 – Proposed construction of three, two family detached buildings where one of the houses will not be fronting on a mapped street contrary to General City Law 36. R3X Special South Richmond District.

PREMISES AFFECTED – 148 Sprague Avenue, Block 7867, Lot 52, Borough of Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Laid over to July 17, 2018, at 10 A.M., for continued hearing.

2017-323-A

APPLICANT – Marianne Russo, for Kadri Capri, owner.

SUBJECT – Application December 20, 2017 – Proposed development of a one-family dwelling not fronting on a mapped street contrary to General City Law §36. R1-2 zoning district.

PREMISES AFFECTED – 108 Croak Avenue, Block 692, Lot 217, Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Laid over to July 24, 2018, at 10 A.M., for postponed hearing.

ZONING CALENDAR

116-14-BZ

CEQR #14-BSA-160M

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 93rd Street, Block 1521, Lot 40, Borough of Manhattan.

COMMUNITY BOARD #8M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated May 21, 2014, acting on Alteration Application No. 104070586, reads in pertinent part:

“Proposed use as a physical culture establishment,

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as defined by ZR 12-10, is contrary to ZR 32-10”;
and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to permit, in a C1-9 zoning district, the legalization of a physical culture establishment on portions of the first floor and cellar of the subject building, contrary to ZR § 12-10; and

WHEREAS, a public hearing was held on this application on August 15, 2017, after due notice by publication in *The City Record*, with continued hearings on November 14, 2017, and January 30, 2018, and then to decision on May 22, 2018; and

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

WHEREAS, Community Board 8, Manhattan, recommends disapproval of this application, citing concerns with signage, noise and vibrations; and

WHEREAS, a resident of the subject building provided testimony in opposition to this application, citing concerns with noise and vibrations; and

WHEREAS, the subject site is located on the southwest corner of East 93rd Street and Third Avenue, in a C1-9 zoning district, in Manhattan; and

WHEREAS, the subject site has approximately 69 feet of frontage along East 93rd Street, 76 feet of frontage along Third Avenue, 5,224 square feet of lot area and is occupied by a five-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 subject PCE occupies 2,277 square feet of floor area as follows: 2,277 square feet of floor area on the first floor, including a reception area, bicycle spinning area, locker room and restrooms, and space in the cellar, used for storage, laundry and a restroom; and

WHEREAS, the PCE has been in operation as Crank since December 2012 with the following hours of operation: Monday to Friday, 6:00 a.m. to 9:30 p.m., and Saturday and Sunday, 7:00 a.m. to 7:00 p.m.; and

WHEREAS, the applicant represents that the PCE use is consistent with the vibrant commercial area in which it is located, that the PCE use is fully contained within the envelope of an existing building and that the PCE's patrons

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are residents of the surrounding area who arrive by foot or public transit; 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 or the surrounding neighborhood; and

WHEREAS, the Board finds that the PCE use is so located as not to 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 training and the use of equipment for spinning 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 submitted evidence 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, in response to questions from the Board at hearing and community concerns, the applicant revised the drawings to reflect compliance of signage with applicable zoning regulations and conducted studies of noise and vibration impacts by two independent consultants as well as daily logs testing the efficacy of installed sound-attenuation measures and demonstrating a precipitous drop in noise-related complaints further indicating acceptable acoustic levels; and

WHEREAS, the applicant also revised the proposal to reflect the installation of enhanced sound-attenuation measures to isolate the PCE from other uses in the building, including a decoupled ceiling hung furring strips and vibrating clips with one layer of ½” insulation board and one layer of two-pound mass vinyl and ½” medium density foam, gypsum board to the rear wall laminated with ½” sheetrock, vibrating brackets for speakers’ attachment to walls and limiters inline for sound system set so that music cannot exceed noise-code levels; and

WHEREAS, the applicant states that, in response to text messages from the resident of the subject building during the course of hearings, the volume on the PCE’s speaker system was reduced to decrease sound levels further and represents that it has not and will not be increased; 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 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. 14BSA160M, dated May 30, 2014; and

WHEREAS, the Board finds that the evidence in the record supports the findings required to be made under ZR §§ 73-36 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion; and

WHEREAS, the Board notes that the term of this grant has been significantly reduced to reflect the period of time that the PCE has operated without a special permit.

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 §§ 73-36 and 73-03 *to permit*, in a C1-9 zoning district, the legalization of a physical culture establishment on portions of the first floor and cellar of the subject building, contrary to ZR § 12-10; *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked “Received January 30, 2018”-Ten (10) sheets; and *on further condition*:

THAT this grant shall be limited to a term of ten (10) years, expiring December 31, 2022;

THAT sound levels shall be kept down so as not to disturb tenants in the subject building and complaints regarding sound levels shall be responded to immediately;

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 maintained 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 remain 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 May 22, 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

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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 22, 2018.

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 67th Street, Block 5760, Lot 70, 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 Sheta.....4

Negative:0

Abstain: Commissioner Scibetta.....1

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated September 27, 2016, acting on Department of Buildings (“DOB”) Application No. 302309605 reads in pertinent part:

Alteration 302309605 Type 1 for premises located at 1223 67 street Brooklyn, NY 11219, Block 5760 Lot 70 Community Board 10 in R5 ZD was filed on 3/21/2007

The zoning District was changed after filing on 7/2/5/2007 from R5 to R4-1

The Application was approved on 11/29/2007 and permit was issued on 4/11/2008

On 6/5/2013 after 5 years from obtaining the permit, it was discovered that the zoning District was changed from R5 to R4-1 ZD on 7/25/2007 after filing the Application and before obtaining approval and permit.

The Application consequently was revoked on 6/5/2013. After all work almost completed.

An Application has been filed with the BSA under calendar number 234-15-BZ for the modification of Bulk Regulations as per Sec 73-60, Sec 73-62, and Sec 73-622 of the Zoning Resolution to permit an enlargement of a single or two family detached or semi detached Residence in R4-1 ZD, in community Board 10, Brooklyn NY in order to

rescind the approval and permit revocation.

[One] waiver[] [is] being sought in this application; Floor area (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 regulations in an R4-1 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 legalize, in an R4-1 zoning district, the enlargement and conversion of a one-family detached residence to a two-family detached 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 March 7, 2017, after due notice by publication in *The City Record*, with continued hearings on May 16, 2017, July 18, 2017, October 3, 2017, February 27, 2018, and May 15, 2018, and then to decision on May 22, 2018; and

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

WHEREAS, Community Board 10, Brooklyn, waived its recommendation with regards to the subject application, but stated, in a letter dated December 22, 2015, that, while they believe that the unique circumstances that led to this application, partially detailed in the DOB objection, were not directly caused by the owner, the community board neither approves of nor supports the ZR § 73-622 special permit process and is in the process of removing itself from community boards in which the special permit is available; and

WHEREAS, on October 7, 2016, ZR § 73-622 was amended to remove Community Board 10, Brooklyn, from list of areas in which the special permit is available and this calendar number was explicitly referenced in subparagraph (c) as an application that could, nevertheless be granted a special permit; and

WHEREAS, the subject site is located on the north side of 67th Street, between 12th Avenue and 13th Avenue, in an R4-1 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 40 feet of frontage along 67th Street, a depth of 1,000 feet and 4,000 square feet of lot area; and

WHEREAS, the site is occupied by a detached two-family residence containing 4,307 square feet of floor area and a floor area ratio (“FAR”) of 1.1; 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

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- 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 this application is explicitly referenced in ZR § 73-622(c) as one for which the subject special permit is available; and

WHEREAS, the Board notes further that the subject application seeks to legalize the enlargement of what was previously a detached one-family residence, as contemplated by ZR § 73-622; and

WHEREAS, the applicant originally also requested a waiver of ZR § 23-631(b) with regards to the perimeter wall height of the enlargement, but such a waiver was unavailable pursuant to ZR § 73-622(c)(3) because the enlarged residence on the subject site is not adjacent to residences with existing non-complying perimeter walls facing the street and, thus, the maximum permissible perimeter wall height for the enlarged building is 25 feet, as measured from the base plane, pursuant to ZR § 23-631(b); and

WHEREAS, accordingly, this grant is with regards to floor area ratio in excess of the maximum permitted pursuant to ZR § 23-142, which, at the subject site, is 0.75 FAR (3,000 square feet of floor area); and

WHEREAS, the Board has made no finding as to the compliance of the existing enlargement with applicable zoning regulations relating to front yards, permitted obstructions in yards, front or side yard setbacks, perimeter wall height or maximum building height and setbacks and grants no waivers from those regulations; and

WHEREAS, the applicant provided the Board with drawings of the maximum allowable zoning envelope at the subject site and full sets of drawings for two options fitting within that allowable envelope; only one set has been approved by the Board in connection with this application, but the Board notes that should the applicant choose to pursue the other option presented to and reviewed by the Board and not approved herein, such approval may be accomplished by letter amendment, pursuant to § 1-12.11 of the Board's Rules of Practice and Procedure; and

WHEREAS, the applicant provided an analysis of single- or two-family dwellings located within 400 feet of the subject premises within an R4-1 zoning district (the "Study Area") concluding that, of the 19 qualifying residences in the Study Area, 16 (84 percent) have an FAR of greater than 0.75, ranging from 0.89 FAR to 1.5 FAR, including two residences with an FAR of 1.407 located immediately adjacent and to the west of the subject site; 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.

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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 legalize, in an R4-1 zoning district, the enlargement and conversion of a one-family detached residence to a two-family detached residence that does not comply with the zoning requirements for floor area, contrary to ZR § 23-142; *on condition* that all work shall substantially conform to drawings as they apply to the objection above-noted, filed with this application and marked “Received May 22, 2018”-Thirteen (13) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area ratio of 1.1 (4,307 square feet of floor area), as illustrated on the BSA-approved plans;

THAT should the applicant decide to pursue the other building form option presented to and reviewed by the Board but not approved herein, such approval may be accomplished by letter amendment, pursuant to § 1-12.11 of the Board’s Rules of Practice and Procedure;

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 22, 2018.

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 July 17, 2018, at 10 A.M., for continued hearing.

2016-4208-BZ

CEQR #16-BSA-120M

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 19th Street, Block 794, Lot 63, Borough of Manhattan.

COMMUNITY BOARD #4M

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

Abstain: Commissioner Scibetta.....1

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated June 5, 2017, acting on Application No. 121190549 reads in pertinent part:

1. ZR 23-153: The proposed lot coverage exceeds the maximum permitted as per ZR section 23-153;
2. ZR 23-47: The proposed rear yard is deficient. A 30’-0” rear yard is required as per ZR 23-47; and

WHEREAS, this is an application under ZR § 72-21 to permit, on a site located within a C6-3A zoning district, the construction of a seven-story plus cellar residential building that does not comply with the underlying regulations pertaining to lot coverage and rear yards, contrary to ZR §§ 23-153 and 23-47; 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 hearings on June 6, 2017, August 22, 2017, October 31, 2017, January 30, 2018, and March 27, 2018, and then to decision on May 22, 2018; and

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

WHEREAS, the applicant initially proposed to construct a 10-story building at the premises, necessitating a waiver of ZR § 23-692, commonly referred to as the “Sliver Law,” which limits the height of portions of buildings with street walls less than 45 feet in width; and

WHEREAS, Community Board 4, Manhattan, recommended denial of the original proposal, but voted to recommend approval for a building of eight-stories; in its recommendation, the Community Board questioned whether there are, in fact, unique conditions at the site, whether the variance requested was the minimum necessary and whether the proposed height of the building was consistent with character of the immediate area, particularly the six-story and seven-story buildings located on either side of the subject lot; and

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WHEREAS, by letter dated August 5, 2016, New York State Senator Brad Hoylman expressed his support for the Community Board's recommendation of an eight-story residential building at the subject site, in lieu of the originally proposed ten-story building; and

WHEREAS, by letter dated April 28, 2017, New York City Councilmember Corey Johnson expressed his support for an eight-story plus cellar residential building at the premises; and

WHEREAS, counsel appeared in opposition to this application on behalf of a neighbor of the subject site, alleging that the site suffered from no unique physical condition to justify the granting of a variance and that the original proposal for a ten-story building was too tall; and

WHEREAS, the subject site is located on the south side of West 19th Street, between Sixth Avenue and Seventh Avenue, in a C6-3A zoning district, in Manhattan; and

WHEREAS, the site has approximately 26 feet of frontage along West 19th Street, depth of 92 feet, 2,242 square feet of lot area and is vacant; and

WHEREAS, the site was previously developed with a four-story plus cellar mixed-use residential and commercial building that was demolished in early 2017; and

WHEREAS, the applicant originally proposed a ten-story plus cellar residential building containing nine dwelling units, 16,052 square feet of floor area, a floor area ratio ("FAR") of 7.16 and a total height of 100 feet requiring a waiver of ZR § 23-692, known as the "Sliver Law," but, in the course of hearings, revised the proposal to eliminate the request for a waiver of the Sliver Law and, instead, construct a seven-story plus cellar residential building containing seven dwelling units, 13,268 square feet of floor area, 5.92 FAR and a total height of 67 feet; and

WHEREAS, in light of the revised proposed, opposition counsel notified the Board, in a letter dated January 9, 2018, that their client wished to withdraw their opposition, but reserved the right to again oppose the application should future revisions increase the height of the proposed building; and

WHEREAS, the proposed building will provide a 22 foot rear yard and 78 percent lot coverage; and

WHEREAS, at the subject site, a rear yard of at least 30 feet is required pursuant to ZR § 23-47 and maximum lot coverage of 70 percent is permitted pursuant to ZR § 23-153; and

WHEREAS, the applicant states that, pursuant to ZR § 72-21(a), the narrow, irregular shape—specifically the width of the site, which tapers from the front lot line, where it is approximately 26 feet wide, to the rear lot line, at which the lot is approximately 22 feet wide—and shallow depth of the lot create practical difficulties and unnecessary hardship in developing the site in conformance with the zoning regulations applicable in the underlying zoning district; and

WHEREAS, in support of this contention, the applicant provided the Board with a study of lots located within 400 feet of the premises and within a C6-2 or C6-3 zoning district (the "Study Area") concluding that, of the 59

total lots in the Study Area excluding the subject site, 14 lots (24 percent) have a lot width of 26 feet or less, 4 lots (7 percent) have a lot width of 22 feet or less, 10 lots (17 percent) contain 2,242 square feet of lot area or less and 38 lots (64 percent) have a depth of 92 feet or less; and

WHEREAS, the applicant submits that the narrow width, shallow depth and shape of the lot reduces the proportion of usable interior space and results in inefficient residential unit layouts and floor plates that are disproportionately occupied by the elevator core and mechanical equipment; 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 six-story building with six residential dwelling units and 4.54 FAR (the "AOR Scenario") and (2) the subject proposal, demonstrating that only the subject proposal would provide a reasonable return; and

WHEREAS, based upon a review of the applicant's submissions, and the Board's independent analysis of the costs provided—specifically, to reduce costs attributed to construction cost line items that the Board found to be inappropriately considered for purposes of this application—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 several sites in the surrounding areas have non-complying rear yard and lot coverage conditions, including the lot located immediately to the west of the subject lot on West 19th Street, which has an 11 foot deep rear yard, and the two lots located immediately to the east of the subject site, which are both developed fully to their rear lot lines, and the massing of the proposed building is comparable to the massing of the buildings located on immediately adjacent lots; and

WHEREAS, 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, and the Board finds, that the subject proposal is the minimum variance

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necessary to afford relief; and

WHEREAS, the Board has determined that the evidence in the record supports all of 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 Environmental Assessment Statement Short Form CEQR No. 16BSA120M, dated December 2, 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, by letter dated June 26, 2017, the New York City Department of Environmental Protection (“DEP”) recommends that, at the completion of the project, a Professional Engineer certified Remedial Closure Report indicating that all remedial requirements have been properly implemented (i.e., proper transportation/disposal manifests and certificates from impacted soils removed and properly disposed of in accordance with all NYSDEC regulations; proof of installation of engineering control system; and two feet of DEP approved certified clean fill/top soil capping requirement in any landscaped/grass covered areas not capped with concrete/asphalt, etc.), be submitted to DEP for review and approval; and

WHEREAS, by letter dated February 9, 201[8], the New York City Department of Environmental Protection (“DEP”) states that they have reviewed the subject proposal for air quality and had no additional comments; and

WHEREAS, the New York City Landmarks Preservation Commission (“LPC”) reviewed the subject proposal and concluded that, while the subject site is of no architectural or archaeological significance, it is located within 400 feet of an LPC designated historic district (the Ladies’ Mile Historic District) and a site listed on the National Register of Historic Places; 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 a C6-3A zoning district, the construction of a seven-story plus cellar residential building that does not comply with the underlying regulations pertaining to lot coverage and rear yards, contrary to ZR §§ 23-153 and 23-47, *on condition* that all work shall substantially conform to drawings filed with this application marked “Received May 3, 2018”--sixteen (16) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: maximum lot coverage of 78 percent, a rear yard with a minimum depth of 22 feet, as illustrated on the Board-approved plans;

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., proper transportation/disposal manifests and certificates from impacted soils removed and properly disposed of in accordance with all NYSDEC regulations; proof of installation of engineering control system; and two feet of DEP approved certified clean fill/top soil capping requirement in any landscaped/grass covered areas not capped with concrete/asphalt, etc.) shall 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, May 22, 2018.

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 June 5, 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 24th Street, Block 7605, Lot 76, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Laid over to June 5, 2018, at 10 A.M., for continued hearing.

2017-187-BZ

APPLICANT – John M. Marmora, Esq. c/o K & L Gates LLP, for 3680 Tremont Realty, owner; McDonald’s USA, LLC, lessee.

SUBJECT – Application May 22, 2017 – 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/R4-1 zoning district.

PREMISES AFFECTED – 3660 East Tremont Avenue, Block 5543, Lot 86, Borough of Bronx.

COMMUNITY BOARD #10BX

ACTION OF THE BOARD – Laid over to June 5, 2018, at 10 A.M., for continued hearing.

2017-213-BZ

APPLICANT – Slater & Beckerman, P.C., for Dynamic Youth Community, Inc., owner.

SUBJECT – Application June 14, 2017 – 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).

PREMISES AFFECTED – 1808 Coney Island Avenue, Block 6592, Lot 39, Borough of Brooklyn.

COMMUNITY BOARD #12BK

ACTION OF THE BOARD – Laid over to June 5, 2018, at 10 A.M., for adjourned hearing.

2017-214-BZ

APPLICANT – Eric Palatnik, P.C., for Mark Strimber, owner.

SUBJECT – Application June 16, 2017 – 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.

PREMISES AFFECTED – 1459 East 24th Street, Block

7678, Lot 25, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Laid over to July 17, 2018, at 10 A.M., for adjourned hearing.

2017-217-BZ

APPLICANT – Akerman, LLP, for Hylan Properties, LLC, owner.

SUBJECT – Application June 20, 2017 – 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).

PREMISES AFFECTED – 4855 Hylan Boulevard, Block 6401, Lot(s) 1, 3, 5 & 6, Borough of Staten Island.

COMMUNITY BOARD #3 SI

ACTION OF THE BOARD – Laid over to August 14, 2018, at 10 A.M., for continued hearing.

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**REGULAR MEETING
TUESDAY AFTERNOON, MAY 22, 2018
1:00 P.M.**

Present: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.

2017-287-BZ

CEQR #18-BSA-048Q

APPLICANT – Eric Palatnik, P.C, for Rudolf Abramov, owner.

SUBJECT – Application October 27, 2017 – 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.

PREMISES AFFECTED – 113-03 – 113-11 Springfield Boulevard, Block 11231, Lot 246, 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 Sheta and Commissioner Scibetta.....5

Negative:0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated February 1, 2018, acting on Alteration Application No. 421347590, reads in pertinent part:

“The proposed additional Culture Establishment . . . is not permitted pursuant to ZR 32-10”; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to permit, in an R3-2 (C2-3) zoning district, the operation of a physical culture establishment, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on May 22, 2018, after due notice by publication in *The City Record*, and then to decision on the same date; and

WHEREAS, Community Board 13, Queens, recommends approval of this application; and

WHEREAS, the subject site is located on the southeast corner of Springfield Boulevard and 113th Avenue, in an R3-2 (C2-3) zoning district, in Queens; and

WHEREAS, the subject site has approximately 103 feet of frontage along Springfield Boulevard, 96 feet of frontage along 113th Avenue, 10,819 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 subject special permit in order to minimize the adverse effects of the special permit upon other property and

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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 15,311 square feet of floor space as follows: 5,820 square feet of floor area at the first story, including areas used cardiovascular equipment, and 9,491 square feet of floor space in the cellar, used for free-weight and circuit-training areas, locker rooms and restrooms; and

WHEREAS, the PCE will operate as Retro Fitness, with the following hours of operation: Monday to Friday, 5:00 a.m. to 12:00 a.m., and Saturday and Sunday, 7:00 a.m. to 7:00 p.m.; and

WHEREAS, the applicant represents that the PCE use is consistent with the vibrant mixed-use area in which it is located and that the PCE use is fully contained within the envelope of an existing commercial building; and

WHEREAS, in addition, the applicant submits that the building envelope and interior demising walls are designed to minimize sound transmission so that noise levels in adjoining spaces and outside the building will not exceed 45 dBA; and

WHEREAS, the Board finds that the PCE use is so located as not to 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 and weight reduction; 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 will be 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—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 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 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. 18BSA048Q, dated October 30, 2017; and

WHEREAS, the Board finds that the evidence in the record supports the findings required to be made under ZR §§ 73-36 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion.

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 §§ 73-36 and 73-03 *permit*, in an R3-2 (C2-3) zoning district, the operation of a physical culture establishment, contrary to ZR § 32-10; *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked “Received October 30, 2017”-Five (5) sheets; and *on further condition*:

THAT this grant shall be limited to a term of ten (10) years, expiring May 22, 2028;

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 May 22, 2022;

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

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22, 2018.

2017-296-BZ

CEQR #18-BSA-056

APPLICANT – Laurent Fromigue – Caudalie Washington St LLC, for 817-33 Washington Street, LLC, owner; Caudalie USA LLC, lessee.

SUBJECT – Application November 9, 2017 – 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.

PREMISES AFFECTED – 817-33 Washington Street, Block 644, Lot 33, 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 Sheta and Commissioner Scibetta.....5

Negative:0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated November 1, 2017, acting on Alteration Application No. 123064735, reads in pertinent part:

“Proposed Physical Culture Establishment [as defined in section ZR 12-10] is not permitted as of right in M1-5 Zoning Districts and is contrary to section ZR 42-10”; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to permit, in an M1-5 zoning district and the Gansevoort Market Historic District, the operation of a physical culture establishment, contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on May 22, 2018, 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, stating that the use is compatible with the commercial nature of the surrounding area and will not create an increase in vehicular or pedestrian traffic or interfere with any approved or pending public improvement projects and that no portion of the PCE is located on the rooftop of the subject building, the entrance is appropriately located on a wide street and the PCE has no potential hazards or disadvantages that will adversely affect the privacy, quiet, light or air within the neighborhood; and

WHEREAS, the subject site is located on the east side of Washington Street, between Little West 12th Street and Gansevoort Street, in an M1-5 zoning district and the Gansevoort Market Historic District, in Manhattan; and

WHEREAS, the subject site has approximately 19 feet

of frontage along Washington Street, 60 feet of depth, 1,720 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 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 will occupy 1,655 square feet of floor space as follows: 1,020 square feet of floor area on the first floor, including a sales area, wine bar, treatment rooms, office and restroom, and 635 square feet of floor space in the cellar, used for storage; and

WHEREAS, the PCE will operate as Caudalie with the following hours of operation: Monday to Friday, 11:00 a.m. to 8:00 p.m., Saturday, 11:00 a.m. to 7:00 p.m., and Sunday, 11:00 a.m. to 6:00 p.m.; and

WHEREAS, the applicant represents that the PCE use is consistent with the vibrant mixed-use area in which it is located, that the PCE use is fully contained within the envelope of an existing building and that the primary entrance to the PCE is situated on a wide street and will neither impede nor inhibit vehicular or pedestrian flow; and

WHEREAS, the Board finds that the PCE use is so located as not to 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 the practice of massage by New York State licensed massage therapists and that said facilities promote overall natural wellness, health and 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 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—will be installed in the entire PCE space; 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 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 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. 18BSA056, dated February 15, 2018; and

WHEREAS, on July 14, 2017, on August 22, 2017, and on September 6, 2017, the New York City Landmarks Preservation Commission (“LPC”) issued Certificates of No Effect (Nos. CNE-19-11602, CNE-19-11543 and CNE-19-16406) stating that the proposed work will have no effect on significant protected features of the building; and

WHEREAS, the Board finds that the evidence in the record supports the findings required to be made under ZR §§ 73-36 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion.

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 §§ 73-36 and 73-03 *to permit*, in an M1-5 zoning district and the Gansevoort Market Historic District, the operation of a physical culture establishment, contrary to ZR § 42-10; *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked “Received February 15, 2018”-Four (4) sheets; and *on further condition*:

THAT this grant shall be limited to a term of ten (10) years, expiring May 22, 2028;

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 therapists;

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 provided in the entire PCE space, 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 May 22, 2019;

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, May 22, 2018.

190-15-BZ

APPLICANT – Francis R. Angelino, Esq., for Carmine Limited, owner.

SUBJECT – Application August 19, 2015 – Variance (§72-21) to propose a new six-story and bulkhead mixed building with ground floor commercial use and residential use on the upper floors located partially within a R6 zoning district and a C2-6 zoning district.

PREMISES AFFECTED – 51-57 Carmine Street, Block 582, Lot 35, Borough of Manhattan.

COMMUNITY BOARD #2M

ACTION OF THE BOARD – Laid over to August 14, 2018, at 10 A.M., for continued hearing.

2016-4273-BZ

APPLICANT – Akerman LLP, for S & M Enterprises, owner.

SUBJECT – Application October 25, 2016 – Variance (§72-21) to permit the legalization of an existing non-conforming replacement advertising sign based upon good-faith reliance. C1-9 zoning district.

PREMISES AFFECTED – 669 Second Avenue, Block 917, Lot(s) 21, 24, 30, 32, 34, Borough of Manhattan.

COMMUNITY BOARD #6M

ACTION OF THE BOARD – Laid over to August 7, 2018, at 10 A.M., for continued hearing.

Carlo Costanza, Executive Director

BULLETIN

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June 15, 2018

DIRECTORY

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Tuesday, June 5, 2018**

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2018-96-BZ

145 Ludlow Street, The premises is located on Ludlow Street between Stanton Street and Rivington Street, Block 00411, Lot(s) 0025, Borough of **Manhattan, Community Board: 3**. Special Permit (§73-36) to legalize the operation of a physical culture establishment (F45 Training) in the cellar and ground floor of a mixed-use building contrary to ZR §32-10. C4-4A zoning district. C4-4A district.

2018-97-A

50 Storer Avenue, The premises is located on Arthur Kill Road and Carlin Street, Block 07315, Lot(s) 0078, Borough of **Staten Island, Community Board: 5**. Proposed construction of a new building not fronting on a legally mapped street contrary to General City Law Section §36. M1-1 Special South Richmond District. M-1-1 district.

2018-98-BZ

160-10 Cross Bay Boulevard, Premises is located between 92nd Street and Cross Bay Boulevard bounded between 160th Avenue and 161st Avenue., Block 14030, Lot(s) 6, 20, Borough of **Queens, Community Board: 10**. Special Permit (§73-36) to operate a physical culture establishment (Planet Fitness) on a portion of the ground floor and the entire second floor of an existing commercial building contrary to ZR §32-10. C2-2/R3-1 zoning district. R2, R3-1/C2-2 district.

2018-99-BZ

275 Pleasant Avenue, The premises is located on Pleasant Avenue between East 114th Street and East 115th Street, Block 01708, Lot(s) 0025, Borough of **Manhattan, Community Board: 11**. Variance (§72-21) to permit the construction of a five-story and basement, two-family building contrary to ZR §23-32 (Minimum Lot Area or Lot Width for Residences). R7A zoning district. R7A district.

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

CALENDAR

REGULAR MEETING JULY 17, 2018, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, July 17, 2018, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

SPECIAL ORDER CALENDAR

933-28-BZ

APPLICANT – Gerard J. Caliendo, R.A., AIA, for RB Auto Repair/Roger Budhu, owner.

SUBJECT – Application October 16, 2015 – Extension of Term, Amendment & Waiver (11-413) for an extension of the term of a variance which permitted the operation of an automotive repair facility and gasoline service station (UG 16) and an Amendment for the legalization of the enlargement with an insulated corrugated metal enclosure. R5 zoning district.

PREMISES AFFECTED – 125-24 Metropolitan Avenue, Block 9271, Lot 4, Borough of Queens.

COMMUNITY BOARD #9Q

131-97-BZ

APPLICANT – Pryor Cashman LLP, for Ricky’s Bronx Property, LLC, owner; McDonald’s Corporation, lessee.

SUBJECT – Application June 29, 2016 – Amendment to reinstate and eliminate the term of a previously approved Variance (72-21) which permitted an eating and drinking establishment (UG 6) with an accessory drive-through facility, which expired on January 27, 2003; change the hours of operation, enlarge the existing building, and reduce the parking from 9 to 8 spaces; Waiver of the Rules. R1-2 zoning district.

PREMISES AFFECTED – 1600 Boston Road, Block 2967, Lot 42, Borough of Bronx.

COMMUNITY BOARD #3BX

309-09-BZ

APPLICANT – Eric Palatnik, P.C., for Yong Lin, owner.

SUBJECT – Application April 20, 2018 – Extension of Time to Complete Construction of a previously approved Variance (§72- 21) to permit construction of a four-story (three levels and a basement) eight-unit multiple dwelling that does not provide a required side yard, contrary to ZR § 23-51 which expired on May 3, 2015; Amendment to permit a height increase from an approved 34’-8” to 37’-8”; Waiver of the Rules. C2-3/R5 and R6A zoning districts.

PREMISES AFFECTED – 2173 65th Street, Block 5550, Lot 40, Borough of Brooklyn.

COMMUNITY BOARD #11BK

166-12-A

APPLICANT – NYC Board of Standards and Appeals.

SUBJECT – Application June 19, 2018 – Motion to review original Board decision.

PREMISES AFFECTED – 638 East 11th Street, Block 393, Lot(s) 25, 26, 27, Borough of Manhattan.

COMMUNITY BOARD #1M

107-13-A

APPLICANT – NYC Board of Standards and Appeals.

SUBJECT – Application June 19, 2018 – Motion to review original Board decision.

PREMISES AFFECTED – 638 East 11th Street, Block 393, Lot(s) 25, 26, 27, Borough of Manhattan.

COMMUNITY BOARD #1M

210-13-BZ

APPLICANT – Sheldon Lobel, P.C., for MDL & S, LLC, owner; Physique LLC, lessee.

SUBJECT – Application February 1, 2018 – Extension of Time to Obtain a Certificate of Occupancy of a previously approved Variance (§72-21) the operation of a physical culture establishment (*The Physique*) which expired on January 22, 2015; Waiver of the Rules. C1-4/R7A zoning district.

PREMISES AFFECTED – 43-12 50th Street, Block 138, Lot 25, Borough of Queens.

COMMUNITY BOARD #2Q

APPEALS CALENDAR

2017-290-A

APPLICANT – Michael Gruen, Esq., for Carnegie Hill Neighbors, owners

SUBJECT – Application November 3, 2017 – 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 zoning district.

PREMISES AFFECTED – 1558 Third Avenue, Block 01516, Lot(s) 32, 37 & 138, Borough of Manhattan.

COMMUNITY BOARD #8M

CALENDAR

**REGULAR MEETING
JULY 17, 2018, 1:00 P.M.**

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, July 17, 2018, 1:00 P.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

ZONING CALENDAR

2017-20-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for GTO Holding LLC, owner; Harbor Fitness Park Slope, Inc., lessee.

SUBJECT – Application January 20, 2017 – 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.

PREMISES AFFECTED – 550 5th Avenue, Block 1041, Lot 7501, Borough of Brooklyn.

COMMUNITY BOARD #6BK

2017-246-BZ

APPLICANT – Seyfarth Shaw LLP, for 6163 Crosby Street, Inc., owner.

SUBJECT – Application August 18, 2017 – 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).

PREMISES AFFECTED – 61/63 Crosby Street, Block 482, Lot 13, Borough of Manhattan.

COMMUNITY BOARD #2M

2017-300-BZ

APPLICANT – Mango & Iacoviello, LLP, for Woodrow Plaza LLC#2, owner; Orangetheory Fitness, lessee.

SUBJECT – Application November 14, 2017 – 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.

PREMISES AFFECTED – 1275 Woodrow Road, Block 6145, Lot 16, Borough of Staten Island.

COMMUNITY BOARD #3SI

Carlo Costanza, Executive Director

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**REGULAR MEETING
TUESDAY MORNING, JUNE 5, 2018
10:00 A.M.**

Present: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.

SPECIAL ORDER CALENDARS

441-31-BZ

APPLICANT – Eric Palatnik, P.C., for Spartan Petroleum Corp., owner.

SUBJECT – Application October 27, 2017 – Extension of Term (§11-411) for the continued use of a Gasoline Service Station (*BP Amoco*) with accessory convenience store which expired on April 26, 2017. C2-2/R5 zoning district.

PREMISES AFFECTED – 7702 Flatlands Avenue, Block 8014, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #18BK

ACTION OF THE BOARD – Laid over to August 7, 2018, at 10 A.M., for continued hearing.

789-45-BZ

APPLICANT – Vassalotti Associates Architects, LLP, for Woodside 56, LLC, owner; Leemil’s Petroleum, Inc., lessee.

SUBJECT – Application June 22, 2016 – Extension of Term of a previously granted Variance (§11-411) for the continued operation of a (UG16) gasoline service station (Getty) which expired on July 13, 2016; Waiver of the Rules. M1-1/R5 zoning district.

PREMISES AFFECTED – 56-02/20 Broadway, Block 1195, Lot 44, Borough of Queens.

COMMUNITY BOARD #2Q

ACTION OF THE BOARD – Laid over to June 19, 2018, at 10 A.M., for decision, hearing closed.

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 217th Street (Block 7739, Lot 3); 73-36 Springfield Boulevard (Block 7742, Lot 3); 219-02 74th Avenue (Block 7754, Lot 3); 73-10 220th Street (Block 7755, Lot 3), Borough of Queens.

COMMUNITY BOARD #11Q

ACTION OF THE BOARD – Laid over to November 20, 2018, at 10 A.M., for continued hearing.

540-84-BZ

APPLICANT – Eric Palatnik, P.C., for 341 Soundview Corp., owner.

SUBJECT – Application June 20, 2016 – Extension of Term of a previously approved Variance (§72-21) which permitted the operation of an Automotive Service Station (UG 16B) which expired on Jun 20, 2016. R3-2 zoning district.

PREMISES AFFECTED – 341 Soundview Avenue, Block 3473, Lot 43, Borough of Bronx.

COMMUNITY BOARD #9BX

ACTION OF THE BOARD – Laid over to August 21, 2018, at 10 A.M., for adjourned hearing.

31-91-BZ

APPLICANT – Alfonso Duarte, for Frank Mancini, owner.

SUBJECT – Application April 13, 2017 – Extension of term and amendment (§ 1-07.3(3) (ii)) of the Board’s Rules of Practice and Procedures for a previously granted Variance (§72-21) which permitted a one story enlargement to an existing non-conforming eating and drinking establishment (Use Group 6) which expired on July 28, 2012; Waiver of the Rules. R6 & R6B zoning districts.

PREMISES AFFECTED – 173 Kingsland Avenue aka 635 Meeker Avenue, Block 2705, Lot 34, Borough of Brooklyn.

COMMUNITY BOARD #1SI

ACTION OF THE BOARD – Laid over to August 21, 2018, at 10 A.M., for adjourned hearing.

APPEALS CALENDAR

2017-103-A

APPLICANT – Law Office of Steven Simicich, for Lera Property Holdings, LLC, owner.

SUBJECT – Application April 7, 2017 – 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

PREMISES AFFECTED – 3924 Victory Boulevard, Block 2620, Lot 126, 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 Sheta and Commissioner Scibetta.....5

Negative:0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated September 19, 2017, acting on New Building Application No. 520270313, reads in pertinent part:

“The street giving access to proposed building is not duly placed on the official map of the City of

MINUTES

New York therefore . . . No Certificate of Occupancy can be issued pursuant to Article 3, Section 36 of the General City Law”; and

WHEREAS, this is an application under General City Law (“GCL”) § 36 to permit construction of a two-story two-family residence that does not front on a mapped street; and

WHEREAS, a public hearing was held on this application on February 13, 2018, after due notice by publication in *The City Record*, with continued hearings on April 10, 2018 and May 22, 2018, and then to decision on June 5, 2018; and

WHEREAS, Commissioner Ottley-Brown performed an inspection 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 on the south side of Victory Boulevard, between Towers Lane and Simmons Lane, in an R3A zoning district, in Staten Island; and

WHEREAS, the site has approximately 68 feet of frontage along Victory Boulevard, 256 feet of depth, 14,336 square feet of lot area and is vacant; and

WHEREAS, the applicant proposes to develop three two-story two-family residence, two of which front Victory Boulevard, which is duly placed on the official map of the City of New York, and one of which fronts on a private driveway and is the subject of this application; and

WHEREAS, the applicant submits that the buildings proposed for the subject site comply with all zoning regulations applicable in the underlying zoning district, including restrictions on the use of open space for parking under ZR § 25-64; and

WHEREAS, the private driveway has a width of approximately 30 feet in front of the subject building and 20 feet approaching the subject building and is accessible from Victory Boulevard, paved to a width of approximately 34 feet; and

WHEREAS, the private driveway does not have sidewalks, and parking on either side of the private driveway is prohibited due to its narrowness; and

WHEREAS, by letter dated November 15, 2017, the Fire Department states that it has no objection to this application on condition that the proposed two-family residence be fully sprinklered as indicated on the approved plans, that there be no parking throughout the entire apparatus access road way and frontage space with “no parking” signage posted as required by the New York City Fire Code and indicated on the approved plans, that an illuminated sign be mounted at the location indicated on the approved plan identifying the address for the proposed residence and that the location of the proposed new fire hydrant be installed as indicated on the approved plans; and

WHEREAS, by letter dated January 9, 2018, the Department of Environmental Protection states that it has no objection to this application; and

WHEREAS, based upon its review of the record, the

Board has determined that this approval is appropriate with certain conditions as set forth below and that the applicant has substantiated a basis to warrant exercise of discretion.

Therefore it is Resolved, that the Board of Standards and Appeals does hereby *modify* the decision of the Department of Buildings dated September 19, 2017, acting on New Building Application No. 520270313, under the powers vested in the Board by Section 36 of the General City Law, to *permit* construction of a two-story two-family residence that does not front on a mapped street; *on condition* that all work and site conditions shall conform to drawings filed with this application marked “Received March 21, 2018”-One (1) sheet; and *on further condition*:

THAT the driveway restrictive declaration shall be recorded against the properties in the County Clerk’s Office prior to the issuance of any certificate of occupancy, including a temporary certificate of occupancy, and shall substantially conform to the form and substance of the following:

DECLARATION, made this _____ of _____, 2018, by LERA Property Holdings LLC hereinafter referred to as the “Declarant”, having an office at 4366B Victory Blvd., Staten Island, New York, New York 10314.

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 2620 Lot 125 on the Tax Map of the City of New York, hereinafter referred to as the Master Parcel, more particularly described by a metes and bounds description set forth in Exhibit A annexed hereto and by reference made a part hereof;

WHEREAS, the Declarant intends to divide the property and create three new lots to be designated as lots 124, 125 and 126 as more particularly described by the individual lot metes and bounds descriptions set forth in Exhibit B, B-1 and B-2 annexed hereto and by this reference made a part hereof;

WHEREAS, the Declarant is desirous of creating a driveway for the purposes of permitting and enabling present and future owners of the three newly created lots, their heirs, successors and assigns to pass over the lands of all lots for the purpose of ingress and egress to and from Victory Boulevard which lies at the front of said parcels for pedestrian and motor vehicle use;

WHEREAS, the Declarant has requested the New York City Board of Standards and Appeals (the “BSA”) to act upon BSA Cal. No. 2017-103-A for approval to construct a two-family residence that does not front on a final mapped street, contrary to Article III, Section 26 of the General City Law (“GCL”) (DOB Application No. 520270313); and WHEREAS, the BSA requires Declarant to execute and file this restrictive declaration prior

MINUTES

to obtaining a Certificate of Occupancy for the subject application; and

WHEREAS, a diagram marked Exhibit C showing the three above referenced properties, the boundaries of each and a cross-hatched portion indicating the area of the driveway (the "20" Wide Private Driveway Easement) is attached hereto, and make a part hereof, said Private Driveway Easement being more particularly described by a metes and bounds description set forth in Exhibit D annexed hereto and by this reference made a part hereof; and

WHEREAS, the Declarant has created the Triumph Way Homeowners Association to act as the vehicle through which the Declarant and the subsequent lot owners maintain and repair the private easement area and enforce restrictions on the use of such easement.

NOW, THEREFORE, in consideration of BSA approval of construction of a two-family residence not fronting on a legally mapped street, contrary to Article III, Section 36 of the GCL, Declarant does hereby declare, impose and establish the following:

1. The Private Driveway Easement shall be used to permit and enable present and future owners of said parcels, their heirs and assigns to pass over the lands of lots 124, 125 and 126 for the purpose of ingress and egress to and from Victory Boulevard and the front of said parcels for pedestrian and motor vehicle access;
2. The Private Driveway Easement shall at all times be maintained and kept clear and unobstructed;
3. No parking is permitted on the Private Driveway Easement pursuant to Fire Code Section 503.2.7;
4. Signage for the Easement must be provided and maintained by the Triumph Way Homeowners Association pursuant to Fire Code Section 503.2.7.2.1;
5. This declaration may not be modified, amended or terminated without the prior written consent of the BSA;
6. The covenants set forth herein shall run with the land and shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns;
7. Failure to comply with the terms of this declaration may result in the revocation of a building permit or certificate of occupancy; and
8. This declaration shall be recorded at the Office of the Staten Island County Clerk against the Master Parcel and subsequent

subdivisions of the Master Parcel (the "Affected Parcels") and the cross reference number and title of the declaration shall be recorded on each temporary and permanent certificate of occupancy hereafter issued to buildings located on the Affected Parcels and in any deed for the conveyance therefor.

This declaration is only effective upon approval by the BSA of the application filed under BSA Cal. No. 2017-103-A and upon subsequent completion of construction and issuance of a certificate of occupancy pursuant to such approval; otherwise, this declaration is of no effect;

THAT homeowners shall maintain the roadways, "no parking" signs and striping;

THAT all sanitary, storm-sewer and water connections constructed, including in the private easement driveway, shall be maintained by the owners or homeowners association and will not be maintained by the City of New York;

THAT the proposed two-family residence shall be fully sprinklered as indicated on the approved plans;

THAT there shall be no parking throughout the entire apparatus access road way and frontage space;

THAT "no parking" signage shall be posted as required by the New York City Fire Code and indicated on the approved plans;

THAT an illuminated sign shall be mounted at the location indicated on the approved plans identifying the address for the proposed residence;

THAT the location of the proposed new fire hydrant shall be installed as indicated on the 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 June 5, 2022;

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 5, 2018.

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2017-218-A

APPLICANT – Law Office of Steven Simicich, for Leonard Censi, owner.

SUBJECT – Application June 20, 2017 – Proposed single family detached residential building which is within the unbuilt portion of the mapped street, contrary to General City Law 35. R3A zoning district.

PREMISES AFFECTED – 35 Howe Street, Block 302, Lot 19, 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, Commissioner Sheta and Commissioner Scibetta.....5

Negative:0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated May 22, 2017, acting on New Building Application No. 520288885, reads in pertinent part:

“Proposed one family building within the bed of a mapped street is contrary to Article III, Section 35 of the General City Law”; and

WHEREAS, this is an application under General City Law (“GCL”) § 35 to permit construction of a three-story single-family residence within the bed of a mapped, but unimproved, street; and

WHEREAS, a public hearing was held on this application on February 13, 2018, after due notice by publication in *The City Record*, with continued hearings on April 10, 2018 and May 22, 2018, and then to decision on June 5, 2018; and

WHEREAS, Commissioner Ottley-Brown performed an inspection of the site and surrounding neighborhood; and

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

WHEREAS, a resident of an adjacent property submitted testimony, citing concerns with a retaining wall on adjacent lots; and

WHEREAS, the subject site is located on the north side of Howe Street, west of Bement Avenue, partially in an R2 zoning district and partially in an R3X, in Staten Island; and

WHEREAS, the site has approximately 56 feet of frontage along Howe Street, 104 feet of depth, 5,638 square feet of lot area and is vacant; and

WHEREAS, the site is located within the bed of North Burgher Avenue, mapped, but unimproved, street; and

WHEREAS, the applicant proposes to construct a two-story, with basement, single-family residence within the bed of North Burgher Avenue; 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 applicant submits that the proposed

development complies with all applicable zoning regulations, including requirements for side yards and distance between buildings under ZR § 23-46, and will provide two parking spaces; and

WHEREAS, by letter dated July 11, 2017, the Fire Department states that it has no objection to this application on condition that the proposed residence be fully sprinklered, that a hydrant be located within 250 feet of the main front entrance and that two off-street parking spaces be provided; and

WHEREAS, by letter dated April 5, 2018, the New York City Department of Environmental Protection (“DEP”) represents that it has no objection to this application on condition that a 35-foot-wide sewer corridor easement in the bed of the mapped North Burgher Avenue between Howe Street and Bosworth Street be required for the installation, maintenance or reconstruction of the future and existing sewers and water main; and

WHEREAS, by letter dated May 7, 2018, the New York City Department of Transportation (“DOT”) states that the improvement of North Burgher Avenue, which would involve the taking of a portion of the subject site, is not presently included in DOT’s Capital Improvement Program and that the applicant shall consult with DOT at the time when the guardrail at the end of Howe Street must be relocated; and

WHEREAS, in response to questions from the Board, the applicant reduced the width of the proposed building to provide 28 feet of width, 21’-8” of which is within the subject site, to North Burgher Avenue, should said mapped street or sewer be constructed at some future time; and

WHEREAS, in response to community concerns regarding a retaining wall on adjacent sites, the Board notes that this matter is not within the Board’s purview on this application but that DOB will ensure that the proposed construction complies with all applicable laws, rules and regulations; and

WHEREAS, based upon its review of the record, the Board has determined that this approval is appropriate with certain conditions as set forth below and that the applicant has substantiated a basis to warrant exercise of discretion.

Therefore it is Resolved, that the Board of Standards and Appeals does hereby *modify* the decision of the Department of Buildings, dated May 22, 2017, acting on New Building Application No. 520288885, under the powers vested in the Board by Section 35 of the General City Law, to *permit* construction of a three-story single-family residence within the bed of a mapped, but unimproved, street; *on condition* that all work and site conditions shall conform to drawings filed with this application marked “Received May 21, 2018”-One (1) sheet; and *on further condition*:

THAT a certificate of occupancy shall be obtained within four (4) years, by June 5, 2022;

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

MINUTES

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 5, 2018.

166-12-AII

APPLICANT – NYC Department of Buildings.
SUBJECT – Application April 9, 2018 – Request for a Re-hearing for an appeal seeking a reconsideration of a ruling that the subject property common law rights had vested and then by ruling that such its vested rights had been abandoned.

PREMISES AFFECTED – 638 East 11th Street, Block 393, Lot(s) 25, 26, 27, Borough of Manhattan.

COMMUNITY BOARD #1M

THE VOTE TO CLOSE HEARING –

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

ACTION OF THE BOARD – Laid over to June 19, 2018, at 10 A.M., for decision, hearing closed.

166-12-AIII and 107-13-A

APPLICANT – Steven Barshov, Esq., Sive, Paget & Riesel, P.C., for Sky East LLC, owner.

SUBJECT – Application April 9, 2018 – Request for a Re-hearing for an appeal seeking a reconsideration of a ruling that the subject property common law rights had vested and then by ruling that such its vested rights had been abandoned.

PREMISES AFFECTED – 638 East 11th Street, Block 393, Lot(s) 25, 26, 27, Borough of Manhattan.

COMMUNITY BOARD #1M

THE VOTE TO CLOSE HEARING –

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

ACTION OF THE BOARD – Laid over to June 19, 2018, at 10 A.M., for decision, hearing closed.

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 July 24, 2018, at 10 A.M., for adjourned hearing.

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 August 14, 2018, at 10 A.M., for continued hearing.

2017-48-A

APPLICANT – Akeeb Shekoni, for Nigerian Muslim Community of Staten Island, owner; Hamzat Kabiau, lessee.

SUBJECT – Application February 17, 2017 – Proposed construction located within the bed of a mapped street, contrary to General City Law 35. R3A Zoning District.

PREMISES AFFECTED – 36 Hardy Street, Block 638, Lot(s) 44,46,47,49, Borough of Staten Island.

COMMUNITY BOARD #1SI

THE VOTE TO CLOSE HEARING –

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

ACTION OF THE BOARD – Laid over to June 19, 2018, at 10 A.M., for decision, hearing closed.

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2017-285-A

APPLICANT – Rosenberg Estis, P.C., for Committee for Environmental Sound Development/ Amsterdam Avenue Redevelopment Associates, LLC, owner.

SUBJECT – Application October 26, 2017 – 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.

PREMISES AFFECTED – 200 Amsterdam Avenue, Block 1158, Lot 133, Borough of Manhattan.

COMMUNITY BOARD #7M

THE VOTE TO CLOSE HEARING –

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

ACTION OF THE BOARD – Laid over to July 17, 2018, at 10 A.M., for decision, hearing closed.

215-15-A

APPLICANT – Gerald J. Caliendo, RA, AIA, for Farhad Bokhour, owner.

SUBJECT – Application September 1, 2015 – Proposed construction of a two story two family dwelling (U.G. 2), located within the bed of a mapped street contrary to Article 3, Section 35, of the General City Law, within an R3A zoning district.

PREMISES AFFECTED – 144-14 181st Street, Block 13089, Lot 56, Borough of Queens.

COMMUNITY BOARD #12Q

ACTION OF THE BOARD – Laid over to September 13, 2018, at 10 A.M., for continued hearing.

ZONING CALENDAR

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 62nd Street, Block 5734,

Lot 35, Borough of Brooklyn.

COMMUNITY BOARD #11BK

ACTION OF THE BOARD – Application withdrawn without prejudice.

THE VOTE TO WITHDRAW –

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

Adopted by the Board of Standards and Appeals, June 5, 2018.

2016-4179-BZ

CEQR #16-BSA-043K

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 62nd Street, Block 5734, Lot 45, Borough of Brooklyn.

COMMUNITY BOARD #11BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated April 22, 2016, acting on Alteration Application No. 321007272, reads in pertinent part:

“Use and enlargement to the existing building to accommodate the Existing Use Group 3 Yeshiva is contrary to ZR Section 42-00”; and

WHEREAS, this is an application brought on behalf of Congregation Machna Shalva (the “School”) under ZR §§ 73-19 and 73-03 to permit, in an M1-1 zoning district, the operation of a school, contrary to ZR § 42-00; and

WHEREAS, a public hearing was held on this application on July 25, 2017, after due notice by publication in *The City Record*, with continued hearings on November 14, 2017, February 27, 2018, and April 17, 2018, and then to decision on June 5, 2018; and

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

WHEREAS, Community Board 11, Brooklyn, recommends approval of this application on condition that the School ensure that adequate employee parking existing, that buses not be stored in front of the subject site during

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school hours, that dismissal of students be staggered to prevent buses and cars from stacking and that, upon dismissal, only the amount of buses that can be accommodated curbside be brought onto the block to prevent queueing and blocked traffic; and

WHEREAS, the subject site is located on the south side of 62nd Street, between 14th Avenue and 15th Avenue, in an M1-1 zoning district, in Brooklyn; and

WHEREAS, the subject site has approximately 208 feet of frontage along 62nd Street, 163 feet of frontage along 15th Avenue, 33,010 square feet of lot area and is occupied by a four-story, with cellar, commercial building; and

WHEREAS, ZR 73-19 provides:

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 *street* 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.

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

WHEREAS, as to the threshold issue of whether the School qualifies as a school for purposes of ZR § 73-19, the applicant states that the School meets the ZR § 12-10 definition of “school” 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, further, the applicant submitted a study supporting the School’s compliance with the New York State Education Law and detailing the School’s curriculum and required attendance policies; and

WHEREAS, by letter dated January 29, 2018, the New York State Department of Education’s Office of Religious and Independent Schools states that the School is recognized as a nonpublic school; and

WHEREAS, with respect to ZR § 73-19(a), an applicant must demonstrate its 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 study of the School’s programmatic needs demonstrating that the School will enroll students in preschool, elementary, middle and high school and accordingly needs approximately 105,000 square feet of floor area, including uses as classrooms, play areas, library space, specialty classrooms, a gymnasium, lunchrooms and administrative spaces; and

WHEREAS, thus, the Applicant has demonstrated that its stated requirements related to size and configuration are justified by its programmatic needs; and

WHEREAS, the Applicant represents that the School has conducted an exhaustive search for potential expansion sites using the following criteria: (1) suitability of the site for the School’s educational use; (2) the size (lots with areas of 10,000 square feet of lot area and lots unoccupied with substantial improvements) and configuration of available space; (3) the ability of the property owner to timely prepare the site for the School’s use; and (4) availability for sale; and

WHEREAS, the Applicant represents that the School considered 6 sites within the subject neighborhood to be served by the School located in commercial or residential districts where the school use is permitted as-of-right, including: (1) 5822 16th Avenue; (2) 5911 16th Avenue; (3) 1560 60th Avenue; (4) 6607 New Utrecht Avenue; and (6) 1301 65th Street; and

WHEREAS, thus, the applicant maintains that the site

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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 radius diagram which reflects that the subject building is within 400 feet of an R6A zoning district and an R5 zoning district; 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 states that an April 2015 Phase I Environment Site Assessment there is possibility for site contamination from former manufacturing, printing, dry cleaning and equipment maintenance operations in the subject building; the presence of urban or historic fill at the subject site; and the possible presence of asbestos containing building materials or lead based paints in the subject site and that, therefore, a Remedial Action Work Plan will be completed to ensure that no significant adverse impacts associated with hazardous materials would occur as a result of the proposed actions; and

WHEREAS, the applicant states that the Indoor Air Quality survey concluded that no volatile organic compounds were detected in the air at concentrations above the applicable New York State Department of Health Air Guidelines Values or above the range of anticipated background levels, and the indoor air quality was found to be within acceptable standards and guidelines; therefore, no significant adverse hazardous materials impacts are anticipated as a result of the proposed actions; and

WHEREAS, the applicant state states that, based on field observations of the existing arrival and dismissal pedestrian operations, the School would not have a significant adverse impact on pedestrian travel; and

WHEREAS, the applicant states no existing large combustion sources, such as power plants or cogeneration facilities were identified within 1,000 feet of the subject site and that no odor producing facility was identified within 1,000 feet of the subject site; and

WHEREAS, the applicant states that a screening analysis for carbon monoxide and particulate matter associated with on-street traffic indicated a detailed analysis was unwarranted, and, therefore, no significant air quality impacts are expected as a result of the proposed action; and

WHEREAS, the applicant states that, based on a field survey and online search within 400 feet of the subject site, no significant air quality impacts were predicted from auto body facilities to the subject site; and

WHEREAS, the applicant states that, based on the

results of noise monitoring, window repair and replacement to improve window-wall attenuation will be provided for the subject building to provide an additional 9.5 dB of attenuation for frontages facing the street and an addition 10.5 dB of attenuation for facades facing the subject line; and

WHEREAS, the Board finds that the conditions surrounding the site and the Proposed Building's use will adequately separate the proposed school use from noise, traffic and other adverse effects of any of the uses within the surrounding M1-1 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 Board referred the application to the School Safety Engineering Office of the Department of Transportation ("DOT"); and

WHEREAS, by letter dated November 28, 2017, DOT states that it has no objection to this application and that the School should notify DOT so that DOT may determine if traffic safety improvements or parking regulation changes would be necessary; and

WHEREAS, the applicant submitted a parking space lease agreement indicating that there will be 24 parking spaces for school buses available at 1453 62nd Street, Brooklyn; and

WHEREAS, the Board finds that the abovementioned measures will control traffic so as to protect children going to and from the proposed school; and

WHEREAS, therefore, the Board finds that the requirements of ZR § 73-19(d) are met; and

WHEREAS, in response to the Board's questions at hearing, the applicant revised the parking lot lease agreement to reflect that bus parking will be available as long as the School is in operation under this special permit at the subject site, installed an acoustic fence at the rooftop play area, clarified ownership of the subject site, confirmed that fire alarm and sprinkler systems have been installed with all electrical wiring and installation of fixtures done in accordance with the New York City Construction Codes and made substantial progress curing outstanding violations; and

WHEREAS, by letter dated May 17, 2018, the Fire Department states there are three (3) outstanding violation orders for the subject site that shall be cured as follows: that the applicant shall obtain approval of Public Assembly No. 321621786 from DOB; that the fire alarm system shall be inspected by the Fire Department and signed off and that a new certificate of occupancy shall be obtained after the alteration application is amended and signed off by DOB; that the alteration application shall be amended to show all the uses for each floor as shown on the Board-approved plans; that a new Public Assembly application shall be filed or the existing one be amended to show the public assembly spaces on the first and fourth floors; and

WHEREAS, the Board finds that, under the conditions

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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 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. 16BSA043K, dated May 29, 2018; 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 March 23, 2018, the Department of Environmental Protection (“DEP”) states that, based upon its review of the January 2018 Construction Health and Safety Plan, the proposed renovation work will be protective of the on-site workers, the surrounding community and the environment and accordingly has no objection to the proposed action; and

WHEREAS, by letter dated April 25, 2018, DEP states that it was determined that the proposed project would not result in any potential for significant adverse impacts in regards to air quality; and

WHEREAS, by letter dated April 25, 2018, DEP also states that, based on the results of Noise analysis performed as for the City Environmental Quality Review Technical Manual, it was determined that the proposed project would not result in any potential for significant adverse impacts in regards to Noise on condition that a composite window-wall noise attenuation of 28 dBA shall be required for all proposed building facades, that an alternative means of ventilation shall be required and shall be incorporated into building design and construction and that the proposed roof top play area shall be equipped with a 10-foot acoustic fence; and

WHEREAS, by letter dated April 26, 2018, the Department of Transportation states that, following Level 1 (Trip Generation) and Level 2 (Trip Assignment) screening assessments, a pedestrian levels of service analysis was performed at two sidewalks which are projected to operate at an acceptable level of service under the Action condition and would not create any significant adverse impacts and that a detailed traffic level of service analysis is not warranted as the proposed action would generate fewer than 50 trip-ends during any given hour; 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 finds that the evidence in the record supports the findings required to be made under ZR §§ 73-19 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion.

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 an M1-1 zoning district, the operation of a school, contrary to ZR § 42-00; *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked “Received February 7, 2018”-Nine (9) sheets; and *on further condition*:

THAT a composite window-wall noise attenuation of 28 dBA shall be required for all proposed building facades; an alternative means of ventilation shall be required and shall be incorporated into building design and construction; and the proposed rooftop play area shall be equipped with a 10-foot acoustic fence;

THAT no on-street bus parking shall be permitted adjacent to the subject site;

THAT all buses shall return to the parking lot located at 1453 62nd Street, Brooklyn, immediately upon picking up and dropping off students at the School;

THAT failure to maintain off-street parking spaces shall void the special permit;

THAT adequate employee parking existing;

THAT buses shall not be stored in front of the subject site during school hours;

THAT dismissal of students shall be staggered to prevent buses and cars from stacking;

THAT upon dismissal, only the amount of buses that can be accommodated curbside shall be brought onto the block to prevent queuing and blocked traffic;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy shall be obtained within one (1) year, by June 5, 2019;

THAT there are three (3) outstanding violation orders issued by the Fire Department for the subject site that shall be cured as directed by the Fire Department, described as follow: that the applicant shall obtain approval of Public Assembly No. 321621786 from DOB; that the fire alarm system shall be inspected by the Fire Department and signed off and that a new certificate of occupancy shall be obtained after the alteration application is amended and signed off by DOB; that the alteration application shall be amended to show all the uses for each floor as shown on the Board-

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approved plans; that a new Public Assembly application shall be filed or the existing one shall be amended to show the public assembly spaces on the first and fourth floors;

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 5, 2018.

**2016-4295-BZ
CEQR #17-BSA-037K**

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 24th Street, Block 7605, 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, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated October 7, 2016, acting on Alteration Application No. 321065431, 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 Sections 23-461 and 23-48 in that the proposed side yards are 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 and 73-03 to permit, in an R2 zoning district, the enlargement of an existing two-story, with cellar, single-family detached residence that does not comply with zoning regulations for floor area ratio, open space ratio, side yards and rear yards, contrary to ZR §§ 23-141, 23-461, 23-48 and 23-47; and

WHEREAS, a public hearing was held on this application on October 3, 2017, after due notice by publication in *The City Record*, with continued hearings on January 23, 2018, March 27, 2018, and May 22, 2018, and then to decision on June 5, 2018; and

WHEREAS, Vice-Chair Chanda and Commissioner Ottley-Brown 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 24th Street, between Avenue J and Avenue K, in an R2 zoning district, in Brooklyn; and

WHEREAS, the subject site has approximately 38 feet of frontage along East 24th Street, 100 feet of depth, 3,750 square feet of lot area and is occupied by an existing two-story, with cellar, 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-*

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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 from 2,146 square feet of floor area (0.57 FAR) to 3,785 square feet of floor area (1.00 FAR), reduce the open space ratio from 65 percent to 54 percent, maintain side yards with depths of 4'-0" and 7'-4" and reduce the rear yard from 35'-5" to 22'-0"; and

WHEREAS, the applicant states that, at the subject site, floor area may not exceed 1,875 square feet (0.50 FAR) under ZR § 23-141, the open space ratio must be at least 150

percent under ZR § 23-141, side yards must have depths of at least 5'-0" and 7'-4" under ZR §§ 23-461 and 23-48 and the rear yard must have a minimum depth of 30 feet under ZR § 23-47; and

WHEREAS, the applicant represents that the proposed building as enlarged is consistent with the built character of the neighborhood; and

WHEREAS, in support of this contention, the applicant surveyed single- and two-family residences in the surrounding area, finding that there are there are 21 residences with 1.0 FAR or greater, there are at least five residences on East 24th Street with open space ratios equal to or lower than 54 percent; and

WHEREAS, the applicant further studied rear yards in the area indicating that 81 percent of the residences on the subject block have non-complying rear yards, that there are 17 residences with rear yards with depths less than or equal to 22 feet and that 27 residences have garages or sheds located in the rear yard; and

WHEREAS, the applicant also submitted photographic streetscape montage, radius diagram and a photographic neighborhood study demonstrating that the proposed building will fit in with the built conditions of the surrounding area; and

WHEREAS, based upon its review of the record and inspections of the subject site and surrounding neighborhood, the Board finds that the proposed building as enlarged will not alter the essential character of the neighborhood or district in which the subject building is located, nor impair the future use or development of the surrounding area; and

WHEREAS, in response to questions from the Board at hearing about the effect of the enlarged building on residences nearby, the applicant reduced the proposed building's incursion into the rear yard, decreased the proposed floor area, removed the open terrace at the rear of the attic and revised the angle of the roof's rear portion; 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 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-037K, dated November 1, 2016; and

WHEREAS, the Board finds that the evidence in the record supports the findings required to be made under ZR §§ 73-622 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion.

Therefore it is Resolved, that the Board of Standards and Appeals does hereby *issue* a Type II determination

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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, the enlargement of an existing two-story, with cellar, single-family detached residence that does not comply with zoning regulations for floor area ratio, open space ratio, side yards and rear yards, contrary to ZR §§ 23-141, 23-461, 23-48 and 23-47; *on condition* that all work and site conditions shall conform to drawings filed with this application marked “Received May 29, 2018”-Seventeen (17) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: a maximum of 3,785 square feet of floor area (1.00 FAR), a minimum open space ratio of 54 percent, side yards with minimum depths of 4’-0” and 7’-4” and a rear yard with a minimum depth of 22’-0”, as illustrated on the Board-approved plans;

THAT removal of existing joists or perimeter walls in excess of that shown on the Board-approved plans shall void the special permit;

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 5, 2022;

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 5, 2018.

2017-187-BZ

CEQR #17-BSA-130X

APPLICANT – John M. Marmora, Esq. c/o K & L Gates LLP, for 3680 Tremont Realty, owner; McDonald’s USA, LLC, lessee.

SUBJECT – Application May 22, 2017 – 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/R4-1 zoning district.

PREMISES AFFECTED – 3660 East Tremont Avenue, Block 5543, Lot 86, 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 and Commissioner Sheta and

Commissioner Scibetta.....5

Negative:0

THE RESOLUTION –

WHEREAS, the decision of the Bronx Borough Commissioner, dated November 15, 2017, acting on Department of Buildings (“DOB”) Application No. 220575161, reads:

Special Use Permit pursuant to Z.R. Sections 73-243 and 32-31 to permit an eating and drinking establishment with accessory drive through in C1-2 (in R4-1) Zoning District and proposed use is contrary to ZR 32-15; and

WHEREAS, this is an application under ZR §§ 73-243 and 73-03, to permit, on a site located within an R4-1 (C1-2) zoning district, a Use Group (“UG”) 6 eating or drinking establishment contrary to ZR § 32-15; and

WHEREAS, a public hearing was held on this application on March 20, 2018, after due notice by publication in *The City Record*, with continued hearing on May 22, 2018, and then to decision on June 5, 2018; and

WHEREAS, Commissioner Ottley-Brown performed an inspection of the subject site and neighborhood; and

WHEREAS, Community Board 10, the Bronx, recommends approval of this application; and

WHEREAS, by separate letter, Community Board 10 states that it is supportive of this application and is anxious for the proposed redevelopment of the subject site because it will help alleviate traffic congestion in the area; and

WHEREAS, the Board notes that the subject proposal was the result of a substantial amount of outreach to Community Board 10, that, at the request of the Board, the applicant sent supplemental notice of the May 22 hearing to neighbors located within 500 feet of the property; and

WHEREAS, New York City Councilmember Mark Gjonaj submitted a letter in support of this application, stating that the proposed redevelopment will have numerous benefits, “including the amelioration of a problematic traffic issue on Philip Avenue”; and

WHEREAS, the subject site is located on the southeast corner of East Tremont Avenue and Philip Avenue, in an R4-1 (C1-2) zoning district, in the Bronx; and

WHEREAS, the site has approximately 152 feet of frontage along East Tremont Avenue, 94 feet of frontage along Philip Avenue, 15,758 square feet of lot area and is occupied by a one-story eating or drinking establishment with a drive-through facility; and

WHEREAS, the applicant proposes to demolish the existing eating or drinking establishment and construct a new eating or drinking establishment with a drive-through facility; and

WHEREAS, ZR § 73-243 reads as follows:

In C1-1, C1-2 and C1-3 Districts, (except in Special Purpose Districts) the Board of Standards and Appeals may permit eating or drinking places (including those which provide musical entertainment but not dancing, with a capacity of 200 persons or less, and those which provide

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outdoor table service) with accessory drive-through facilities for a term not to exceed five years, provided that the following findings are made:

- (a) the drive-through facility contains reservoir space for not less than 10 automobiles;
- (b) the drive-through facility will cause minimal interference with traffic flow in the immediate vicinity;
- (c) the eating or drinking place with *accessory* drive-through facility fully complies with the *accessory* off-street parking regulations for the indicated zoning district, including provision of the required number of *accessory* off-street parking spaces for the indicated zoning district (for the purpose of this finding, the waiver provisions of Sections 36-231 and 36-232 shall be inapplicable);
- (d) the character of the commercially zoned *street* frontage within 500 feet of the subject premises reflects substantial orientation toward the motor vehicle, based upon the level of motor vehicle generation attributable to the existing *commercial uses* contained within such area and to the subject eating or drinking place (excluding the *accessory* drive-through facility portion);
- (e) the drive-through facility shall not have an undue adverse impact on *residences* within the immediate vicinity of the subject premises; and
- (f) there will be adequate buffering between the drive-through facility and adjacent *residential uses*.

In connection therewith, the Board may modify the requirement of Section 32-411 (In C1, C5, C6-5 or C6-7 Districts) insofar as it relates to the *accessory* drive-through facility. 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 is also subject to and guided by, *inter alia*, ZR §§ 73-01 through 73-04; and

WHEREAS, the site plan submitted by the applicant indicates that the proposed drive-through facility provides reservoir space sufficient for 10 vehicles in satisfaction of ZR § 73-243(a); and

WHEREAS, the applicant represents that the proposed redevelopment of the site will substantially improve the conditions of the existing drive-through facility, which utilizes Philip Avenue, a residential street, for queuing for the drive-through during peak times, relocating the one-story eating and drinking establishment from a portion of the site closest to the intersection to the southeastern corner of the site, which will allow for the site itself to fully accommodate

a queue of at least 10 vehicles; and

WHEREAS, in addition, the applicant submitted a transportation assessment for the proposal in accordance with the CEQR technical Manual, March 2014 methodologies concluding that, in comparison to the existing restaurant, the subject proposal would, among other things, improve the efficiency of the operation of the drive-through by replacing the traditional drive-through with a tandem drive-through with two menu boards; increase the distance between the drive-through egress driveway and full-movement site driveway located on East Tremont Avenue; and improve pedestrian circulation on site by providing additional elements, including an ADA compliant curb ramp and sidewalk areas; and

WHEREAS, in satisfaction of ZR § 73-243(c), the applicant submits that 10 off-street parking spaces are required at the site pursuant to ZR § 36-21 and that 12 off-street parking spaces are provided at the site, therefore, the proposed redevelopment complies with applicable accessory off-street parking regulations; and

WHEREAS, the applicant represents that the existing site exhibits a substantial orientation toward the motor vehicle, as required by ZR § 73-243(d), and in support of that contention submits that a majority of traffic to the site during peak hours is vehicular and accounts for between 70 percent of vehicular site traffic during the Saturday peak hour (1:00 p.m. to 2:00 p.m.) and 75 percent of vehicular site traffic during the weekday morning peak hour (8:00 a.m. to 9:00 a.m.); additionally, the applicant submits that the portion of East Tremont Avenue at which the subject site is located, is classified as an Urban Minor Arterial and a designated Local Truck Route, that numerous commercial uses, including some with drive-through facilities, are located on the eastern side of East Tremont Avenue and that the orientation of the area toward the motor vehicle is consistent with the lack of subway service in the immediate area; and

WHEREAS, with regards to the potential for the proposal to have an undue adverse impact on residences located within the immediate vicinity of the subject premises, the applicant states that the proposed redevelopment of the site mitigates the adverse impacts of the existing eating or drinking establishment by improving onsite and drive-through circulation, relocating the parking area and trash enclosure from the southwestern portion of the property to the portion of the site closest to the corner of Philip Avenue and East Tremont Avenue, installing new fencing and additional landscaping along the western property line, which the site shares with a residential property and controlling the drive-through menu board speakers with an Automatic Volume Control system, which calibrates the volume of the speaker to the level of the ambient noise; and

WHEREAS, with regards to buffering, the applicant proposes a 5 foot wide planted buffer strip along the western property line and a 6 foot board-on-board fence to sufficiently buffer any visual or noise impacts of the

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proposed drive-through facility and submitted a landscaping plan illustrating such measures; 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, therefore, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-243 and 73-03; and

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

WHEREAS, the Board as 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. 17BSA130X, dated February 14, 2018; 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 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 §§ 73-243 and 73-03 to permit, on a site located within an R4-1 (C1-2) zoning district, a Use Group (“UG”) 6 eating or drinking establishment contrary to ZR § 32-15; *on condition* that all work, site conditions and operations shall conform to drawing filed with this application marked “Received May 25, 2018”—ten (10) sheets and “Received June 5, 2018”—two (2) sheets; and *on further condition*:

THAT the term of this grant shall expire on June 5, 2021;

THAT parking and queuing space for the drive-through facility shall be provided as indicated on the BSA-approved plans;

THAT all landscaping and/or buffering shall be maintained as indicated on the BSA-approved plans;

THAT all signage, including directional signage, shall

comply with applicable zoning 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 June 5, 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; 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, June 5, 2018.

2017-221-BZ

APPLICANT – Eric Palatnik, P.C., for Spartan Petroleum Corp., owner.

SUBJECT – Application June 30, 2017 – 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.

PREMISES AFFECTED – 1781 Bay Ridge Parkway, Block 6215, Lot 47, Borough of Brooklyn.

COMMUNITY BOARD #11BK

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

Abstain: Commissioner Scibetta.....1

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Board’s Rules of Practice and procedure and a reinstatement of a variance, previously granted by the Board; and

WHEREAS, a public hearing was held on this application on February 13, 2018, after due notice by publication in *The City Record*, with a continued hearing on April 17, 2018, and then to decision on June 5, 2018; and

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

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

WHEREAS, the subject site is located on the northeast corner of Bay Ridge Parkway and 18th Avenue, in an R5 (C1-2) zoning district, in Brooklyn; and

WHEREAS, the Board has exercised jurisdiction over the subject site since September 25, 1956, when, under BSA Calendar Number 862-55-BZ, the Board granted a variance for a term of fifteen (15) years, expiring September 25, 1971, on condition that all buildings and uses on site not intended to be retained be removed and the site be levelled

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substantially to the grade of the adjoining streets; that the accessory building have no cellar and be constructed and arranged and of the proposed design as shown on the Board-approved plans and in all other respects comply with the requirements of the Building Code; that the accessory building be faced with face brick on all sides except that the rear wall may be of common brick, except that wood may be used on the gable ends, as shown, properly backed by masonry; that the roof surfacing be of asphalt shingles; that along the lot line to the north where walls of adjoining buildings do not occur there be a masonry wall agreeing with the brick used on the exterior of the accessory building not less than 2 feet in height above which be a steel picket fence to a total height of not less than 5'-6"; that a similar wall and fence be along the westerly zoning lot line to Bay Ridge Parkway with suitable terminating post; that pumps be of a low approved type erected not nearer than 15 feet to the street building lines of Bay Ridge Parkway and 18th Avenue; that there may be not over 12 approved gasoline storage tanks each of 550-gallon capacity; that a planting area be maintained where shown along the westerly zoning line and along the north lot line with suitable planting material and protected with concrete curbing not less than 8 inches in height and 6 inches in width; that the balance of the site where not occupied by the accessory building and planting and pumps be paved with concrete or asphaltic pavement; that curb cuts to Bay Ridge Parkway, as shown, each 30 feet in width and two curb cuts to 18th Avenue, as shown, with no portion of any curb cut nearer than 5 feet to any lot line as prolonged; that the sidewalks and curbing abutting the subject site be repaired or restored to the satisfaction of the Borough President; 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 temporary signs but permitting the erection of a post standard for supporting a sign, which may be illuminated, permitting such sign to extend beyond the building line of Bay Ridge Parkway for a distance of not more than 4 feet; that such portable fire-fighting appliances be maintained within the accessory building as the Fire Commissioner shall direct; that any curb cut or showroom window herein proposed may be permitted; that parking of motor vehicles awaiting service may be permitted on the open portion of the plot provided such motor vehicles are parked where there will be no interference with the servicing of the station; and

WHEREAS, on February 29, 1972, under BSA Calendar Number 862-55-BZ, the Board granted an extension of term of ten (10) years, expiring September 25, 1981; and

WHEREAS, on February 2, 1982, under BSA Calendar Number 862-55-BZ, the Board granted an extension of term of ten (10) years, expiring September 25, 1991, and amended the variance to permit the elimination of one gasoline pump from the existing gasoline pump island fronting on Bay Ridge Parkway and to eliminate the shrubbery at the north lot line, extending from the accessory

building to the 18th Avenue building line, on condition that the station be operated at all times in such a fashion as to minimize traffic congestion and that a new certificate of occupancy be obtained within one (1) year, by February 2, 1983; and

WHEREAS, on August 8, 1989, under BSA Calendar Number 862-55-BZ, the Board amended the variance to permit a change in the design and arrangement of the existing automotive service station; to erect a new steel canopy over three (3) new gasoline pump islands with new "MPD" self-serve pumps; to reduce the size of the accessory buildings; to erect a new kiosk; to eliminate the planted area located along the northerly lot line; to eliminate all uses other than gasoline service station on condition that the station be maintained clean and free of graffiti and debris at all times; that the landscaping be densely planted with evergreen shrubs or trees at least four feet high at the time of the planting and which are of a type which may be expected to form a year-round dense screen at least 6 feet high within three years and be maintained and replaced when necessary; and 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 April 28, 1992, under BSA Calendar Number 862-55-BZ, the Board granted an extension of term of ten (10) years, expiring September 25, 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 within one (1) year, by April 28, 1993; and

WHEREAS, on March 11, 1997, under BSA Calendar Number 862-55-BZ, the Board granted an extension of time to obtain a certificate of occupancy of fifty-nine (59) months; and

WHEREAS, on July 13, 1999, under BSA Calendar Number 862-55-BZ, the Board granted an extension of term of ten (10) years, expiring July 13, 1999, and amended the variance to permit the replacement of the existing storage building located on the northwest perimeter of the site and a kiosk under the canopy, with the erection of a 784 square foot convenience store, the addition of one new pump island to be located where the kiosk to be removed now sits, the addition of three parking spaces and the removal of two existing curb cuts, located on 18th Avenue on condition that the site remain graffiti free at all times, that no vehicles be parked on sidewalks, that all signs be maintained in accordance with the Board-approved plans and that a new certificate of occupancy be obtained within one (1) year, by July 13, 2000; and

WHEREAS, the term having expired, the applicant now seeks a waiver of the Board's Rules of Practice and Procedure to allow the late filing of this application and a reinstatement of the variance; and

WHEREAS, the applicant submits that there are no proposed changes to the site and that the convenience store is an accessory use to the gasoline service station; and

WHEREAS, in response to questions from the Board,

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the applicant represents that new landscaping and a light shield atop of the light fixture at the rear of the subject site have been installed; that the site has been cleaned with debris removed and grass trimmed; that signs were removed from the fence adjacent to residences; that parking stripes have been repainted; and that slats on the fence have been repaired; and

WHEREAS, based upon its review of the record, the Board has determined that the requested waiver of the Board's Rules of Practice and Procedure and reinstatement are appropriate with certain conditions as set forth below.

Therefore it is Resolved, that the Board of Standards and Appeals does hereby *waive* the Rules of Practice and Procedure and *reopen* and *amend* the resolution, dated September 25, 1956, as amended through July 13, 1999, under BSA Calendar Number 862-55-BZ, so that as amended this portion of the resolution shall read: "to permit an extension of term of ten (10) years, expiring June 5, 2028; on condition that all work and site conditions shall conform to drawings filed with this application marked "Received March 30, 2018"-Six (6) sheets; and on further condition:

THAT the term of this grant shall be for ten (10) years, expiring June 5, 2028;

THAT landscaping, fencing, slatting and the trash enclosure shall be maintained and replaced as necessary;

THAT landscaping shall be densely planted with evergreen shrubs or trees at last four feet high at the time of the planting and which are of a type which may be expected to form a year-round dense screen at least 6 feet high within three years and be maintained and replaced when necessary so as to shield adjacent properties;

THAT the site shall remain graffiti free at all times;

THAT there shall be no parking of vehicles on the sidewalk or in such a manner as to obstruct pedestrian or vehicular traffic;

THAT all signs shall be maintained in accordance with the Board-approved plans;

THAT the station be maintained clean and free of graffiti and debris at all times;

THAT the station be operated at all times in such a fashion as to minimize traffic congestion;

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 5, 2022;

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 5, 2018.

2017-259-BZ

CEQR #18-BSA-027K

APPLICANT – Eric Palatnik, P.C., for Yisrael Grafstein, owner.

SUBJECT – Application September 1, 2017 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area, open space and lot coverage (ZR §23-142); 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.

PREMISES AFFECTED – 1760 East 28th Street, Block 6810, Lot 29, 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 Sheta and Commissioner Scibetta.....5

Negative:0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings ("DOB"), dated April 19, 2018, acting on Alteration Application No. 321194122, reads in pertinent part:

1. Proposed plans are contrary to Z.R. 23-141(b) in that the proposed Floor Area Ratio (FAR) exceeds the permitted
2. Proposed plans are contrary to Z.R. 23-141(b) in that the proposed Open Space is less than the required
3. Proposed plans are contrary to Z.R. 23-141(b) in that the proposed lot coverage exceeds the maximum required
4. Proposed plans are contrary to Z.R. 23-47 in that the proposed rear yard is less than [required]
5. Proposed plans are contrary to Z.R. 23-631(b) in that the perimeter wall exceeds [maximum]
6. Proposed plans are contrary to Z.R. 23-461(b) in that the side yard is less than [required]; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03 to permit, in an R3-2 zoning district, the enlargement of an existing two-story, with cellar, single-family semi-detached residence that does not comply with zoning regulations for floor area, open space, lot coverage, rear yards, perimeter wall height and side yards, contrary to ZR §§ 23-141(b), 23-47, 23-631(b) and 23-461(b); and

WHEREAS, a public hearing was held on this

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application on April 10, 2018, after due notice by publication in *The City Record*, and then to decision on June 5, 2018; and

WHEREAS, Commissioner Ottley-Brown performed an inspection of the site and surrounding neighborhood; and

WHEREAS, Community Board 15, Brooklyn, recommends approval of this application, stating that the proposed enlargement is modest; and

WHEREAS, the subject site is located on the west side of East 28th Street, between Quentin Road and Avenue R, in an R3-2 zoning district, in Brooklyn; and

WHEREAS, the subject site has approximately 27 feet of frontage along East 28th Street, 100 feet of depth, 2,650 square feet of lot area and is occupied by an existing two-story, with cellar, single-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 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 enlarge the existing residence from 1,680 square feet of floor area (0.63 FAR) to 2,730 square feet of floor area (1.03 FAR), decrease open space from 66 percent to 47 percent, increase lot coverage from 34 percent to 53 percent, decrease the depth of the rear yard from 37'-5" to 20'-0", maintain a perimeter wall height of 22'-1" and maintain a side yard with a depth of 4'-6"; and

WHEREAS, the applicant states that, at the subject site, floor area may not exceed 1,500 square feet (0.50 FAR) under ZR § 23-141(b), there must be at least 65 percent open space under ZR § 23-141(b), lot coverage may not exceed 35 percent under ZR § 23-141(b), rear yards must have a minimum depth of 30 feet under ZR § 23-47, perimeter wall heights may not exceed 21 feet under ZR § 23-631(b) and side yards must have a minimum depth of 8 feet under ZR § 23-461(b); and

WHEREAS, the applicant represents that the proposed

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building as enlarged is consistent with the built character of the neighborhood; and

WHEREAS, in support of this contention, the applicant surveyed single- and two-family residences in the surrounding area, finding that there are seven residences with more than 1.0 FAR, six residences with lot coverages of 50 percent or more, five residences with side yards with less than or equal to 5 feet of depth and 13 residences on the subject block with rear yards with less than or equal to 23 feet of depth; and

WHEREAS, the applicant also submitted a photographic streetscape montage and a photographic neighborhood study demonstrating that the proposed building will fit in with the built conditions of the surrounding area; and

WHEREAS, based upon its review of the record and inspections of the subject site and surrounding neighborhood, the Board finds that the proposed building as enlarged will not alter the essential character of the neighborhood or district in which the subject building is located, nor impair the future use or development of the surrounding area; and

WHEREAS, in response to questions from the Board at hearing about the effect of the enlarged building on residences nearby, the applicant reduced the proposed building's incursion into the rear yard above the first floor and decreased the proposed floor 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 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. 18-BSA-027K, dated September 1, 2017; and

WHEREAS, the Board finds that the evidence in the record supports the findings required to be made under ZR §§ 73-622 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion.

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 §§ 73-622 and 73-03 to *permit*, in an R3-2 zoning district, the enlargement of an existing two-story, with cellar, single-family semi-detached residence that does not comply with zoning regulations for floor area, open space, lot coverage, rear yards, perimeter wall height and side yards, contrary to ZR §§ 23-141(b), 23-47, 23-631(b) and 23-461(b); *on condition* that all work and site

conditions shall conform to drawings filed with this application marked "Received May 18, 2018"-Eleven (11) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: floor area shall be limited to 2,730 square feet (1.03 FAR), there shall be a minimum of 47 percent open space, lot coverage may not exceed 53 percent, the rear yard shall have a minimum depth of 20 feet, perimeter wall height shall not exceed 22'-1" and the side yard shall have a minimum width of 4'-6", as illustrated on the Board-approved plans;

THAT removal of existing joists or perimeter walls in excess of that shown on the Board-approved plans shall void the special permit;

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 5, 2022;

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 5, 2018.

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 September 13, 2018, at 10 A.M., for adjourned hearing.

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 14,

MINUTES

2018, at 10 A.M., for adjourned hearing.

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

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:0

ACTION OF THE BOARD – Laid over to June 19, 2018, at 10 A.M., for decision, hearing closed.

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 August 7, 2018, at 10 A.M., for continued hearing.

2017-8-BZ

APPLICANT – Sheldon Lobel, P.C., for Academic Leadership Charter School, owner.

SUBJECT – Application January 9, 2017 – 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.

PREMISES AFFECTED – 356-362 East 139th Street, Block 2301, Lot(s) 12, 13, 14, 15, Borough of Bronx.

COMMUNITY BOARD #1BX

ACTION OF THE BOARD – Laid over to October 11, 2018, at 10 A.M., for adjourned hearing.

2017-191-BZ

APPLICANT – Sheldon Lobel, P.C., for EMP SRGGREENE, LLC, owner.

SUBJECT – Application May 25, 2017 – 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).

PREMISES AFFECTED – 47 Greene Street, Block 475, Lot 50, Borough of Manhattan.

COMMUNITY BOARD #2M

ACTION OF THE BOARD – Laid over to August 7, 2018, at 10 A.M., for continued hearing.

2017-213-BZ

APPLICANT – Slater & Beckerman, P.C., for Dynamic Youth Community, Inc., owner.

SUBJECT – Application June 14, 2017 – 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).

PREMISES AFFECTED – 1808 Coney Island Avenue, Block 6592, Lot 39, Borough of Brooklyn.

COMMUNITY BOARD #12BK

ACTION OF THE BOARD – Laid over to July 24, 2018, at 10 A.M., for continued hearing.

2017-308-BZ

APPLICANT – Greenberg Traurig by Jay A. Segal, for East Side Homestead LLC, owner.

SUBJECT – Application November 29, 2017 – 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.

PREMISES AFFECTED – 50 East 69th Street, an interior lot located on the south side of East 69th Street, on the block bounded by East 69th Street, Park Avenue, East 68th Street and Madison Avenue. Block 1383, Lot 40. Borough of Manhattan.

COMMUNITY BOARD #8M

ACTION OF THE BOARD – Laid over to August 7, 2018, at 10 A.M., for adjourned hearing.

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REGULAR MEETING JUNE 5, 2018, 1:00 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, June 5, 2018, 1:00 P.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

ZONING CALENDAR

2017-294-BZ

CEQR #18-BSA-054Q

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Theater Building Enterprise LLC, owner; Blink Myrtle Avenue, Inc., lessee.

SUBJECT – Application November 3, 2017 – 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.

PREMISES AFFECTED – 55-27 Myrtle Avenue, Block 3451, Lot 7, Borough of Queens.

COMMUNITY BOARD #5Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated December 4, 2017, acting on New Building Application No. 420648829, reads in pertinent part:

“The proposed Physical Culture Establishment is not permitted as of right . . . per ZR 32-10”; 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 on a portion of the first floor and cellar of a five-story building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on June 5, 2018, after due notice by publication in *The City Record*, and then to decision on the same date; and

WHEREAS, Community Board 5, Queens, recommends approval of this application so long as the PCE be properly soundproofed and the owner comply with applicable requirements of the New York City Landmarks Preservation Commission (“LPC”) for the subject site; and

WHEREAS, Queens Borough President Melinda Katz submitted testimony in support of this application so long as soundproofing sufficient to contain potential noise impacts be installed and the owner maintain the landmarked façade

in good repair and appearance as specified by LPC; and

WHEREAS, the subject site is located on the north side of Myrtle Avenue, between Madison Street and Cypress Avenue, in a C4-3A zoning district, in Queens; and

WHEREAS, the subject site has approximately 41 feet of frontage along Myrtle Avenue, 159 feet of frontage along Madison Street, 100 feet of frontage along Cypress Avenue, 17,746 square feet of lot area and is occupied by the Ridgewood Theatre Building, a five-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

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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 14,138 square feet of floor space as follows: 10,558 square feet of floor area on the first floor, including a reception area and spaces for cardiovascular equipment, weight-lifting exercises and stretching, and 4,943 square feet of floor space in the cellar, including locker rooms; and

WHEREAS, the PCE will operate as Blink, with the following 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 PCE use is consistent with the vibrant commercial area in which it is located and that the PCE use is fully contained within the envelope of an existing building; and

WHEREAS, in addition, the applicant submits that sound attenuation measures, including rubber flooring and demising walls with batt insulation, will be provided within the space so as to not disturb residents in the subject building; and

WHEREAS, the Board finds that the PCE use is so located as not to 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 the PCE will be 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—will be installed in the entire PCE space; and

WHEREAS, the Fire Department represents 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 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 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. 18-BSA-054Q, dated November 8, 2017; and

WHEREAS, on June 12, 2014, LPC issued a Certificate of No Effect (No. CNE-15-8856) stating that proposed work will have no effect on significant protected features of the subject building, which is an individual landmark; and

WHEREAS, the Board finds that the evidence in the record supports the findings required to be made under ZR §§ 73-36 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion.

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 §§ 73-36 and 73-03 to *permit*, in a C4-3A zoning district, the operation of a physical culture establishment on a portion of the first floor and cellar of a five-story building, contrary to ZR § 32-10; *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked “Received November 8, 2017”-Six (6) sheets; and *on further condition*:

THAT this grant shall be limited to a term of ten (10) years, expiring June 5, 2028;

THAT the ceiling and walls of the physical culture establishment shall be sound attenuated to prevent the transmittal of noise and vibration to residents above the physical culture establishment;

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—

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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 June 5, 2022;

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 5, 2018.

2018-11-BZ

CEQR #18-BSA-090M

APPLICANT – Law Office of Jay Goldstein, for SM 1495 LLC, owner; Rumble Fitness LLC, lessee.

SUBJECT – Application January 26, 2018 – Special Permit (§73-36) to permit the operation of a physical cultural establishment (*Rumble Fitness*) within 5 stories and cellar of an existing building contrary to ZR §32-10. C1-9 zoning district.

PREMISES AFFECTED – 1495 3rd Avenue, Block 1530, Lot 3, Borough of Manhattan.

COMMUNITY BOARD #8M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Deputy Borough Commissioner, dated December 28, 2017, acting on Department of Buildings (“DOB”) Application No. 121227467 reads in pertinent part:

ZR 32-10, 73-36: BSA: Proposed ‘Physical Culture Establishment’ is not permitted As-Of-Right 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 permit, on a site located in a C1-9 zoning district, the establishment of a physical culture establishment (“PCE”) within the entirety of the cellar level, first, second, fourth and fifth floors and a portion of the third floor of an existing five-story plus cellar building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on June 5, 2018, after due notice by publication in *The City Record*, and then to decision on the same date; and

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

WHEREAS, Commissioner Ottley-Brown performed an inspection of the subject site and surrounding neighborhood; and

WHEREAS, the subject site is located on the east side of Third Avenue, between East 84th Street and East 85th Street, in a C1-9 zoning district, in Manhattan; and

WHEREAS, the site has approximately 26 feet of frontage along Third Avenue, a depth of 100 feet, 2,575 square feet of lot area and is occupied by a five-story plus cellar 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 subject PCE will occupy 2,868 square feet of floor space in the cellar, 2,537 square feet of floor area on the first floor, 2,337 square feet of floor area on the second floor, 1,590 square feet of floor area on the third floor, 2,337 square feet of floor area on the fourth floor and 1,565 square feet of floor area on the fifth floor of the existing building at the site; and

WHEREAS, utilities, storage and men's locker rooms and saunas will be located in the cellar, a reception area and private training room will be located on the first floor, the entire second and fourth floors will each be dedicated to one fitness studio, the third floor will be comprised of women's locker rooms and saunas and the fifth floor will contain accessory offices; and

WHEREAS, the PCE will be operated as Rumble Fitness with the following proposed hours of operation: Monday through Friday, 5:30 a.m. to 10:00 p.m., and Saturday through Sunday, 7:00 a.m. to 7:30 p.m.; and

WHEREAS, the applicant represents that the proposed PCE use will neither impair the essential character nor the future use or development of the surrounding area because the surrounding area includes residential, manufacturing, commercial and community facility uses and, thus, trafficked by retail customers as well as a residents and commercial tenants, many of whom may frequent the subject PCE; and

WHEREAS, the remainder of the third floor of the subject building, not occupied by the proposed PCE, will be occupied by an accessory beauty salon, a use compatible with the proposed PCE use; and

WHEREAS, the applicant submits that the fitness studios on the second and fourth floors and the private training room on the first floor will be isolated with acoustical partitions, isolating those rooms from adjacent structure with two layers of 5/8" sheetrock in studio and two layers outside the studio and four-inch sound attenuated batt insulation; all flooring at the studio will be four-inch isolated mat subfloor with neoprene isolators, fiberglass batting and perimeter isolation boards at all edges; all penetrations at studio ceilings and partitions will be sealed with mineral fiber insulation and caulked; and acoustical separation materials will have STC ratings of 60 at the partitions and 64 at the flooring; 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 PCE will provide high intensity training and boxing instruction in group fitness studios utilizing free weights and a training bag, thus containing facilities for classes, instruction and programs for physical improvement; and

WHEREAS, the Board finds that the proposed 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 submits that the PCE space will be equipped with sprinklers and a class E interior fire alarm including area smoke detectors, manual pull stations, local audible and visual alarms and a connection to an FDNY-approved central station; and

WHEREAS, by letter dated May 29, 2018, the Fire Department states that applications have been file with DOB for the fire alarm system and removal and installation of new sprinkler system at the subject site, work has been permitted, is currently in progress and is being inspected by the Bureau of Fire Prevention, Construction, Demolition and Abatement Unit, who have been notified of this application, and that the agency has no additional comments or recommendations relative 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

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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 action under CEQR Checklist No. 18-BSA-090M, dated March 9, 2018; 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 within a C1-9 zoning district, the establishment of a physical culture establishment in the entirety of the cellar level, first, second, fourth and fifth floors and a portion of the third floor of an existing five-story plus cellar building, contrary to ZR §32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received January 30, 2018”-Three (3) sheets and “March 9, 2018”-Five (5) sheets; and *on further condition*:

THAT this special permit shall be for a term of ten (10) years, expiring June 5, 2028;

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 three feet 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 class E fire alarm system—including area smoke detectors, manual pull stations at each require exit, local audible and visual alarms and a connection to an FDNY-approved central station—shall be installed in the entire PCE space;

THAT a sprinkler system shall be installed and maintained within the entire PCE space;

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 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

5, 2018.

2018-92-BZ

CEQR #18-BSA-137Q

APPLICANT – NYC Mayor's Office of Housing Recovery Operations (HRO)

SUBJECT – Application May 22, 2018 – Special Permit (§64-92) to waive bulk requirements for the reconstruction of homes damaged/destroyed by Hurricane Sandy for a property registered in the NYC Build it Back Program. Waiver of minimum required side yard (ZR 23-461). R4 zoning district.

PREMISES AFFECTED – 213 Bayside Avenue, Block 16340, Lot 50. 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 Sheta and Commissioner Scibetta.....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, in an R4 zoning district, the development of a single-family residence in compliance with flood-resistant construction standards that does not comply with the zoning requirements for side yards, contrary to ZR § 23-461; 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 Bayside Avenue, east of Roxbury Boulevard, in an R4 zoning district, in Queens; and

WHEREAS, the subject site has approximately 22 feet of frontage along Bayside Avenue, 110 feet of depth, 2,490 square feet of lot area and is occupied by a single-family residence; and

WHEREAS, ZR § 64-92 provides:

MINUTES

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, the applicant now seeks a special permit, pursuant to ZR § 64-92, to allow the development of a single-family residence with side yards measuring 3'-1" to the east, 5'-0" to the west and a total width of 8'-1"; and

WHEREAS, the applicant submits that the existing residence is non-complying as to lot area, lot width and side yards; and

WHEREAS, at the subject site, 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 accordance with ZR § 64-92(a), the composition of the existing residence on the lot and relocation of the septic tank to comply with New York State Department of Environmental Conservation restrictions create practical difficulties in complying with flood-resistant construction standards without the modification of requirements for side yards, and waiving the same is the minimum necessary to allow for a building compliant with flood-resistant construction standards; and

WHEREAS, the applicant notes that the proposed development reduces the degree to which the residence does not comply with applicable bulk regulations, specifically, it improves the existing yards' minimum dimension and increases distance between buildings for emergency access; 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 residences and that the proposal improves the existing side yard condition thus, makes a positive contribution to the existing neighborhood fabric, especially in consideration of the neighborhood's potential development in accordance with flood-resistant construction standards; 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. 18BSA137Q, dated May 22, 2018; and

WHEREAS, the Board finds that the evidence in the record supports the findings required to be made under ZR § 64-92 and that the applicant has substantiated a basis to warrant exercise of discretion.

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 § 64-92 to *permit*, in an R4 zoning district, the development of a single-family residence in compliance with flood-resistant construction standards that does not comply with the zoning requirements for side yards, contrary to ZR § 23-461; *on condition* that all work and site conditions shall conform to drawings filed with this application marked "Received May 22, 2018"-Four (4) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: side yards shall have minimum widths of 3'-1" to the east, 5'-0" to the west and a minimum total width of 8'-1", as illustrated on the Board-approved plans;

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

THAT DOB and related agency application(s) filed in connection with the authorized use or bulk shall be signed off by DOB and all other relevant agencies within four (4) years, by June 5, 2022;

MINUTES

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 plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, June 5, 2018.

2018-93-BZ

CEQR #18-BSA-138K

APPLICANT – NYC Mayor's Office of Housing Recovery Operations (HRO)

SUBJECT – Application May 22, 2018 – 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 the minimum required front yard regulations of ZR 23-45 and ZR 64-A351, waiver of the minimum required side yard regulations of ZR 23-461 and ZR 64-A352. R4 zoning district.

PREMISES AFFECTED – 7 Bevy Court, Between Everett Avenue and Florence Avenue. Block 8925, Lot 266. Borough of Brooklyn.

COMMUNITY BOARD #15M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....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, in an R4 zoning district, the development of a detached single-family residence in compliance with flood-resistant construction standards that does not comply with the zoning requirements for front yards and side yards, contrary to ZR §§ 23-45- and 23-461; 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 Bevy Court, between Florence Avenue and Everett Avenue, in an R4 zoning district, in Brooklyn; and

WHEREAS, the subject site has approximately 34 feet of frontage along Bevy Court, 53 feet of depth, 1,785 square feet of lot area and is occupied by a detached single-family residence; 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, the applicant now seeks a special permit, pursuant to ZR § 64-92, to allow the development of a single-family detached residence with a front yard measuring approximately 8.8 feet and side yards with widths measuring 4.8 feet to the west, 8.4 feet to the east and a total width of 13.2 feet; and

MINUTES

WHEREAS, at the subject site, a front yard of at least 10 feet is required pursuant to ZR § 23-45 and side yards with a total 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 accordance with ZR § 64-92(a), the need to reconstruct the existing residence creates practical difficulties in complying with flood-resistant construction standards without the modification of the requirements for front yards and side yards, and waiving the same is the minimum necessary to allow for a building compliant with flood-resistant construction standards; and

WHEREAS, the applicant notes that shifting of the residence on the lot during construction resulted in deviations of 0.1 feet to the right and 1.2 feet forward on the lot, creating the proposed yard conditions; 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 residences and that the proposal improves the existing side yard condition thus, makes a positive contribution to the existing neighborhood fabric, especially in consideration of the neighborhood's potential development in accordance with flood-resistant construction standards; 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. 18BSA138K, dated May 22, 2018; and

WHEREAS, the Board finds that the evidence in the record supports the findings required to be made under ZR § 64-92 and that the applicant has substantiated a basis to warrant exercise of discretion.

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 § 64-92 to *permit*, in an R4 zoning district, the development of a detached single-family residence in compliance with flood-resistant construction standards that does not comply with the zoning requirements for front yards and side yards, contrary to ZR §§ 23-45- and 23-461; *on condition* that all work and site conditions shall conform to drawings filed with this application marked "Received May 22, 2018"-Three (3) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: the front yard shall have a minimum depth of 8.8 feet, and the side yards shall have minimum widths of 4.8 feet to the west and 8.4 feet to the south with a minimum total width of 13.2 feet, as illustrated on the Board-approved plans;

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

THAT DOB and related agency application(s) filed in connection with the authorized use or bulk shall be signed off by DOB and all other relevant agencies within four (4) years, by June 5, 2022;

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 plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, June 5, 2018.

2018-94-BZ

CEQR #18-BSA-139K

APPLICANT – NYC Mayor's Office of Housing Recovery Operations (HRO)

SUBJECT – Application May 22, 2018 – 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 the minimum required front yard regulations of ZR 23-45 and ZR 64-A351, waiver of the minimum required side yard regulations of ZR 23-461 and ZR 64-A352. R4 zoning district.

PREMISES AFFECTED – 105 Dare Court, Between Bartlett Place and Cyrus Avenue. Block 8914, Lot 434. 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 Sheta and Commissioner Scibetta.....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, in an R4 zoning district, the development of a detached single-family residence in compliance with flood-resistant construction standards that does not comply with the zoning requirements for front yards and side yards, contrary to ZR §§ 23-45 and 23-461; and

WHEREAS, this application is brought on behalf of

MINUTES

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 Dare Court, between Bartlett Place and Cyrus Avenue, in an R4 zoning district, in Brooklyn; and

WHEREAS, the subject site has approximately 40 feet of frontage along Dare Court, 45 feet of depth, 1,800 square feet of lot area and is occupied by a detached single-family residence; 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, the applicant now seeks a special permit, pursuant to ZR § 64-92, to allow the development of a single-family detached residence with a front yard measuring approximately 9'-4" and side yards measuring 4'-6" to the west and 8'-0" to the east with a total width of 12'-2"; and

WHEREAS, at the subject site, a front yard of at least 10 feet is required pursuant to ZR § 23-45, and side yards with a total 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 accordance with ZR § 64-92(a), the need to reconstruct the existing residence creates practical difficulties in complying with flood-resistant construction standards without the modification of the requirements for front yards and side yards, and waiving the same is the minimum necessary to allow for a building compliant with flood-resistant construction standards; and

WHEREAS, the applicant notes that shifting of the residence on the lot during construction resulted in deviations of 0.1 feet to the right and 1.2 feet forward on the lot, creating the proposed yard conditions; 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 residences and that the proposal improves the existing side yard condition thus, makes a positive contribution to the existing neighborhood fabric, especially in consideration of the neighborhood's potential development in accordance with flood-resistant construction standards; 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. 18BSA139K, dated May 22, 2018; and

WHEREAS, the Board finds that the evidence in the record supports the findings required to be made under ZR § 64-92 and that the applicant has substantiated a basis to warrant exercise of discretion.

Therefore it is Resolved, that the Board of Standards and Appeals does hereby *issue* a Type II determination

MINUTES

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 § 64-92 to *permit*, in an R4 zoning district, the development of a detached single-family residence in compliance with flood-resistant construction standards that does not comply with the zoning requirements for front yards and side yards, contrary to ZR §§ 23-45 and 23-461; *on condition* that all work and site conditions shall conform to drawings filed with this application marked “Received May 22, 2018”-Three (3) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: the front yard shall have a minimum depth of 9.3 feet, and the side yards shall have minimum widths 4’-6” to the west and 8’-0” to the east with a minimum total width of 12’-2”, as illustrated on the Board-approved plans;

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

THAT DOB and related agency application(s) filed in connection with the authorized use or bulk shall be signed off by DOB and all other relevant agencies within four (4) years, by June 5, 2022;

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 plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, June 5, 2018.

2017-247-BZ

APPLICANT – Law Office of Lyra J. Altman, for Eli Leshkowitz and Rachel Leshkowitz, owners.

SUBJECT – Application August 22, 2017 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area ratio and open space ratio (ZR 23-141); and less than the required rear yard (ZR 23-47). R2 zoning district.

PREMISES AFFECTED – 1367 East 24th Street, Block 7660, Lot 17, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Laid over to August 21, 2018, at 10 A.M., for continued hearing.

Carlo Costanza, Executive Director

BULLETIN

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June 29, 2018

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SHAMPA CHANDA, *Vice-Chair*

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Commissioners

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Tuesday, June 19, 2018**

Morning Calendar411

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308-79-BZ	43 Clark Street, aka 111 Hicks Street, Brooklyn
175-05-BZ	18-24 Luquer Street, Brooklyn
68-91-BZ	223-15 Union Turnpike, Queens
240-55-BZ	207-22 Northern Boulevard, Queens
182-95-BZ	2465 Broadway, Manhattan
183-95-BZ	2473 Broadway, Manhattan
18-09-BZ	250 West 54 th Street, Manhattan
2016-4255-BZ	4801 Ocean Avenue, Brooklyn
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2017-276-A	96 Industrial Loop, Staten Island
2017-320-BZY	428-432 East 58 th Street, Manhattan
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104-14-BZ	4452 Broadway (aka 44-90 Fairview Avenue), Manhattan
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2016-4339-BZ	5018 14 th Avenue, Brooklyn
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2017-267-BZ	129-18 Newport Avenue, Queens
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Correction435

Affecting Calendar Number:

91-14-BZ	3420 Bedford Avenue, Brooklyn
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DOCKETS

New Case Filed Up to June 19, 2018

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CALENDAR

**REGULAR MEETING
JULY 24, 2018, 10:00 A.M.**

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, July 24, 2018, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

SPECIAL ORDER CALENDAR

341-43-BZ

APPLICANT – Seyfarth Shaw LLP, for SP HHF Sub B LLC, owner.

SUBJECT – Application April 13, 2018 – Extension of Term (§11-411) of a previously approved variance which permitted a storage warehouse (UG 16B) which expired on June 4, 2016; Waiver of the Board’s Rules. C2-4, C2-3, R7A and R5 zoning district.

PREMISES AFFECTED – 3319 Atlantic Avenue, Block 4145, Lot(s) 1, 13, 23, Borough of Brooklyn.

COMMUNITY BOARD #5BK

170-96-BZ

APPLICANT – Eric Palatnik, P.C., for 8501 Flatlands Avenue Realty Corp., owner.

SUBJECT – Application March 23, 2018 – Extension of Term of a previously approved Variance (§72-21) which permitted the operation of an Automotive Repair Facility (UG 16B) expiring on April 21, 2018. C2-3/R5D zoning district.

PREMISES AFFECTED – 8501 Flatlands Avenue, Block 8006, Lot 7, Borough of Brooklyn.

COMMUNITY BOARD #18BK

197-05-BZ

APPLICANT – Law Offices of Marvin B. Mitzner LLC, for Broadway Realty LLC, owner.

SUBJECT – Application April 27, 2018 – Amendment of a previously approved variance (§72-21) which permitted the construction of an 11-story mixed-use building with ground floor commercial. The amendment seeking to permit a 4’9” by 28’ bump out at the rear of the building; Extension of Time to Complete construction which expires on April 29, 2019. C6-1/R7 zoning district.

PREMISES AFFECTED – 813 Broadway, Block 563, Lot(s) 33 & 34, Borough of Manhattan.

COMMUNITY BOARD #2M

218-06-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Plaza Tower, LLC, owner; TSI East 48 LLC dba New York Sports Club, lessee.

SUBJECT – Application May 1, 2017 – Extension of Term of a previously approved Special Permit (§73-36) which permitted the operation of a Physical Cultural Establishment (New York Sports Club) located on the sub-cellar and cellar levels with an entrance on the first floor in a 46-story commercial building which expired on February 13, 2017: Amendment to permit the a modification of the hours of operation: Waiver of the Rules. . C1-9 (TA), R8B and R10 zoning district.

PREMISES AFFECTED – 885 Second Avenue aka 1 Dag Hammarskjold Plaza, Block 1321, Lot 22, Borough of Manhattan.

COMMUNITY BOARD #6M

264-13-BZ

APPLICANT – Francis R. Angelino, Esq., for David Lowenfeld, owner; BBP Fitness, LLC, d/b/a Brick Crossfit NYC, lessee.

SUBJECT – Application November 17, 2016 – Extension of Term of a previously approved Special Permit (§73-36) permitting a physical culture establishment (Brick CrossFit) on the ground floor and cellar of an existing 10-story building which expires on November 20, 2016. C6-2A zoning district.

PREMISES AFFECTED – 257 West 17th Street, Block 767, Lot 7502, Borough of Manhattan.

COMMUNITY BOARD #4M

APPEALS CALENDAR

2017-323-A

APPLICANT – Marianne Russo, for Kadri Capri, owner.

SUBJECT – Application December 20, 2017 – Proposed development of a one-family dwelling not fronting on a mapped street contrary to General City Law §36. R1-2 zoning district.

PREMISES AFFECTED – 108 Croak Avenue, Block 692, Lot 217, Borough of Staten Island.

COMMUNITY BOARD #2SI

CALENDAR

2018-22-A

APPLICANT – NYC Department of Buildings, for Eighteen Properties, LLC, owner.

SUBJECT – Application February 14, 2018 – Request for a revocation, by the New York City Building’s Department, of Certificate of Occupancy No. 301016898F issued for a four-story walk-up apartment building. R6B zoning district.

PREMISES AFFECTED – 255 18th Street, Block 873, Lot 69, Borough of Brooklyn.

COMMUNITY BOARD #7BK

**REGULAR MEETING
JULY 24, 2018, 1:00 P.M.**

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, July 24, 2018, 1:00 P.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

ZONING CALENDAR

2017-149-BZ

APPLICANT – Sheldon Lobel, P.C., for Willard J. Price Associates LLC, owner.

SUBJECT – Application May 15, 2017 – 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.

PREMISES AFFECTED – 510 Quincy Street & 651-671 Gates Avenue, Block 1811, Lot 19, Borough of Brooklyn.

COMMUNITY BOARD #3BK

2017-279-BZ

APPLICANT – Law Office of Jay Goldstein PLLC, for 87 Wythe Holdings LLC, owner; Will Bar LLC, lessee.

SUBJECT – Application October 16, 2017– 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.

PREMISES AFFECTED – 97 N 10th Street, Lot 2296, Lot 4, Borough of Brooklyn.

COMMUNITY BOARD #1BK

252-06-BZ

APPLICANT – Sheldon Lobel, P.C., for MHSP Walton Owner LLC, owner.

SUBJECT – Application October 27, 2017 – Amendment of a previously approved Variance (§72-21) which permitted the construction of a four-story Use Group 4 community center facility contrary to underlying bulk regulations. The amendment seeks to allow for a modified design of the gymnasium building approved in the original variance. R8 zoning district. (Companion Case 2017-289-BZ)

PREMISES AFFECTED – 1761 Walton Avenue, Block 2850, Lot(s) 34, 38, 63 & 160, Borough of Bronx.

COMMUNITY BOARD #5BX

2017-289-BZ

APPLICANT – Sheldon Lobel, P.C., for MHSP Walton Owner LLC, owner.

SUBJECT – Application October 27, 2017 – 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 under BSA Cal. No. 252-06-BZ.

PREMISES AFFECTED – 1761 Walton Avenue, Block 2850, Lot(s) 34, 38, 63 & 160, Borough of Bronx.

COMMUNITY BOARD #5BX

2018-20-BZ

APPLICANT – Jay Goldstein, Esq., for Jeffrey Ackerman, owner.

SUBJECT – Application February 9, 2018 – Special Permit (§73-622) to permit the enlargement of an existing single-family home contrary to ZR §23-141 (floor area and open space) and ZR §23-461(1) (required side yard). R2 zoning district.

PREMISES AFFECTED – 2801 Avenue M, Block 7646, Lot 7, Borough of Brooklyn.

COMMUNITY BOARD #14BK

CALENDAR

2018-36-BZ

APPLICANT – Jay Goldstein, Esq., for Moshe and Pnina Arking, owners.

SUBJECT – Application March 6, 2018 – Special Permit (§73-622) to permit the enlargement of a one family home contrary to ZR §23-141 (FAR and Open Space); ZR §23-461 (a) (side yard) and ZR §23-47 (rear yard). R2 zoning district.

PREMISES AFFECTED – 1482 East 26th Street, Block 7679, Lot 87, Borough of Brooklyn.

COMMUNITY BOARD #14BK

2018-110-BZ

APPLICANT – NYC Mayors Office of Housing Recovery (HRO)

SUBJECT – Application July 11, 2018 – 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.R-4 zoning district.

PREMISES AFFECTED – 17 Abbey Court, Plumb Beach Channel Shoreline, Lois Avenue. Block 8845, Lot 1984. Borough of Brooklyn.

COMMUNITY BOARD #3BK

2018-111-BZ

APPLICANT – NYC Mayors Office of Housing Recovery (HRO)

SUBJECT – Application July 11, 2018 – 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 – 18 Neutral Avenue. Block 4093, Lot 9. Borough of Staten Island.

COMMUNITY BOARD #5SI

2018-112-BZ

APPLICANT – NYC Mayors Office of Housing Recovery (HRO)

SUBJECT – Application July 11, 2018 – 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 – 26 Milbank Road, Neutral Avenue, Cedar Grove Avenue. Block 4092, Lot 58. Borough of Staten Island.

COMMUNITY BOARD #5SI

2018-113-BZ

APPLICANT – NYC Mayors Office of Housing Recovery (HRO)

SUBJECT – Application July 11, 2018 – 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 – 27 State Road. Block 16340, Lot 50. Borough of Queens.

COMMUNITY BOARD #4Q

2018-114-BZ

APPLICANT – NYC Mayors Office of Housing Recovery (HRO)

SUBJECT – Application July 11, 2018 – 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.R4A zoning district.

PREMISES AFFECTED – 394 Beach 25th Street. Block 15776, Lot 6. Borough of Queens.

COMMUNITY BOARD #4Q

2018-115-BZ

APPLICANT – NYC Mayors Office of Housing Recovery (HRO)

SUBJECT – Application July 11, 2018 – 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.R3-2 zoning district.

PREMISES AFFECTED – 715 Cross Bay Boulevard, Noel Road, West 8th Road. Block 15133, Lot 23. Borough of Queens.

COMMUNITY BOARD #4M

Carlo Costanza, Executive Director

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**REGULAR MEETING
TUESDAY MORNING, JUNE 19, 2018
10:00 A.M.**

Present: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.

SPECIAL HEARINGS

789-45-BZ

APPLICANT – Vassalotti Associates Architects, LLP, for Woodside 56, LLC, owner; Leemilt’s Petroleum, Inc., lessee.

SUBJECT – Application June 22, 2016 –Extension of Term of a previously granted Variance (§11-411) for the continued operation of a (UG16) gasoline service station (Getty) which expired on July 13, 2016; Waiver of the Rules. M1-1/R5 zoning district.

PREMISES AFFECTED – 56-02/20 Broadway, Block 1195, Lot 44, Borough of Queens.

COMMUNITY BOARD #2Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....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 term of a variance, previously granted by the Board; and

WHEREAS, a public hearing was held on this application on April 17, 2018, after due notice by publication in *The City Record*, with a continued hearing on June 5, 2018, and then to decision on June 19, 2018; and

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

WHEREAS, Community Board 2, Queens, recommends approval of this application on condition that there be no parking of vehicles on the street, that there be no blocking of pedestrian access, that the site be maintained free of debris and graffiti and that the canopy lighting be directed down and away from residences; and

WHEREAS, the subject site is located on the south side of Broadway, between 56th Street and 57th Street, partially in an M1-1 zoning district and partially in an R5 zoning district, in Queens; and

WHEREAS, the Board has exercised jurisdiction over the subject site since July 16, 1946, when, under the subject calendar number, the Board granted a variance to permit the construction and maintenance of a gasoline service station,

lubratorium and automotive laundry on certain conditions; and

WHEREAS, on February 4, 1947, under the subject calendar number, the Board approved plans as in substantial compliance with the requirements of the Board’s resolution adopted July 16, 1946, on condition that all work be completed within one (1) year, by February 4, 1948; and

WHEREAS, on February 25, 1948, under the subject calendar number, the Board granted an extension of time to obtain permits and complete construction; and

WHEREAS, February 23, 1949, under the subject calendar number, the Board granted an extension of time to complete construction; and

WHEREAS, on May 15, 1956, under the subject calendar number, the Board granted an extension of term of ten (10) years, expiring May 15, 1966, and an extension of time to complete construction on condition that a new certificate of occupancy be obtained within six (6) months, by November 15, 1956; and

WHEREAS, on July 12, 1966, under the subject calendar number, the Board amended the variance to include minor auto repairs with hand tools only, storage and sales of automotive accessories and the parking of cars awaiting service and granted an extension of term of ten (10) years, expiring July 12, 1976, on condition that a certificate of occupancy be obtained; and

WHEREAS, on July 13, 1976, under the subject calendar number, the Board granted an extension of term of ten (10) years, expiring July 13, 1986, on condition that sidewalks in front of the subject site on 56th Street and 57th Street be paved for their full width in compliance with the specifications of the Department of Highways and that a new certificate of occupancy be obtained within one (1) year, by July 13, 1977; and

WHEREAS, on March 10, 1986, under the subject calendar number, the Board granted an extension of term of ten (10) years, expiring July 13, 1996, on condition that the landscaping be maintained and replaced when necessary, that the fence be repaired and maintained in good order at all times, that the dumpster be located on the subject site and covered at all times, that the station be maintained clean and free of debris at all times and that a new certificate of occupancy be obtained within one (1) year, by March 10, 1987; and

WHEREAS, on May 27, 1998, under the subject calendar number, the Board amended the variance to permit the installation of a metal canopy over two concrete pump islands and granted an extension of term of ten (10) years, expiring July 13, 2006, on condition that the wooden fence along the southerly lot line be installed and adequately maintained, that the planting area along the 57th Street side of the subject site be restored and maintained in accordance with the Board-approved plans, that the fencing surrounding the planted areas be removed, that the dumpster be located in accordance with the Board-approved plans, that the accessory business signs be in accordance with the Board-approved plans, that all light be directed down and away

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from residences, that the canopy lighting not exceed the Board-approved drawings, that the parking be for cars awaiting service, that the site be maintained graffiti free and in accordance with the Board-approved plans and that a new certificate of occupancy be obtained within one (1) year, by May 27, 1999; and

WHEREAS, on January 11, 2000, under the subject calendar number, the Board granted an extension of time to obtain a certificate of occupancy; and

WHEREAS, on January 10, 2012, under the subject calendar number, the Board granted an extension of term of ten (10) years, expiring July 13, 2016, and an extension of time to obtain a certificate of occupancy of one (1) year, expiring January 10, 2013, on condition that the site be maintained free of debris and graffiti, that there be no parking of cars on the sidewalk and all on-site parking be in accordance with the Board-approved plans, that all signage comply with C1 zoning district regulations, that the above conditions appear on the certificate of occupancy and that a new certificate of occupancy be obtained by January 10, 2013; and

WHEREAS, the term having expired, the applicant now seeks a waiver of the Board's Rules of Practice and Procedure to permit the late filing of this application and an extension of term; and

WHEREAS, in response to questions from the Board, the applicant submitted a revised lighting plan to reflect lower wattage lighting and evidence that the fence and wall have been repaired; and

WHEREAS, by letter dated May 30, 2018, the Fire Department states that it has no objection to this application; and

WHEREAS, based upon its review of the record, the Board has determined that the requested waiver of the Board's Rules of Practice and Procedure 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 *waive* the Rules of Practice and Procedure and *reopen* and *amend* the resolution, dated July 16, 1946, as amended through January 10, 2012, so that as amended this portion of the resolution shall read: "to *permit* an extension of term of ten (10) years, expiring July 13, 2026; *on condition* that all work and site conditions shall conform to drawings filed with this application marked "Received May 3, 2018"-Two (2) sheets and "June 15, 2018"-One (1) sheet; and *on further condition*:

THAT the term of this grant shall be limited to ten (10) years, expiring July 13, 2026;

THAT there shall be no parking of vehicles on the street;

THAT there shall be no blocking of pedestrian access;

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

THAT the canopy lighting shall be directed down and away from residences;

THAT intensity of the bulbs shall be reduced to

achieve 0 foot candles at the property line;

THAT there shall be no parking of cars on the sidewalk and all on-site parking shall be in accordance with the Board-approved plans;

THAT all signage shall comply with C1 zoning district regulations;

THAT the wooden fence along the southerly lot line shall be adequately maintained;

THAT the planting area along the 57th Street side of the subject site shall be maintained in accordance with the Board-approved plans;

THAT the dumpster shall be located in accordance with the Board-approved plans;

THAT the accessory business signs shall be in accordance with the Board-approved plans;

THAT all light shall be directed down and away from residences;

THAT the canopy lighting shall not exceed the Board-approved drawings;

THAT the parking shall be for cars awaiting service;

THAT the fence shall be maintained in good order at all times;

THAT the dumpster shall be located on the subject site and covered at all times;

THAT sidewalks in front of the subject site on 56th Street and 57th Street shall be paved for their full width in compliance with the specifications of the Department of Transportation;

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 19, 2022;

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 19, 2018.

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308-79-BZ

APPLICANT – Klein Slowik PLLC, for St. George Tower & Grill Owners Corp., owner; St. George Health & Racquet Associates LLC, lessee.

SUBJECT – Application June 20, 2017 – Extension of Term of a previously approved Variance (§72-21) which permitted the operation of a Physical Cultural Establishment (*Eastern Athletic Club*) which expired on July 3, 2014; Waiver of the Rules. R7-1 (Limited Height Special Purpose District) (Brooklyn Heights Historic District).

PREMISES AFFECTED – 43 Clark Street aka 111 Hicks Street, Block 231, Lot 19, 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 Sheta and Commissioner Scibetta.....5
Negative.....0

THE RESOLUTION –

WHEREAS, this is an application for an extension of term of a variance, previously granted by the Board; and

WHEREAS, a public hearing was held on this application on May 8, 2018, after due notice by publication in *The City Record*, and then to decision on June 19, 2018; and

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

WHEREAS, Community Board 2, Brooklyn, waives its recommendation for this application; and

WHEREAS, the Board has exercised jurisdiction over the subject site since July 3, 1979, when, under the subject calendar number, the Board granted a variance to permit, in conjunction with the conversion of an existing hotel into a multiple dwelling, the use of the ballroom and pool area as a physical culture establishment (“PCE”) without the required accessory parking on condition that the term be limited to fifteen (15) years, expiring July 3, 1994, and that the hours of operation be limited to from 8:00 a.m. to 11:00 p.m., seven days per week; and

WHEREAS, on October 31, 1995, under the subject calendar number, the Board amended the variance to permit the dance and martial arts facilities on the second floor of the building as part of the physical culture establishment and reflect the name of the current operator of the establishment and granted an extension of term of ten (10) years, expiring July 3, 2004, on condition that a new certificate of occupancy be obtained within one (1) year, by October 31, 1996; and

WHEREAS, on January 23, 2007, under the subject calendar number, the Board amended the variance to allow minor modifications, including reconfiguration of the cellar space, relocation of the basement-level shop, offices and child care area, enlargement and relocation of the stairs, reconfiguration of the first-floor sports courts and reconfiguration of the second-floor spectator area and

granted an extension of term of ten (10) years, expiring July 3, 2024, 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 having expired, the applicant now seeks a waiver of the Board’s Rules of Practice and Procedure to permit the late filing of this application and an extension of term; and

WHEREAS, the applicant represents that there have been no changes to the floor plan or operator of the facility, Eastern Athletic Club, as previously approved by the Board; and

WHEREAS, in response to questions from the Board, the applicant clarified that the PCE occupies 76,394 square feet of floor space as follows: 557 square feet of floor space in the sub-cellar, 23,406 square feet of floor space in the cellar, 26,156 square feet of floor area in the basement, 14,292 square feet of floor area on the first floor, 8,053 square feet of floor area on the second floor, 3,035 square feet of floor area on the fourth floor and 895 square feet of floor area on the fifth floor; and

WHEREAS, by letter dated May 4, 2018, and stated at hearing, the Fire Department represents that it has no objection to this application; and

WHEREAS, based upon its review of the record, the Board has determined that the requested waiver of the Board’s Rules of Practice and Procedure 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 *waive* the Rules of Practice and Procedure and *reopen* and *amend* the resolution, dated July 3, 1979, as amended through January 23, 2007, so that as amended this portion of the resolution shall read: “to *permit* an extension of term of ten (10) years, expiring July 3, 2024; *on condition* that all work, site conditions and operations shall conform to the Board-approved plans; and *on further condition*:

THAT the term of this grant shall be limited to ten (10) years, expiring July 3, 2024;

THAT the hours of operation shall be limited to from 8:00 a.m. to 11:00 p.m., seven days per week;

THAT there shall be no change in ownership or operating control of the PCE without prior 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 June 19, 2022;

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

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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 19, 2018.

175-05-BZ

APPLICANT – Sheldon Lobel, P.C., for 18-24 Luquer Street Realty, LLC, owner.

SUBJECT – Application February 16, 2018 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) to construct a four-story multiple dwelling with accessory parking which expired on January 9, 2015; Waiver of the Rules. M1-1 zoning district.

PREMISES AFFECTED – 18-24 Luquer Street, Block 520, Lot 13, 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, Commissioner Sheta and Commissioner Scibetta.....5
Negative:0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Board’s Rules of Practice and Procedure, reopening and an extension of time to complete construction pursuant to a previously granted variance, which expired on January 25, 2015; and

WHEREAS, a public hearing was held on this application on May 8, 2018, after due notice by publication in *The City Record*, with a continued hearing on June 19, 2018, 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, the subject site is located on the south side of Luquer Street, between Columbia Street and Hicks Street, in an M1-1 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 85 feet of frontage along Luquer Street, a depth of 100 feet, 8,500 square feet of lot area and is vacant; and

WHEREAS, the Board has exercised jurisdiction over the subject site since January 9, 2007, when, under the subject calendar number, the Board granted a variance, pursuant to ZR § 72-21, to permit the construction of a three-story plus cellar residential building contrary to ZR § 42-00 on condition that the parameters of the proposed building be as follows: three stories, 14,025 square feet of floor area (1.65 FAR), a street wall and total height of 34 feet, a rear yard of 30 feet, a front yard of 15 feet, 12 dwelling units and 12 parking spaces; and

WHEREAS, also on January 9, 2007, a Restrictive Declaration was filed in the Office of the City Register of the City of New York against the subject site (Document ID 2007010400585001) to address potential hazardous material impacts relating to the variance application and requiring the fee owner of the site to, *inter alia*, (1) restrain from submitting applications for grading, excavation, foundation, alteration, building or other permits for soil disturbance to Department of Buildings (“DOB”) until the New York City Department of Environmental Protection (“DEP”) has issued a Notice of No Objection, Notice to Proceed, Notice of Satisfaction or Final Notice of Satisfaction and (2) refrain from submitting an application to DOB for a temporary or permanent certificate of occupancy reflecting a change in use group at the site until DEP has issued a Notice of No Objection, Notice of Satisfaction or Final Notice of Satisfaction; and

WHEREAS, pursuant to ZR § 72-23, a variance granted under the provisions of the Zoning Resolution automatically lapses if substantial construction, in accordance with the plans for which such variance was granted, has not been completed within four years from the date of granting such variance by the Board of Standards and Appeals; and

WHEREAS, accordingly, the time to substantially complete construction pursuant to the 2007 variance grant expired on January 9, 2011; and

WHEREAS, on January 25, 2011, under the subject calendar number, the Board granted a four (4) year extension of time to complete construction, expiring January 9, 2015, on condition that the fence located along the eastern lot line be repaired by April 25, 2011 and that all conditions from prior resolutions not specifically waived by the Board remain in effect; and

WHEREAS, the time for substantial construction to have been completed having expired, the applicant seeks the subject relief; and

WHEREAS, the applicant additionally requests a waiver, pursuant to § 1-14.2 of the Board’s Rules of Practice and Procedure, of Rule § 1-07.3(c)(3) to permit the filing of this application less than four (4) years after the expiration of the time to complete construction; and

WHEREAS, the applicant submits that the commencement of construction at the site has been delayed by difficulties in obtaining necessary financing, but represents that financing has been secured and construction would begin at the site immediately upon the Board’s grant of this application; and

WHEREAS, in addition, the applicant provided an estimated timeline for construction, concluding that the development could be completed within two and a half years from the date of grant; and

WHEREAS, in hearing, members of the Board expressed concerns regarding the lack of progress at the site in the 11 years since the variance grant and suggested that the subject application be filed as a new variance application; and

WHEREAS, other member of the Board stated that the character of the subject block has remained the same since the 2007 variance grant, that real estate financing was, in fact,

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difficult to obtain at that time and that the applicant's submission of a construction timeline evidences an intention to develop the site pursuant to the plans approved by the Board in 2007 in short order; and

WHEREAS, the Board agreed, however, that this should be the final extension of time granted for the subject to facilitate construction pursuant to the 2007 variance and, though the applicant has requested an extension of only two and a half years, the Board finds it prudent to grant this final extension for four (4) years from the date of grant to ensure timely completion of the approved development; and

WHEREAS, additionally, the Board requested that the applicant review the 2007 plans approved by the Board for compliance with the 2014 New York City Building Code to ensure that no amendments to those plans are required in addition to an extension of time; and

WHEREAS, the applicant's architect submitted an analysis of the modifications required for the project to comply with the 2014 New York City Building Code and concluded that all necessary modifications can be made without amending the envelope of the previously approved building and, thus, no amendment to the previously approved variance was required; and

WHEREAS, with regards to compliance with conditions of prior resolutions, the applicant provided photos showing that the fence located on the eastern lot line was repaired as required by the 2011 resolution, but was unable to provide any evidence of compliance with the Restrictive Declaration; and

WHEREAS, the Board incorporates the requirements of the Restrictive Declaration as conditions of the subject grant to ensure that such Restrictive Declaration is, in fact, complied with in the course of developing the subject site; 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 January 9, 2007, as amended through January 25, 2011, so that as amended this portion of the resolution reads: "to grant a four (4) year extension of time to complete construction to June 19, 2022; and *on further condition*:

THAT substantial construction shall be completed by June 19, 2022, as evidenced by an inspection and determination by the Department of Buildings;

THAT the parameters of the proposed building be as follows: three stories, 14,025 square feet of floor area (1.65 FAR), a street wall and total height of 34 feet, a rear yard of 30 feet, a front yard of 15 feet, 12 dwelling units and 12 parking spaces;

THAT the development shall comply with the 2014 New York City Building Code;

THAT the Restrictive Declaration filed against the subject site shall be complied with in all respects, including but not limited to the following restrictions and obligations:

- (a) Declarant covenants and agrees that no application for grading, excavation,

foundation, alteration, building or other permit respecting the Subject Property which permits soil disturbance shall be submitted to or accepted from the Department of Buildings (the "DOB") by the Declarant until DEP has issued to DOB, as applicable, either a Notice of No Objection . . . , a Notice to Proceed . . . , a Notice of Satisfaction . . . or a Final Notice of Satisfaction

- (b) Declarant further covenants and agrees that no application for a temporary or permanent Certificate of Occupancy that reflects a change in use group respecting the Subject Property shall be submitted to or accepted from DOB by the Declarant until DEP has issued to DOB, as applicable, either a Notice of No Objection . . . , a Notice of Satisfaction . . . or a Final Notice of Satisfaction;

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); 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 19, 2018.

68-91-BZ

APPLICANT – Eric Palatnik, P.C., for MUKTI 223 LLC, owner.

SUBJECT – Application November 3, 2017 – Amendment (§11-412) of an approved variance which permitted the operation of an automotive service station (UG 16B) with accessory uses. Amendment seeks to permit the enlargement of the existing building and conversion from accessory repair bays to convenience store; the addition of a new storefront, two (2) canopies over the gasoline pump island, and modification of islands and gasoline pumps. R5D/C1-2 & R2A zoning district.

PREMISES AFFECTED – 223-15 Union Turnpike, Block 7780, Lot 1, 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, Commissioner Sheta and Commissioner Scibetta.....5

Negative:0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings ("DOB"), dated October 6, 2017, acting on

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Alteration Application No. 421011185, reads in pertinent part:

“Continued use of the gasoline service station, and reduction in the number of service bays to enlarge the convenience store, is contrary to the BSA grant under application number 68-91-BZ and not permitted as-of-right”; and

WHEREAS, this is an application for an amendment to a variance, previously granted by the Board, to allow the enlargement of the accessory convenience store, two canopies over the gasoline pump island and modifications to islands and gasoline pumps; and

WHEREAS, a public hearing was held on this application on June 19, 2018, 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 11, Queens, recommends approval of this application, stating that exterior lighting should be directed away from adjacent residences; and

WHEREAS, Queens Borough President Melinda Katz submitted testimony in support of this application; and

WHEREAS, the Board has exercised jurisdiction over the subject site since January 13, 1942, when, under BSA Calendar Number 150-41-BZ, the Board granted a variance to permit the construction and maintenance of a gasoline service station for a term of ten (10) years, expiring January 13, 1952; and

WHEREAS, on July 20, 1943, under BSA Calendar Number 150-41-BZ, the Board granted an extension of time to complete construction; and

WHEREAS, on July 17, 1945, under BSA Calendar Number 150-41-BZ, the Board granted an extension of time to complete construction; and

WHEREAS, on October 1, 1946, under BSA Calendar Number 150-41-BZ, the Board granted an extension of time to complete construction and amended the variance to allow modifications to the distance from the building line for brand signs; and

WHEREAS, on July 11, 1950, under BSA Calendar Number 150-41-BZ, the Board amended the variance so that, in the event the new owner, the Gulf Oil Corporation, desires to extend the gasoline service station to the north, such extension of building and uses may be permitted for a term of fifteen (15) years, expiring July 11, 1965, on condition that the design of the building and the arrangement of the subject site are as indicated on the Board-approved plans and that the landscaping of the area be maintained properly protected with curbing, except that there be maintained on the lot lines to the south, west and north, a masonry wall agreeing with the masonry of the accessory building and properly coped to a height of not less than 5'-6" above the existing grade, except that such wall may be reduced to a height of 4'-6" within 10 feet of the Springfield

Boulevard building line, that the proposed accessory building extension comply with the requirements of the Building Code in all other respects and no cellar be constructed thereunder, that the greasing equipment be by hydraulic lifts only, that minor repairing may be permitted, provided such work is done within the accessory building and by hand tools only, that the portion of the subject site to the north where indicated may be used for parking of cars to be serviced or having been serviced for a term of fifteen (15) years, that the additional curb cuts may be constructed, but not exceeding 30 feet in width each, that additional pumps may be erected, provided same are not nearer than 15 feet to the street building line and are of the parkway type similar to the ones installed, that six (6) additional 550-gallon gasoline storage tanks may be installed, that the roof of the accessory building be surfaced with natural slate shingles, that such portable fire-fighting appliances be installed as the fire commissioner directs, that signs be restricted to the permanent sign attached to the façade of the accessory building, that there may be erected an additional post standard toward the northerly end within the building line, which sign may be illuminated and may extend over the building line for a distance of not more than 4 feet, that new sidewalks and curbs be constructed around the subject site on Union Turnpike and Springfield Boulevard, where approved concrete sidewalks and stone curbing do not already exist and that a new certificate of occupancy be obtained; and

WHEREAS, on July 17, 1951, under BSA Calendar Number 150-41-BZ, the Board granted an extension of time to complete construction; and

WHEREAS, on October 13, 1965, under BSA Calendar Number 150-41-BZ, the Board granted an extension of term of ten (10) years, expiring October 13, 1975, on condition that a certificate of occupancy be obtained; and

WHEREAS, on November 5, 1975, under BSA Calendar Number 150-41-BZ, the Board granted an extension of term of ten (10) years, expiring November 5, 1985, on condition that a new certificate of occupancy be obtained; and

WHEREAS, on May 19, 1992, under the subject calendar number, the Board reinstated the variance for a term of five (5) years, expiring May 19, 1997, on condition that there be no parking of cars on the sidewalk, that landscaping be installed and maintained in accordance with the Board-approved plans, that there be no outdoor storage at the subject site, that the rear overhead door of the subject site be kept closed except for the removal of vehicles to minimize noise impacts on the adjacent residential uses, that the hours when motor vehicles may be repaired on the subject site be limited to Monday through Friday, 7:00 a.m. to 7:00 p.m., and Saturday, 7:00 a.m. to 12:00 p.m., to minimize noise and vehicular impacts on the adjacent residential uses, that work on motor vehicles be solely performed inside the service bays of the subject building, that all site lighting be directed downward and away from

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adjacent residential uses and that the above conditions appear on the certificate of occupancy; and

WHEREAS, on June 28, 1994, under the subject calendar number, the Board granted an extension of time to complete construction of fourteen (14) months from July 19, 1995; and

WHEREAS, on March 2, 1999, under the subject calendar number, the Board granted an extension of term of five (5) years, expiring May 19, 2002, on condition that a new certificate of occupancy be obtained within one (1) year, by March 2, 2000; and

WHEREAS, on September 10, 2002, under the subject calendar number, the Board granted an extension of term of ten (10) years, expiring May 19, 2012, and amended the variance to permit the conversion of a portion of the automotive service building to an accessory convenience store and the installation of an aboveground anti-freeze tank on condition that the site be maintained graffiti-free at all times, that all automotive repair work be limited to Monday to Saturday, 8:00 a.m. to 7:00 p.m., and closed on Sunday, that there be no parking of automobiles on the sidewalk at any time, that there be no self-service coin-operated car wash machines on the subject site, that the hours of operation for the automobile vacuums be limited to 9:00 a.m. to 7:00 p.m. and that the above conditions appear on the certificate of occupancy; and

WHEREAS, on March 12, 2013, under the subject calendar number, the Board granted an extension of term of ten (10) years, expiring May 19, 2022, and amended the variance to permit minor interior changes, including partition and layout changes to the interior of the accessory convenience store and relocation of the exterior door, and to permit automotive repair service on Sunday, on condition that the signage on the site comply with C1 district regulations, that the hours of operation be limited to Monday through Saturday, 7:00 a.m. to 7:00 p.m., and Sunday, 8:00 a.m. to 4:00 p.m., that the above conditions appear on the certificate of occupancy and that a new certificate of occupancy be obtained by March 12, 2014; and

WHEREAS, on September 16, 2014, under the subject calendar number, the Board granted an extension of time to obtain a certificate of occupancy to March 12, 2015; and

WHEREAS, the applicant now proposed to amend the variance to allow the enlargement of the accessory convenience store, two canopies over the gasoline pump island and modifications to islands and gasoline pumps; and

WHEREAS, in response to questions from the Board, the applicant clarified the use of the trailer on the subject site and submits that landscaping will be maintained in accordance with the Board-approved plans; and

WHEREAS, based upon its review of the record, the Board has determined 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 January 13, 1942, as amended through September 16, 2014, so that as amended this portion of the resolution shall

read: “to *permit* the enlargement of the accessory convenience store, two canopies over the gasoline pump island and modifications to islands and gasoline pumps; *on condition* that all work and site conditions shall conform to drawings filed with this application marked “Received April 24, 2018”-Eighteen (18) sheets; and *on further condition*:

THAT the term of this grant shall be limited to ten (10) years, expiring May 19, 2022;

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

THAT the signage on the site shall comply with C1 district regulations;

THAT the hours of operation shall be limited to Monday through Saturday, 7:00 a.m. to 7:00 p.m., and Sunday, 8:00 a.m. to 4:00 p.m.;

THAT the site shall be maintained graffiti-free at all times;

THAT there shall be no parking of automobiles on the sidewalk at any time;

THAT there shall be no self-service coin-operated car wash machines on the subject site;

THAT there shall be no parking of cars on the sidewalk;

THAT landscaping shall be installed and maintained in accordance with the Board-approved plans;

THAT there shall be no outdoor storage at the subject site;

THAT the rear overhead door of the subject site shall be kept closed except for the removal of vehicles to minimize noise impacts on the adjacent residential uses;

THAT work on motor vehicles shall be performed solely inside the service bays of the subject building,

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 19, 2022;

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 19, 2018.

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240-55-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for DLC Properties, owner.

SUBJECT – Application January 24, 2018 – Request for a Re-Hearing pursuant to § 1-12.5 of the Board’s Rules for an application which was dismissed for lack of prosecution on November 21, 2017. The application seeks 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 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 July 17, 2018, at 10 A.M., for continued hearing.

182-95-BZ

APPLICANT – Rothkrug & Spector LLP, for 2465 Broadway Associates LLC., owner.

SUBJECT – Application October 14, 2014 – Extension of Term of a previously granted Special Permit (§73-36) for the continued operation of a PCE (*Equinox Fitness Club*) which expires on November 1, 2015; Amendment to expand the PCE into the cellar and the full third floor; Waiver of the Rules. C4-6A/R8 zoning district.

PREMISES AFFECTED – 2465 Broadway, West side of Broadway, 50' south of southwest corner of intersection of Broadway and West 92nd Street, Block 01239, Lot 52, Borough of Manhattan.

COMMUNITY BOARD #7M

ACTION OF THE BOARD – Laid over to August 7, 2018, at 10 A.M., for continued hearing.

183-95-BZ

APPLICANT – Rothkrug & Spector LLP, for Haymes Broadway LLC, owner.

SUBJECT – Application October 14, 2014 – Extension of Term of a previously granted Special Permit (§73-36) for the continued operation of a PCE (*Equinox Fitness Club*) which expires on November 1, 2015; Amendment to expand the PCE into the cellar and the full third floor; Waiver of the Rules. C4-6A/R8 zoning district.

PREMISES AFFECTED – 2473 Broadway, southwest corner of intersection of Broadway and West 92nd Street, Block 01239, Lot 55, Borough of Manhattan.

COMMUNITY BOARD #7M

ACTION OF THE BOARD – Laid over to August 7, 2018, at 10 A.M., for continued hearing.

18-09-BZ

APPLICANT – Klein Slowik PLLC, for West 54th Street LLC c/o ZAR Property, owner; Crunch LLC, lessee.

SUBJECT – Application August 28, 2017 – Extension of Term of a special permit (§73-36) for the continued operation of a physical culture establishment (*Crunch Fitness*) which expires on November 21, 2021; Amendment to permit the change in operator; Waiver of the Rules. C6-5 and C6-7 zoning district.

PREMISES AFFECTED – 250 West 54th Street, Block 1025, Lot 54, Borough of Manhattan.

COMMUNITY BOARD #5M

ACTION OF THE BOARD – Laid over to August 7, 2018, at 10 A.M., for continued hearing.

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, Commissioner Sheta and Commissioner Scibetta.....5
Negative:0

ACTION OF THE BOARD – Laid over to September 27, 2018, at 10 A.M. for decision, hearing closed.

APPEALS CALENDAR

166-12-AII

APPLICANT – NYC Department of Buildings.

SUBJECT – Application April 9, 2018 – Request for a Re-hearing for an appeal seeking a reconsideration of a ruling to partially revoke a certificate of occupancy.

166-12-AIII and 107-13-A

APPLICANT – Steven Barshov, Esq., Sive, Paget & Riesel, P.C., for Sky East LLC, owner.

SUBJECT – Application April 9, 2018 – Request for a Re-hearing for an appeal seeking a reconsideration of a ruling to partially revoke a certificate of occupancy and that the subject property common law rights had vested and then by ruling that such its vested rights had been abandoned.

PREMISES AFFECTED – 638 East 11th Street, Block 393, Lot(s) 25, 26, 27, Borough of Manhattan.

COMMUNITY BOARD #1M

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ACTION OF THE BOARD – Request for re-argument denied; Board’s Motion to Review Decision Granted.

THE VOTE TO DENY –

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

THE VOTE TO GRANT –

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

THE RESOLUTION –

WHEREAS, these are two requests for re-argument of two applications previously heard and decided by the Board; and

WHEREAS, by submission dated April 6, 2018, the New York City Department of Buildings (“DOB”) filed an application, pursuant to § 1-12.4 of the Board’s Rules of Practice and Procedure, to reargue BSA Cal. No. 166-12-A, an application DOB filed with the Board to revoke Certificate of Occupancy No. 103703226, issued to the subject premises (the “CO Revocation Appeal”), which the Board granted with regards to the Use Group 4 medical offices in a one-story plus cellar structure located at the premises’ rear lot line (the “Rear Structure”) only; and

WHEREAS, by submission dated April 9, a representative of the owner of the premises (“Appellant”) filed an application, pursuant to § 1-12.4 of the Board’s Rules of Practice and Procedure, to reargue both the CO Revocation Appeal and BSA Cal. No. 107-13-A, an application filed with the Board to recognize a common law vested right to continue construction at the site subsequent to an amendment to the Zoning Resolution that excluded Use Group 4 medical offices from the list of permitted obstructions in the subject premises’ required rear yard (the “Common Law Vested Right Appeal”; together, the “Appeals”), which the Board recognized, but found had been abandoned, pursuant to Putnam Armonk, Inc. v. Town of Southeast, 52 AD2d 10 (2d Dept 1976), when the space was continuously occupied, contrary to law, by residential tenants; and

WHEREAS, DOB argued that the Board’s partial revocation of the certificate of occupancy, as stated in the resolution issued for both applications (the “Resolution,” BSA Cal. Nos. 166-12-A & 107-13-A) (October 17, 2017)1), was not supported by the text of the Zoning Resolution and failed to address issues affecting not only the rear portion of the premises, but the premises in its entirety; and

WHEREAS, DOB argued that the denial of the Common Law Vested Right Appeal was legally inconsistent with the Board’s decision in the CO Revocation Appeal; that the abandonment of a non-conforming use was irrelevant to the subject premises, where the issue was, instead, non-

compliance; and that, because outstanding objections remain at the premises, including the absence of a second means of egress from the front portion, the certificate of occupancy at issue could not be considered lawfully issued and must be revoked in its entirety; and

WHEREAS, the Appellant also argued that the Board was in error in determining that the vested right had been abandoned where the issue at the site was the non-complying, rather than non-conforming, Rear Structure and suggested that the Board reverse its decision in the Common Law Vested Right Appeal and stay further disposition of the CO Revocation Appeal to permit DOB to issue permits so that the Appellant may cure the outstanding objections and DOB may ultimately issue a new certificate of occupancy; and

WHEREAS, a public hearing was held on this application on June 5, 2018, after due notice by publication in *The City Record*, and then to decision on June 15, 2018; and

WHEREAS, § 1-12.4 of the Board’s Rules of Practice and Procedure states, in relevant part:

The Board will not grant a request to reargue a case which was denied, dismissed, or approved unless the applicant shows that the Board misapprehended the relevant facts or misapplied any controlling principals of law, including the Zoning Resolution; and

WHEREAS, the Board disagrees with both DOB and the Appellant that it misapplied the relevant facts in its decision on the Appeals—the CO Revocation Appeal was pending at the Board for four years and the Common Law Vested Right Appeal was pending at the Board for three years, with several hearings, written submissions and oral testimony from both DOB and the Appellant in which either party could have identified and/or cleared up any factual errors or explained shifting approaches; and

WHEREAS, however, at hearing, the Board suggested that DOB’s application to reargue the CO Revocation Appeal, which the Board understood to heavily rely on DOB’s procedural difficulties in enforcing the Board’s decision on the Appeals (i.e. ensuring that the objections at the site are actually cured where the premises has a valid certificate of occupancy), may be better suited as a request for rehearing, pursuant to § 1-12.5 of the Board’s Rules of Practice and Procedure; and

WHEREAS, § 1-12.5 of the Board’s Rules of Practice and Procedure states, in relevant 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, the Board proposed that DOB’s procedures constituted substantial new evidence not

1 The resolution was released on March 8, 2018.

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available at the time of the initial hearings in accordance with that section; and

WHEREAS, the Appellant objected to the recasting of DOB's application for a re-argument as one for rehearing, arguing that DOB's information regarding the difficulties in enforcement at the site was not, in fact, new—all of that information had been provided in the underlying record for the Appeals—and reiterated Appellant's proposal that the Board reverse its decision with regards to the Common Law Vested Right Appeal and allow the Appellant and DOB to cure the violations at the site that DOB states render Certificate of Occupancy No. 103703226 invalidly issued; and

WHEREAS, in light of the Appellant's objection, the Board agrees that DOB's application for re-argument should remain as filed; and

WHEREAS, the Board additionally disagrees that it misapplied any controlling principals of law in its decision on the Appeals—neither DOB nor the Appellant identified a provision of law that the Board's Resolution misapplied; the Board relied on Putnam in its determination that the vested right to occupy the Rear Structure with Use Group 4 medical office use had been abandoned, and such case was submitted into the Record and cited by the Appellant in the Common Law Vested Right Appeal; the Appellant had acknowledged in the course of the hearings on the Appeals that the Common Law Vested Right Appeal was with regards to the Rear Structure only because the building located at the front of the premises was not rendered non-complying by amendment to the Zoning Resolution; DOB's history of issuing temporary certificates of occupancy to the site that did not mention the Rear Structure or Use Group 4 medical offices and the Board's knowledge of lots throughout the city with certificates of occupancy that explicitly note the presence of multiple structures thereon (i.e. one (1) dwelling and a one (1) accessory garage) supported the Board's determination that Certificate of Occupancy No. 103703226 could be modified without having to be revoked in its entirety; additionally, the Board has the authority to modify, in addition to set aside or vacate, certificates of occupancy pursuant to § 645(b)(3)(e) of the New York City Charter; and

WHEREAS, however, the Board notes that, in reviewing the Resolution, there are clauses that could be modified to clarify the Board's rationale and provide greater guidance to the Appellant and DOB as to how to move forward; and

WHEREAS, accordingly, and having found good cause, the Board made and granted a motion to review the Resolution, pursuant to § 1-12.6 of the Board's Rules of Practice and Procedure; and

WHEREAS, that section provides that, In accordance with § 666(8) of the Charter, the Board may, for good cause, on its own motion at a public hearing, review any decision that it has made and may reverse or modify such decision but no such review will prejudice the rights of any

person who has in good faith acted thereon before it is reversed or modified; and

WHEREAS, the date for review of decision was set for July 17, 2018; and

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *deny* the Department of Buildings' application to reargue BSA Cal. No. 166-12-A, *deny* the Appellant's application to reargue both BSA Cal. Nos. 166-12-A and 107-13-A; and *grant* the Board's motion to review its decision in BSA Cal. Nos. 166-12-A and 107-13-A, dated October 17, 2017, at public hearing on July 17, 2018.

Adopted by the Board of Standards and Appeals, June 19, 2018.

2017-48-A

APPLICANT – Akeeb Shekoni, for Nigerian Muslim Community of Staten Island, owner; Hamzat Kabiawu, lessee.

SUBJECT – Application February 17, 2017 – Proposed construction located within the bed of a mapped street, contrary to General City Law 35. R3A Zoning District.

PREMISES AFFECTED – 36 Hardy Street, Block 638, Lot(s) 44,46,47,49, 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, Commissioner Sheta and Commissioner Scibetta.....5

Negative:0

THE RESOLUTION –

WHEREAS, the decision of the Staten Island Deputy Borough Commissioner, dated May 23, 2017, acting on Department of Buildings (“DOB”) Application No. 520256767 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 permit the enlargement and conversion of existing buildings into a Use Group 4 house of worship 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 April 17, 2018, after due notice by publication in *The City Record*, with a continued hearing on June 5, 2018, and then to decision on June 19, 2018; and

WHEREAS, Community Board 1, Staten Island, recommended approval of this application; and

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

WHEREAS, the subject site is comprised of four contiguous tax lots located at the southwest corner of Hardy Street and Waverly Place, in an R3A zoning district, on Staten

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Island; and

WHEREAS, an Application for Mergers or Apportionments for the merger of Tax Lots 44, 46, 47 and 49 on Block 638 on Staten Island into Tentative Tax Lot 44 was approved by the New York City Department of Finance on January 25, 2016, though the New York City Tax Map has not yet been updated to reflect this merger; and

WHEREAS, the site has approximately 100 feet of frontage along Hardy Street, 100 feet of frontage along Waverly Place and 10,000 square feet of lot area; and

WHEREAS, Tax Lots 44 and 46 are occupied by a two-story one-family residence partially located within a mapped but unbuilt portion of Waverly Place and Tax Lots 47 and 49 are occupied by a two-story Use Group 4 house of worship; and

WHEREAS, by letter dated April 10, 2017, the New York City Department of Transportation (“DOT”) states that, according to the Staten Island Borough President’s Topographical Bureau, Waverly Place at the subject premise is mapped for 50 feet and the City has no title and that the improvement of Waverly Place at this location, which would involve the taking of a portion of block 638, Tax Lots 44, 46, 47 and 49 on Block 638 is not presently included in DOT’s Capital Improvement Program, though changes in the program in the future are not precluded; and

WHEREAS, the applicant proposes to connect the two existing buildings and convert the resulting enlargement into a Use Group 4 house of worship; and

WHEREAS, the applicant represents that the enlargement does not increase the degree to which the existing structure presently on Tax Lots 44 and 46 encroaches the mapped but unbuilt portion of Waverly Place and that the proposed enlargement will comply with all bulk regulations applicable in the underlying zoning district; and

WHEREAS, the site plan indicates a new 20 foot wide curb cut on Waverly Place and 11 off-street accessory parking spaces, but the Board makes no findings as to the compliance of the proposed curb cut and number of parking spaces provided with applicable rules and regulations, including but not limited to the Zoning Resolution, and grants no waivers that may be necessary to facilitate the construction of that curb cut or permit a reduction in the number of parking spaces required for the proposed development; and

WHEREAS, by letter dated May 25, 2018, the New York City Department of Environmental Protection (“DEP”) states that there are a 10” diameter (dia.) sanitary sewer and an 8” dia. City water main in the bed of Waverly Place at the subject premises; that Drainage Plan #PRD-2D, Sheet 4 of 9, dated November 21, 1973, shows 10”Dia. Sanitary and 15”Dia. Storm sewers in the bed of Waverly Place between Hardy Street and Targee Street and, in light of a Plot Plan submitted by the applicant proposing a 35 foot DEP utility easement with the minimum available width of 27 feet at the narrowest point inside of Tentative Tax Lot 44 for the installation, maintenance and/or reconstruction of the future and existing sewers and water main, DEP has no objections to the proposed application; and

WHEREAS, by letter dated July 27, 2017, the Fire Department states that it has no objection to the subject proposal on condition that it be fully sprinklered, a hydrant be located within 200 feet of the Siamese connection, a hydrant be located within 250 feet of the main front entrance and that all parking spaces be provided as required by the Zoning Resolution; 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 decision of the Staten Island Borough Commissioner, dated May 23, 2017, acting on Department of Buildings Application No. 520256767, by the power vested in it by Section 35 of the General City Law to grant this appeal, limited to the decision noted above *on condition* that construction shall substantially conform to the drawings filed with the application marked “Received June 14, 2018”-One (1) sheet; and *on further condition*:

THAT a 35 foot DEP utility easement with the minimum available width of 27 feet at the narrowest point shall be provided inside of Tentative Tax Lot 44 for the installation, maintenance and/or reconstruction of the future and existing sewers and water main, as indicated on the BSA-approved plans;

THAT the subject development shall be fully sprinklered;

THAT the new curb cut proposed on Waverly Place shall be as approve by DOT and/or DOB;

THAT a fire hydrant shall located within 200 feet of the Siamese connection and 250 feet of the main entrance;

THAT all roadways shall be paved to the requirements of DOT;

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 June 19, 2022;

THAT DOB shall review the plans approved herewith 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 June 19, 2022;

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, June 19, 2018.

2017-58-A

APPLICANT – SBP 69 Street, LLC/Favor J. Smith, Esq., for SBP 69th Street, LLC, owner.

SUBJECT – Application March 2, 2017 – 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.

PREMISES AFFECTED – 7 E 69th Street, Block 1384, Lot 11, Borough of Manhattan.

COMMUNITY BOARD #8M

ACTION OF THE BOARD – Laid over to August 14, 2018, at 10 A.M., for continued hearing.

2017-68-A thru 2017-96-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Joline Estates, LLC, owner.

SUBJECT – Applications March 27, 2017 – Proposed construction of twenty-nine (29) two-family residences, not fronting on a legally mapped street, contrary to General City Law 36. R3-X (SRD) zoning district.

PREMISES AFFECTED – 7 to 49 Torrice Loop and 11 to 16 Frosinone Lane, Block 7577, Various Lots, Borough of Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Laid over to August 7, 2018, at 10 A.M., for continued hearing.

2017-276-A

APPLICANT – Eric Palatnik, P.C., for Frank McErlean, owner.

SUBJECT – Application October 4, 2017 – Proposed construction of a commercial building not fronting on a legally mapped street, contrary to General City Law 36. M3-1 zoning district.

PREMISES AFFECTED – 96 Industrial Loop, Block 7206, Lot 176, Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Laid over to August 14, 2018, at 10 A.M., for continued hearing.

2017-320-BZY

APPLICANT – Kramer Levin Naftalis & Frankel LLP by Gary Tarnoff, for Sutton 58 Holding Company, LLC, owner.

SUBJECT – Application December 19, 2017 – Proposed extension of time to complete construction for a minor development pursuant to ZR §11-331 to renew building permits lawfully issued before November 30, 2017, the date of the modified tower-on-a-base regulation, to complete the required foundation of a proposed 64-story residential

apartment building. R10 zoning district.

PREMISES AFFECTED – 428-432 East 58th Street, Block 1369, Lot 34, Borough of Manhattan.

COMMUNITY BOARD #6M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:0

ACTION OF THE BOARD – Laid over to June 26, 2018, at 10 A.M. for decision, hearing closed.

ZONING CALENDAR

280-13-BZ

CEQR #14-BSA-050Q

APPLICANT – Sheldon Lobel, P.C., for CA Plaza, LLC, owner.

SUBJECT – Application July 19, 2013 – Special Permit (§73-44) to permit the reduction of required parking for ambulatory diagnostic or treatment facility (Use Group 4) contrary to ZR §36-21. Special Permit (§73-36) to permit a physical culture establishment (PCE) within a portion of the proposed building. C4-2 & C4-3 zoning districts.

PREMISES AFFECTED – 36-18 Main Street, Block 4971, 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 Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated September 12, 2013, acting on New Building Application No. 401816923, reads in pertinent part:

“Proposed physical culture establishment . . . use is contrary to ZR 32-10

Insufficient required parking spaces provided contrary to ZR 36-21”; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to permit, partially in a C4-2 zoning district and partially in a C4-3 zoning district, the operation of a physical culture establishment on portions of the second, third and fourth floors of the subject building, contrary to ZR § 32-10, and under ZR §§ 73-44 and 73-03 to permit a reduction in the number of accessory off-street parking spaces required for an ambulatory diagnostic or treatment facility (Use Group 4), contrary to ZR § 36-21; and

WHEREAS, a public hearing was held on this application on April 17, 2018, after due notice by publication in *The City Record*, and then to decision on June

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19, 2018; and

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

WHEREAS, Community Board 7, Queens, recommends approval of this application on condition that the owner request from the New York City Department of Transportation (“DOT”) a traffic light and study for the intersection of 36th Avenue and Prince Street, that an in-depth study and re-evaluation of egress at the ramp and entrance and U-turn at the interior island be performed and that a zoning study be performed to consider instituting parking requirements similar to the requirements in C4-4 zoning districts; and

WHEREAS, New York State Senator Tony Avella submitted testimony in opposition to this application, stating that a reduction in parking would present an inconvenience to area residents; and

WHEREAS, the subject site is located on the west side of Main Street, between Northern Boulevard and 37th Avenue, partially in an C4-2 zoning district and partially in a C4-3 zoning district, in Queens; and

WHEREAS, the subject site has approximately 74 feet of frontage along Main Street, 151 feet of frontage along Prince Street, 35,858 square feet of lot area and is occupied by 14-story, with cellar and sub-cellar, mixed-use commercial and community-facility building under construction; 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, on June 27, 2017, when, under BSA Calendar Number 2017-61-BZ, the Board granted a special permit to allow the construction of a building that exceeds the maximum height limits around airports on condition that the maximum height of the building, including all appurtenances, be 216 feet AMSL, 214.90 feet NAVD 88 or 213.25 feet Queens Datum, that the proposed building be marked or 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 or any future construction or alteration, including increase to heights, power or the addition of other transmitters, requires separate notice to the FAA; 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

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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 25,830 square feet of floor area as follows: 1,702 square feet of floor area on the second floor, including reception, a waiting area and shoe lockers, 17,372 square feet of floor area on the third floor, including massage rooms, showers, locker rooms, saunas, a pool, a sleeping room, an ice room, a television room, charcoal, coal, crystal and salt rooms, a lounge area and restrooms, and 6,756 square feet of floor area on the fourth floor, including a hot tub area, activity area, media area, kitchen, juice bar, dining area and bathrooms; and

WHEREAS, the PCE will be operated by Prince Plaza Corp., with the following hours of operation: 6:00 a.m. to 12:00 a.m., daily; and

WHEREAS, the applicant represents that the PCE use is consistent with the vibrant commercial area in which it is located, that the PCE use will be fully contained within the envelope of the subject building and that there are a number of other PCEs within the vicinity; and

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

WHEREAS, the applicant states that the PCE will operate as a spa with facilities for the practice of massage by New York State licensed massage therapists; 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 will be 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—will be installed in the entire PCE space; and

WHEREAS, in response to the Board’s comments at hearing, the applicant clarified that the PCE use will not be located on the roof 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 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, ZR § 73-44 provides, in pertinent part, that:

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 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

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* 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, 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, pursuant to ZR § 73-44, the Board may reduce the required parking for an ambulatory diagnostic or treatment facility (Use Group 4) at the subject site 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 and one space per 400 square feet to one space per 800 square feet within the C4-3 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 be occupied by an ambulatory diagnostic or treatment facility (Use Group 4); 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 an ambulatory diagnostic or treatment facility (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; 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, in response to community concerns regarding parking in the area, the applicant provided a parking demand analysis demonstrating that there would be a peak parking demand of 126 spaces on weekdays from 10:00 a.m. to 11:00 a.m. and 183 spaces on a weekend from 1:00 p.m. to 2:00 p.m., fewer than the 260 total parking spaces proposed; and

WHEREAS, in response to the Board's comments at hearing, the applicant revised the drawings to reflect reservoir spaces, egress, valet drop-off areas and pedestrian safe zones; and

WHEREAS, the applicant states there will be no pedestrian circulation through the middle of the garage because all persons wishing to access the Main Street tower will enter the garage, exit their vehicle at the valet drop-off area in front of the valet booths and proceed into the building by way of the pedestrian safe zone and because all persons wishing to access the Prince Street tower will enter the drop-off zone and exit their vehicle with the valet attendant then parking the car in the garage; 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 parking 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 parking regulations will not interfere with any pending public improvement project; 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. 14-BSA-050Q, dated March 21, 2018; 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, the Board finds that the evidence in the record supports the findings required to be made under ZR §§ 73-36, 73-44 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion.

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 §§ 73-36 and 73-03 to *permit*, partially in an C4-2 zoning district and partially in a C4-3 zoning district, the operation of a physical culture establishment on portions of the second, third and fourth floors of the subject building, contrary to ZR § 32-10, and under ZR §§ 73-44 and 73-03 to *permit* a reduction in the number of accessory off-street parking spaces required for an ambulatory diagnostic or treatment facility (Use Group 4), contrary to ZR § 36-21; *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked "Received June 19, 2018"-Twenty-Six (26) sheets; and *on further condition*:

THAT operation of the physical culture establishment shall be limited to a term of ten (10) years, expiring June 19, 2028;

THAT no physical culture establishment or spa use shall be permitted on the roof of the fourth floor;

THAT all massages shall be performed only by New

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York State licensed massage therapists;

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

THAT no certificate of occupancy shall hereafter be issued if the ambulatory diagnostic or treatment facility (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 conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy shall be obtained within four (4) years, by June 19, 2022;

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 19, 2018.

214-14-A

APPLICANT – Sheldon Lobel, P.C., for Fernando Fernandez, owner.

SUBJECT – Application September 3, 2014 – An application to permit construction within the bed of a mapped street, contrary to General City Law (“GCL”) § 35. R5 zoning district. Compliance BZ.

PREMISES AFFECTED – 50-11 & 50-15 103rd Street, 103-10 & 103-16 Alstyn Avenue, Block 1930, Lot 50, 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 Sheta and Commissioner Scibetta.....5

Negative:0

THE RESOLUTION –

WHEREAS, the decision on behalf of the Queens Borough Commissioner, dated August 14, 2014, acting on Department of Buildings (“DOB”) Application No. 420899246 reads in pertinent part:

Proposed New Building project are located in City Mapped Street (Christie Avenue) obtain BSA variance as per Section 35 of General City Law; and

WHEREAS, this is an application to permit construction 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 2, 2017, after due notice by publication in *The City Record*, with a continued hearing on July 18, 2017, and then to decision on June 19, 2018; and

WHEREAS, a companion application for a variance, pursuant to ZR § 72-21, was filed for the subject premises, requesting waivers with regards to front yard and parking regulations set forth in ZR §§ 23-45 and 25-23 to facilitate the development of the site with four three-story, three-family residential building segments; that application was assigned BSA Cal. No. 215-14-BZ; and

WHEREAS, the two applications were heard by the Board in tandem, but, in the course of hearings, the applicant modified the proposed development to instead construct a single three-story multi-family residential building fully compliant with all applicable sections of the Zoning Resolution and requested withdrawal of the variance application, which was granted by the Board in a separate resolution; and

WHEREAS, Community Board 4, Queens, recommends denial of this application, citing the failure of the applicant to maintain the property in a safe and sanitary condition; and

WHEREAS, the Board was additionally in receipt of one form letter of support for the subject application and five form objections, citing concerns about overdevelopment and the lack of parking in the area; 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 a triangular lot located at the southeastern corner of 103rd Street and Alstyn Avenue, in an R5 zoning district, in Queens; and

WHEREAS, the site has approximately 113 feet of frontage along 103rd Street, 161 feet of frontage along Alstyn Avenue and 6,669 square feet of lot area; and

WHEREAS, a portion of the site is located within a mapped, but unbuilt, section of Christie Avenue; and

WHEREAS, the site is currently occupied by a one-story detached garage, a two-and-a-half story residential building, a one-story attached commercial building and two unfinished three-story, three-family residential building segments, all of which the applicant now proposes to demolish in order to

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redevelop the site with one three-story multi-family residential building with 12 rental dwelling units that will be partially located in the portion of the site that is located within a mapped, but unbuilt section of Christie Avenue; and

WHEREAS, the applicant submits that the proposed multi-family residential building will be fully sprinklered and comply with all applicable regulations of the Zoning Resolution; and

WHEREAS, by letter dated February 11, 2016, the New York City Department of Environmental Protection (“DEP”) states that there are no existing sewers or water mains in the bed of Christie Avenue at the subject location; that the Amended Drainage Plan, No: 24 (23), dated December 30, 1919, for the subject location calls for a future 12 inch diameter combined sewer in the bed of Christie Avenue between Alstyn Avenue and 103rd Street; that the only lots that would benefit from the future 12 inch diameter combined sewer in Christie Avenue are Lots 18 and 50, which are fronting the existing combined sewer; that the City has no title to the portion of Christie Avenue at the subject site and Christie Avenue is not open at the subject location; and, thus, the agency has no objections to the subject application; and

WHEREAS, by letter dated January 27, 2017, the New York City Department of Transportation (“DOT”) states that Christie Avenue at the subject location is mapped at a 60 foot width on the Final City Map; that the City has no title to the street at this location; that the improvement of Christie Avenue at this location would involve a taking of a portion of the subject site, which is not presently included in DOT’s Capital Improvement Program, but requested that an existing utility pole along 103rd Street be depicted in the proposed site plan and that the proposed curb cut along 103rd Street be located at seven feet away from the utility pole; and

WHEREAS, the applicant subsequently revised the site plan to indicate the utility pole along 103rd Street and located the new proposed curb cut along 103rd Street 11 feet away from that utility pole, in compliance with DOT’s requests; 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 Board modifies the decision of the Queens Borough Commissioner, dated August 14, 2014, acting on Department of Buildings Application No. 420899246, by the power vested in it by Section 35 of the General City Law to grant this appeal, limited to the decision noted above *on condition* that construction shall substantially conform to the drawings filed with the application marked “Received May 31, 2018”-One (1) sheet; and *on further condition*:

THAT the subject development shall be fully sprinklered;

THAT all new curb cuts shall be as approved by DOT and/or DOB;

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 June 19, 2022;

THAT DOB shall review the plans approved herewith for compliance with all relevant provisions of the Zoning Resolution;

THAT a Certificate of Occupancy shall be obtained within four (4) years, by June 19, 2022;

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 19, 2018.

215-14-BZ

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 103rd Street, 103-10 & 103-16 Alstyn Avenue, Block 1930, Lot 50, Borough of Queens.

COMMUNITY BOARD #4Q

ACTION OF THE BOARD – Application Withdrawn.

THE VOTE TO WITHDRAW –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:0

THE RESOLUTION –

WHEREAS, the decision on behalf of the Queens Borough Commissioner, dated August 14, 2014, acting on Department of Buildings (“DOB”) Application No. 420899246 reads in pertinent part:

1. The subject project buildings not provided adequate Front Yards and contrary to ZR 23-45a;
2. Such proposed 12 dwelling units development not provided adequate number of parking contrary to ZR 25-23; and

WHEREAS, this is an application, pursuant to ZR § 72-21, to permit, on a site located in an R5 zoning district, the construction of four three-story, three-family residential building segments contrary to the front yard and parking regulations set forth in ZR §§ 23-45 and 25-23; and

WHEREAS, a public hearing was held on this

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application on May 2, 2017, after due notice by publication in The City Record, with a continued hearing on July 18, 2017, and then to decision on June 19, 2018; and

WHEREAS, a companion application for a waiver of General City Law (“GCL”) § 35 to permit construction with the bed of a mapped street, was filed for the subject premises and assigned BSA Cal. No. 214-14-A; and

WHEREAS, the two application were heard by the Board in tandem, but separate resolution have been issued; and

WHEREAS, Community Board 4, Queens, recommends denial of this application; and

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

WHEREAS, by letter dated May 30, 2018, the applicant requested withdrawal of this application and stated that they planned to proceed only with the GCL § 35 application in order to construct a single three-story multi-family building that is fully compliant with all applicable sections of the Zoning Resolution; and

WHEREAS, pursuant to § 1-12.2 of the Board’s Rules of Practice and Procedure, because the request for withdrawal was made prior to the close of the hearing on this application, the Board may permit withdrawal of the application without prejudice.

Therefore, it is Resolved, that the Board of Standards and Appeals accepts the withdrawal of this application without prejudice and the surrender of the special permit.

Adopted by the Board of Standards and Appeals, June 19, 2018.

104-15-BZ

APPLICANT – Rosenberg & Estis, P.C., for 4452 Broadway Mazal LLC, owner.

SUBJECT – Application October 31, 2017– 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 withdrawn without prejudice.

THE VOTE TO WITHDRAW –

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

Adopted by the Board of Standards and Appeals, June 19, 2018.

2016-4276-BZ

CEQR #17-BSA-034K

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 – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Sheta and Commissioner Scibetta.....4
Negative:0
Abstain: Commissioner Ottley-Brown.....1

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated September 30, 2016, acting on Alteration Application No. 321192160, reads in pertinent part:

“The proposed NUMBER of parking spaces is less than the amount of parking required; contrary to 44-21”; and

WHEREAS, this is an application under ZR §§ 73-44 and 73-03 to permit, in an M3-1 zoning district, a reduction in the number of accessory off-street parking spaces required for office use in parking requirement category B1 (Use Group 6), contrary to ZR § 44-21; and

WHEREAS, a public hearing was held on this application on September 26, 2017, after due notice by publication in *The City Record*, with continued hearings on May 22, 2018, and June 5, 2018, and then to decision on June 19, 2018; and

WHEREAS, Vice-Chair Chanda and Commissioner Ottley-Brown performed inspections 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 northwest corner of Johnson Avenue and Bogart Street, in an M3-1 zoning district, in Brooklyn; and

WHEREAS, the subject site has approximately 525 feet of frontage along Johnson Avenue, 202 feet of frontage along Bogart Street, 130,592 square feet of lot area and is occupied by a three-story, with cellar, commercial building; and

WHEREAS, ZR § 73-44 provides, in pertinent part, that:

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

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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 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, 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, pursuant to ZR § 73-44, the Board may reduce the required parking for office use in parking requirement category B1 (Use Group 6) 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 office use in parking requirement category B1 (Use Group 6); 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 office use in parking requirement category B1 (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; 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 applicant states that the 279 accessory off-street parking spaces proposed comply with all applicable zoning regulations with 216 parking spaces provided in stackers and 63 parking spaces provided at floor level; and

WHEREAS, the applicant represents that, at peak times between 7:00 a.m. to 10:00 a.m. and 4:00 p.m. to 7:00 p.m., Monday to Friday, the 279 accessory off-street parking spaces proposed will be sufficient to accommodate peak demand, with 138 spaces to remain empty at peak parking accumulation; and

WHEREAS, the applicant states that most visitors and employees will walk or take the subway to the proposed building; and

WHEREAS, the applicant states that, for retail use, parking accumulation will peak at 18 spaces, from 4:00 p.m. to 6:00 p.m., Monday to Friday, that, for office use, parking accumulation will peak at 128 spaces, from 10:00 a.m. to 11:00 a.m. and 2:00 p.m. to 3:00 p.m., Monday to Friday, and that total parking accumulation will peak at 141 occupied spaces, from 10:00 a.m. to 11:00 a.m., Monday to Friday; and

WHEREAS, in response to the Board's comments at hearing, the applicant revised the garage layout to ensure pedestrian safety between vehicle drop off and existing the garage by relocating the pedestrian path to provide a 48-inch-wide clear path to the passenger elevator free of columns and stackers; and

WHEREAS, the applicant submitted an operational plan for the ramp leading to the garage to ensure that drivers will not drop off their cars at the nine reservoir spaces located on the ramp and that drivers will not drive into the garage using the outbound lane of the ramp; and

WHEREAS, the proposed operational plan indicates that inbound traffic will be prevented in the outbound lane by implementing a stop sign and stop bar the entrance to Johnson Avenue, yellow striping between the inbound and outbound lanes, directional arrows on the inbound and outbound lanes and overhead signals at the entrance to the garage with one green signal over the inbound lane stating "Enter" and one red signal over the outbound lane stating "Do Not Enter"; and

WHEREAS, the applicant further states that reservoir spaces on the ramp to the second floor garage are not necessarily required to serve as drop off spaces but can rather serve as holding spaces for vehicles with drivers and notes that the parking garage has been designed to provide 14 reservoir spaces to ensure that there be no spillback on Johnson Avenue; and

MINUTES

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 parking 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 parking regulations will not interfere with any pending public improvement project; 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. 17BSA034K, dated May 25, 2018; 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 July 20, 2017, the New York City Department of Environmental Protection (“DEP”) states that the project would not result in significant air quality or noise impacts; and

WHEREAS, by letter dated May 30, 2018, DEP states that the April 2018 Remedial Action Work Plan and the February 2018 Construction Health and Safety Plan are acceptable on condition that the manufacturer’s specifications of the proposed vapor barrier system be included in the RAP and submitted to DEP for review and approval prior to installation; that suspected asbestos-containing material, lead-based paint and polychlorinated biphenyls may be present in the on-site structure that must be properly removed or managed prior to the start of the construction activities and disposed of in accordance with all federal, state and local regulations; and that the name and phone number for an alternate Site Health and Safety Officer be included in the CHASP; that at the completion of the project, a professional engineer-certified Remedial Closure Report be submitted to DEP for review and approval for the proposed project, indicating that all remedial requirements have been properly implemented (i.e., installation of the vapor barrier, proper transportation and disposal manifests and certificates from impacted soils removed and properly disposed of in accordance with all New York State Department of Environmental Conservation regulations and 2 feet of DEP-approved certified clean fill or top soil capping requirement in any landscaped or grass-covered areas not capped with concrete or asphalt, etc.); 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 finds that the evidence in the record supports the findings required to be made under ZR §§ 73-44 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion.

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 M3-1 zoning district, a reduction in the number of accessory off-street parking spaces required for office use in parking requirement category B1 (Use Group 6), contrary to ZR § 44-21; *on condition* that all work and site conditions shall conform to drawings filed with this application marked “Received June 8, 2018”-Sixteen (16) sheets; and *on further condition*:

THAT no certificate of occupancy shall hereafter 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;

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 19, 2022;

THAT the manufacturer’s specifications of the proposed vapor barrier system shall be included in the Remedial Action Work Plan and submitted to DEP for review and approval prior to installation;

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 19, 2018.

MINUTES

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 June 26, 2018, at 10 A.M., for deferred decision.

77-15-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Arasu Jambukeswaran, owner.

SUBJECT – Application April 9, 2015 – Variance (§72-21) to allow the alteration of an existing two-family dwelling on the second floor and an enlargement, located within an R2A zoning district.

PREMISES AFFECTED – 244-36 85th Avenue, Block 8609, Lot 22, Borough of Queens.

COMMUNITY BOARD #13Q

ACTION OF THE BOARD – Laid over to September 13, 2018, at 10 A.M., for adjourned hearing.

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 11, 2018, at 10 A.M., for adjourned hearing.

2016-4127-BZ

APPLICANT – Dennis D. Dell'Angelo, for 1547 East 26th 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 26th Street, Block 6773, Lot 77, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to September

27, 2018, at 10 A.M., for continued hearing.

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 August 21, 2018, at 10 A.M., for adjourned hearing.

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 39th Avenue, Block 5347, Lot(s) 13 & 71, Borough of Brooklyn.

COMMUNITY BOARD #2BK

ACTION OF THE BOARD – Laid over to October 11, 2018, at 10 A.M., for continued hearing.

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

THE VOTE TO CLOSE HEARING –

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

ACTION OF THE BOARD – Laid over to June 26, 2018, at 10 A.M. for decision, hearing closed.

MINUTES

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 14th Avenue, Block 5649, Lot(s) 44, 46, Borough of Brooklyn.

COMMUNITY BOARD #12BK

ACTION OF THE BOARD – Laid over to October 11, 2018, at 10 A.M., for continued hearing.

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

ACTION OF THE BOARD – Laid over to August 14, 2018, at 10 A.M., for adjourned hearing.

REGULAR MEETING TUESDAY AFTERNOON, JUNE 19, 2018 1:00 P.M.

Present: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.

ZONING CALENDAR

2017-15-BZ

CEQR #17-BSA-069M

APPLICANT – Jeffrey A. Chester, Esq./Schoeman Updike Kaufman LLP, for Northeastern Conference of Seventh-Day Adventists, owner.

SUBJECT – Application January 18, 2017 – 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), ZR 24-35(b) side yard, ZR 24-33 permitted obstructions, and ZR 54-31, increasing the degree of noncompliance of an existing building. R8 zoning district.

PREMISES AFFECTED – 26-28 Edgecombe Avenue,

Block 1960, Lot(s) 29 & 30, 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 Sheta and Commissioner Scibetta.....5

Negative:0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated March 13, 2018, acting on Alteration Application No. 120653505, reads in pertinent part:

“ZR 24-11 The building exceeds the maximum lot coverage.”

“ZR 24-35(b) The building does not provide the minimum required side yard.”

“ZR 24-33 The proposed exterior stair is not a permitted obstruction in a required yard.”; and

WHEREAS, this is an application under ZR § 72-21 to permit, in an R8 zoning district, the enlargement of a house of worship that does not comply with zoning regulations for lot coverage, side yards and permitted obstructions, contrary to ZR § 24-11, 24-35 and 24-33; and

WHEREAS, a public hearing was held on this application on June 19, 2018, 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 10, Manhattan, recommends approval of this application on condition that they maintain the safety of the subject site and explore the possibility of employing a night security guard; and

WHEREAS, the subject site is located on the northeast corner of Edgecombe Avenue and West 136th Street, in an R8 zoning district, in Manhattan; and

WHEREAS, the subject site has approximately 40 feet of frontage along Edgecombe Avenue, 90 feet of frontage along West 136th Street, 3,600 square feet of lot area and is occupied by a four-story, with cellar, residential building and a four-story, with cellar, community-facility building used as a house of worship; and

WHEREAS, the applicant proposes to enlarge the existing house of worship into the adjacent residential building, thereby converting the two buildings into a single building with lot coverage of 96 percent, a side yard with a depth of 4’-1” along West 136th Street and an exterior stair obstructing a required yard; and

WHEREAS, the applicant represents that, at the subject site, lot coverage may not exceed 75 percent under ZR § 24-11, side yards must have minimum depths of 0 feet or 8 feet under ZR § 24-35 and exterior stairs are not permitted obstructions in required yards under ZR § 24-33; and

MINUTES

WHEREAS, the applicant states that enlargement of the existing house of worship is necessary because the growing congregation and multiple community-outreach programs can no longer be housed in the existing building; and

WHEREAS, the applicant submits that, absent the proposed variance, the house of worship would face significant design issues, that the first floor could be built out, though the second floor could not, that this would significantly impair or completely block sightlines for members of the congregation in the balcony, that it would also create an asymmetrical and unbalanced sanctuary space, contrary to the religious services held at the center of the house of worship; and

WHEREAS, the applicant states that providing the required side yard would also create an asymmetrical building because the enlargement on the corner lot could not be flush with the existing building on the interior lot and that the proposed exterior stairway is necessary as a second means of egress; and

WHEREAS, the Board acknowledges that the house of worship 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), a zoning board must grant an educational or religious institution's application 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, the Board finds that the programmatic needs of the house of worship create practical difficulties or unnecessary hardship in complying strictly with applicable zoning regulations that are not created by general circumstances in the neighborhood or district; and

WHEREAS, because the house of worship is a not-for-profit corporation, the Board need not find no reasonable possibility of realizing a reasonable return; and

WHEREAS, the applicant states that the proposed variance will not alter the essential character of the neighborhood or district in which the subject site is located and that there will be virtually no effect on surrounding properties; and

WHEREAS, in support of this contention, the applicant studied the character of the neighborhood, finding that the enlargement only affects the adjacent property's side yard, which has bricked-up lot-line windows, and that the bulk of the proposed building is contextual with the surrounding streetscape; and

WHEREAS, the Board finds that the proposed variance will not alter the essential character of the neighborhood or district in which the subject site is located; 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 above practical difficulties or unnecessary hardship do not constitute a self-created hardship; and

WHEREAS, the Board finds that the above practical difficulties or unnecessary hardship have not been created by the owner or by a predecessor in title; and

WHEREAS, the applicant states that the proposed variance is the minimum necessary to permit a productive use of the site, as reflected in the programmatic needs presented by the house of worship; and

WHEREAS, the Board finds that the proposed variance is the minimum necessary to afford relief within the intent and purposes of the Zoning Resolution; 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. 17BSA069M, dated May 3, 2017; and

WHEREAS, 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 of discretion.

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 R8 zoning district, the enlargement of a house of worship that does not comply with zoning regulations for lot coverage, side yards and permitted obstructions, contrary to ZR § 24-11, 24-35 and 24-33; *on condition* that all work, operations and site conditions shall conform to drawings filed with this application marked "Received April 6, 2018"-Twelve (12) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: maximum lot coverage of 96 percent, a side yard with a minimum depth of 4' -1" along West 136th Street and an exterior stair as a permitted obstruction in the required yard, as illustrated 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 June 19, 2022;

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

MINUTES

19, 2018.

2017-201-BZ

APPLICANT – Law Office of Jay Goldstein, for The Cheder, owner.

SUBJECT – Application May 30, 2017 – 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) and 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), ZR §11-561 and ZR §25-31 (accessory off-street parking) 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).

PREMISES AFFECTED –323 Elmwood Avenue, Block 6503, Lot 103, Borough of Brooklyn.

COMMUNITY BOARD #12BK

ACTION OF THE BOARD – Laid over to August 14, 2018, at 10 A.M., for continued hearing.

2017-267-BZ

APPLICANT – Law Offices of Vincent L. Petraro, PLLC, for Harbor Lights Enterprises, Inc., owner.

SUBJECT – Application September 13, 2017– 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.

PREMISES AFFECTED – 129-18 Newport Avenue, Block 16211, Lot 47 Borough of Queens.

COMMUNITY BOARD #14Q

ACTION OF THE BOARD – Laid over to August 14, 2018, at 10 A.M., for continued hearing.

2017-322-BZ

APPLICANT – Philip L. Rampulla, for MUY Brands, LLC, owner.

SUBJECT – Application December 20, 2017 – Special Permit (§73-243) to permit an accessory drive-through to a proposed eating and drinking establishment (UG 6) (*Taco Bell*) contrary to ZR §32-15. C1-2 Lower Density Growth Management Area.

PREMISES AFFECTED – 2259 Richmond Avenue, Block 2380, Lot 80, Borough of Staten Island.

COMMUNITY BOARD #2SI

THE VOTE TO CLOSE HEARING –

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

ACTION OF THE BOARD – Laid over to August 14, 2018, at 10 A.M. for decision, hearing closed.

Carlo Costanza, Executive Director

MINUTES

*CORRECTION

This resolution adopted on February 13, 2018, under Calendar No. 91-14-BZ and printed in Volume 103, Bulletin No. 8, is hereby corrected to read as follows:

91-14-BZ

APPLICANT – Fox Rothschild, LLP, 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 – Application denied.

THE VOTE TO GRANT –

Affirmative: Commissioner Ottley-Brown.....1

Negative: Chair Perlmutter and Vice-Chair Chanda.....2

Abstain: Commissioner Sheta.....1

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated April 14, 2014, acting on DOB Application No. 320595450 reads in pertinent part:

1. ZR 23-141(a): Proposed floor area is more than permitted and contrary to ZR 23-141(a);
2. ZR 23-141(a): Proposed open space ratio is less than required and contrary to ZR 23-141(a); and

WHEREAS, the Board notes that since the filing of this application, the Zoning Resolution has been amended and the text formerly found at ZR § 23-141(a), setting forth the maximum floor area ratio and minimum required open space ratio permitted in an R2 zoning district, is now simply found in ZR § 23-141; thus, the Board treats the citation to ZR § 23-141(a) in DOB’s objection as a citation to ZR 23-141; and

WHEREAS, this is an application under ZR § 73-622 to permit, in an R2 zoning district, the proposed enlargement of an existing single-family 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 September 16, 2014, after due notice by publication in *The City Record*, with a continued hearing on October 28, 2014; and

WHEREAS, at the hearing scheduled for March 3, 2015, the application was marked off the Board’s calendar due to the applicant’s request for the adjournment of the four preceding hearings, scheduled for December 9, 2014, January 13, 2015, February 3, 2015, and March 3, 2015; and

WHEREAS, the application was returned to the Board’s hearing calendar for continued hearings on December 6, 2016,

and February 13, 2018, with four additional continued hearings adjourned at the applicant’s request in the interim, and then to decision on February 13, 2018; 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 14, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the southwest corner of Bedford Avenue and Avenue M, in an R2 zoning district, in Brooklyn; and

WHEREAS, the site consists of four consecutive tax lots with approximately 170 feet of frontage along Bedford Avenue, 100 feet of frontage along Avenue M and 17,000 square feet of lot area; and

WHEREAS, each of the four tax lots is occupied by a two-story plus attic dwelling with a garage in the rear yard; and

WHEREAS, the applicant proposes to demolish the existing two-story plus attic structures located on tax lots 48, 50 and 52 and enlarge the two-story plus attic single-family residence located on tax lot 45, which has a total of 3,371 square feet of floor area, a floor area ratio (“FAR”) of 0.67 and an open space ratio of 99 percent; 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.

MINUTES

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 originally proposed to merge three full tax lots (Lots 45, 48 and 50) and a portion of a fourth tax lot (Lot 52) into a single zoning lot with 160 feet of frontage along Bedford Avenue and 16,000 square feet of total lot area, demolishing the residences located on Lots 48,

50 and 52 and enlarging the existing two-story plus attic single-family residence located on Lot 45 into a residence with 14,560 square feet of floor area, 0.91 FAR, 8,318 square feet of open space, an open space ratio of 57 percent and a 21'-11" rear yard, contrary to zoning requirements for FAR, open space ratio and rear yards; and

WHEREAS, the applicant now proposes to merge the entirety of Lots 45, 48, 50 and 52 into a single zoning lot with 170 feet of frontage along Bedford Avenue and 17,000 square feet of total lot area, demolishing the residences located on Lots 48, 50 and 52 and enlarging the single-family residence located on Lot 45 into a residence with 12,459 square feet of floor area, 0.73 FAR, 9,897 square feet of open space, an open space ratio of 79.4 and a 30 foot rear yard, contrary to zoning requirements for FAR and open space ratio; and

WHEREAS, at the subject site, a maximum FAR of 0.50 (8,500 square feet of floor area) and an open space ratio of 150.0 are required pursuant to ZR § 23-141; and

WHEREAS, the proposed building is additionally proposed to provide 42 percent lot coverage, a building footprint of 7,103 square feet, a 15'-1" front yard fronting Bedford Avenue and a 17'-11" front yard on Avenue M, a building wall width of 144'-1" on the Bedford Avenue frontage (85 percent of the frontage) and a building width of 79'-10" on the Avenue M frontage (80 percent of the frontage); and

WHEREAS, the applicant submitted an analysis of single- or two-family dwellings located within 400 feet of the subject premises within an R2 zoning district (the "Study Area") concluding that, of the 99 residences in the Study Area, excluding the subject lots, 80 (81 percent) have an FAR of more than 0.50 and 20 (20 percent) have an FAR of 0.73 or greater; and 97 (98 percent) have an open space ratio of less than 150.00 and 25 (25 percent) have an open space ratio of 79.4 or less; and

WHEREAS, the Board acknowledges that 13 of the residences in the Study Area (13 percent) have obtained special permits pursuant to ZR § 73-622 and constructed enlargements pursuant to those grants, including a residence located directly across Bedford Avenue from the subject site that obtained a special permit in 2003 for an enlargement that resulted in dwelling with an FAR of 1.02, 5,088 square feet of floor area and an open space ratio of 29.0, as claimed by the subject applicant's consultant, but unverified by the Board1; and

WHEREAS, with regards to the consistency of the subject proposal with the existing streetscape, however, a majority of the Board finds that the subject proposal is oversized as compared to its neighbors and, thus, alters its essential character; in particular, the building wall of the

1 The Board's resolution for that special permit, granted under BSA Cal. No. 31-03-BZ (July 22, 2003), is silent with regards to the FAR and open space ratio permitted by that grant.

MINUTES

proposed enlargement is taller and several times longer along its Bedford Avenue frontage than its neighbors on that block, measuring approximately 144'-1" (85 percent of its frontage) where every other residence with frontage on Bedford Avenue within the Study Area has a building wall ranging from 17 to 66 feet wide occupying between 50 and 90 percent of their total lot frontage; and

WHEREAS, this conclusion is further evidenced by the applicant's additional analyses of the floor area, building width, building width as a percentage of lot frontage, building footprint, front yard depth, lot area, lot width/frontage and lot coverage of the 99 dwellings located within the Study Area; and

WHEREAS, these analyses demonstrate that, with regards to floor area, 4 dwellings in the Study Area (4 percent) have more than 5,000 square feet of floor area; with regards to building width, zero dwellings have a width equal to or greater than 144'-1" and one dwelling (1 percent) has a width greater than or equal to 79'-10"; with regards to the widths of dwellings as a percentage of their lot frontage, 7 lots (7 percent) are occupied by dwellings that take up 80 percent or more of their lot frontage and 2 lots (2 percent) are occupied by dwellings with a width of 85 percent or more of their lot frontage; with regards to building footprint, zero dwellings have a building footprint of 7,103 square feet or greater; with regards to front yard depth, 47 dwellings (47 percent) have at least one front yard with a depth of 15'-1" or less; with regards to lot area, 8 dwellings (8 percent) are located on lots having 5,000 square feet of lot area or greater and one lot (1 percent) has more than 10,000 square feet of lot area; with regards to lot width/frontage, 12 lots (12 percent) have 100 feet of frontage or more and zero dwellings are on lots having frontage equal to or greater than 170 feet; and with regards to lot coverage, 11 dwellings (11 percent) have lot coverage of 42 percent or greater; and

WHEREAS, one Board Commissioner states, however, that the subject proposal is within the limits of special permits previously granted by the Board, the only difference being that the subject zoning lot is larger; and

WHEREAS, the Board acknowledges that the subject site, comprised of multiple tax lots, is atypically large for the immediate area—there is only one other property within the Study Area (1 percent) with a lot area of more than 10,000 square feet—and a majority of the Board identifies this fact as one that distinguishes this application from the 13 other special permit applications previously granted by the Board and constructed within the Study Area, all which are located on lots with lot areas of between 3,000 square feet and 8,363 square feet and frontages between 37.5 feet and 100 feet; and

WHEREAS, the Board notes that, as evidenced by the 1997 City Planning Commission Report for the New York City Department of City Planning's ("DCP") application to, among other things, add ZR § 73-622 to the Zoning Resolution (N 970203 ZRY, December 22, 1997, the "1997

CPC Report"), the purpose of the special permit was to provide owners of residences developed prior to the adoption of the 1961 Zoning Resolution the opportunity to enlarge those homes, many of which were rendered legal non-compliances by the 1961 Zoning Resolution, in order to house growing families or meet contemporary living standards in a manner that is consistent with the surrounding neighborhood; and

WHEREAS, specifically, the 1997 CPC Report cites the "need for an alternative method [to a variance or a special permit pursuant to ZR § 73-621] for allowing for the upgrading of an aging housing stock," which was "designed for life styles that have significantly changed over time"; the special permit was intended to enable the construction of "additional bathrooms, upgraded kitchens, family rooms and additional bedrooms that necessitate major structural changes to existing homes," which was theretofore thwarted by the Zoning Resolution and resulted in "much of the housing stock remaining unimproved and many households leaving the city who might otherwise have stayed"; and

WHEREAS, the 2016 City Planning Commission Report on the application submitted by Community Board 10, Brooklyn, to remove Community District 10 from applicability under ZR § 73-622 (N 160377 ZRK, September 12, 2016, the "2016 CPC Report") reiterates that the original intent of the special permit "was to provide a means for growing families to add a bedroom, bathroom or extend a kitchen, within certain limitations, that would allow the enlargement consistent with the existing neighborhood character"; and

WHEREAS, the 1997 CPC Report also references a comprehensive review of zoning regulations affecting residential developments in R3, R4 and R5 districts being prompted by "a surge in the demolition of sound single and two-family detached and semi-detached homes and their replacement with bulky, often attached three story buildings that were not in context with the surrounding area"; and

WHEREAS, the Board notes that while the subject proposal is not an "attached" building, it is premised on the demolition of three two-family residences and the construction, in their place, of an enlargement that the majority of the Board finds is not in context with the surrounding area and may serve as precedent for a renewed surge in the demolition of "sound single and two-family detached and semi-detached homes" and their replacement with large residences constructed across multiple tax lots, similar to the one herein proposed, via the subject special permit, which was not created for such purpose; and

WHEREAS, in light of the foregoing, the Board has determined that the evidence in the record does not support the findings required to be made under ZR § 73-622.

Therefore it is Resolved, that the subject application is hereby denied.

Adopted by the Board of Standards and Appeals, February 13, 2018.

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***The resolution has been amended to correct the Applicant's Name. Corrected in Bulletin Nos. 25-26, Vol. 103, dated June 29, 2018.**

BULLETIN

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Tuesday, June 26, 2018**

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- 55-01-BZ 568 Broadway, Manhattan
- 169-98-BZ 3141 Bailey Avenue, Bronx
- 101-92-BZ 66-98 East Burnside Avenue, Bronx
- 413-50-BZ 691 East 149th Street, Bronx
- 40-06-BZ 10 Hanover Square (aka 4-12 Hanover Square, 110-124 Pearl Street, 76-88 West Street), Manhattan
- 254-13-BZ 2881 Nostrand Avenue, Brooklyn
- 2016-4253-A 565 St. John’s Place, Brooklyn
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- 31-14-BZ 165 Spencer Street, Brooklyn
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- 2018-12-BZ 173 North 3rd Street, Brooklyn
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Affecting Calendar Numbers:

- 2017-57-BZ 18-20 Bergen Street, Brooklyn

DOCKETS

New Case Filed Up to June 26, 2018

2018-100-BZ

100-02 Rockaway Boulevard, Premises is located on the southeast corner of intersection of Rockaway Boulevard and 100th Street, Block 09539, Lot(s) 0001, Borough of **Queens, Community Board: 10**. Special Permit (§73-19) to permit the operation of a day care facility (UG 3) (Aim High Leadership Center) to occupy portions of existing commercial building contrary to ZR §42-10. M1-1 zoning district. M1-1 district.

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

CALENDAR

REGULAR MEETING AUGUST 7, 2018, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, August 7, 2018, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

SPECIAL ORDER CALENDAR

103-79-BZ

APPLICANT – Akerman, LLP, for The 1989 Anthony Denicker Trust, owner.

SUBJECT – Application March 27, 2018 – Amendment of a previously approved Variance (§72-21) which permitted the development of a two-family residence contrary to side yard requirements. The amendment seeks to modify the Board’s prior approval to allow a conversion of the building from a two-family residence to a three-family residence contrary to ZR §23-49 and to request a termination of a Board condition that required a recorded declaration describing the use of the site as a two-family residence. R5 zoning district.

PREMISES AFFECTED – 25-30 44th Street, Block 702, Lot 56, Borough of Queens.

COMMUNITY BOARD #1Q

24-96-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Legaga LLC, owner.

SUBJECT – Application January 23, 2018 – Extension of Term (11-411) of a previously approved variance permitting the operation of an Eating and Drinking Establishment (*McDonald’s*) which expired on October 7, 2017; Extension of Time to obtain a Certificate of Occupancy which expired on July 15, 2015; Waiver of the Rules. R7-2 zoning district.

PREMISES AFFECTED – 213 Madison Street, Block 271, Lot 40, Borough of Manhattan.

COMMUNITY BOARD #3M

280-01-BZ

APPLICANT – Akerman LLP, for S & M Enterprises, owner.

SUBJECT – Application June 7, 2018 – Extension of Time to complete construction for a previously approved variance (§72-21) to permit a mixed-use building which expired on May 7, 2018. C1-9 zoning district.

PREMISES AFFECTED – 663-673 Second Avenue & 241-249 East 36th Street, Block 917, Lot(s) 21, 24-30, 32, 34, Borough of Manhattan.

COMMUNITY BOARD #6M

197-05-BZ

APPLICANT – Law Offices of Marvin B. Mitzner LLC, for Broadway Realty LLC, owner.

SUBJECT – Application April 27, 2018 – Amendment of a previously approved variance (§72-21) which permitted the construction of an 11-story mixed-use building with ground floor commercial. The amendment seeking to permit a 4’9” by 28’ bump out at the rear of the building; Extension of Time to Complete construction which expires on April 29, 2019. C6-1/R7 zoning district.

PREMISES AFFECTED – 813 Broadway, Block 563, Lot(s) 33 & 34, Borough of Manhattan.

COMMUNITY BOARD #2M

193-05-BZ

APPLICANT – Patrick W. Jones, P.C., for 32 East 31st Street Corp., owner; Tone House, lessee.

SUBJECT – Application May 24, 2016 – Extension of Term of a previously granted Special Permit (§73-36) for the continued operation of Physical Culture Establishment (*Tone House*) which expired on April 25, 2016. C5-2 zoning district.

PREMISES AFFECTED – 32 East 31st Street, Block 860, Lot 55, Borough of Manhattan.

COMMUNITY BOARD #5M

141-06-BZ

APPLICANT – Eric Palatnik, P.C., for Congregation Tefiloh Ledovid, owner.

SUBJECT – Application April 20, 2018 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) permitting the construction of a House of Worship (*Congregation Tefiloh Ledovid*) UG 3) contrary to underlying bulk requirements which expired on March 12, 2017; Waiver of the Board’s Rules. R5 zoning district.

PREMISES AFFECTED – 2084 60th Street, Block 5521, Lot 42, Borough of Brooklyn.

COMMUNITY BOARD #12BK

APPEALS CALENDAR

2017-59-A

APPLICANT – Eric Palatnik, P.C., for Yuriy Prakhin, owner.

SUBJECT – Application March 3, 2017 – 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.

PREMISES AFFECTED – 3857 Oceanview Avenue, Block 6955, Lot 5, Borough of Brooklyn.

COMMUNITY BOARD #13BK

CALENDAR

2018-63-A

APPLICANT – Fried Frank, LLP, for 25-30 Columbia Heights (Brooklyn), LLC, owner.

SUBJECT – Application May 1, 2018 – Interpretative Appeal of a final determination of the New York City Department of Buildings, set forth in the ZRD1 denial dated April 2, 2018 (Control No. 46921), denying a request for confirmation that existing signs are non-conforming and may be continued as accessory signs, with changes to subject matter, structural alterations, reconstruction, and replacement permitted pursuant to Article V, Chapter 2 of the New York City Zoning Resolution. M2-1 zoning district.

PREMISES AFFECTED – 30 Columbia Heights, Block 208, Lot 2, Borough of Brooklyn.

COMMUNITY BOARD #2BK

REGULAR MEETING AUGUST 7, 2018, 1:00 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, August 7, 2018, 1:00 P.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

ZONING CALENDAR

263-15-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Seshadri and Prema Das (Lot 29) & Premast Management (Lot 32), owners.

SUBJECT – Application December 4, 2015 – Special Permit (§73-126) to allow a medical office, contrary to bulk regulations (§22-14). R3X zoning district.

PREMISES AFFECTED – 45/47 Little Clove Road, Block 662, Lot(s) 29 & 32, Borough of Staten Island.

COMMUNITY BOARD #1SI

2017-224-BZ

APPLICANT – Tuttle Yick LLP, for Two Spring Associates LLC, owner.

SUBJECT – Application July 6, 2017– 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.

PREMISES AFFECTED – 2-4 Spring Street, Block 478, Lot 22, Borough of Manhattan.

COMMUNITY BOARD #2M

2017-260-BZ

APPLICANT – Law Office of Lyra J. Altman, for BIF Realty LLC by Jak Farhi, owner.

SUBJECT – Application September 1, 2017 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area, open space and lot coverage (ZR §23-142); less than the required rear yard (ZR §23-47); and less than the required side yards (ZR §23-461). R4 zoning district.

PREMISES AFFECTED – 2672 East 12th Street, Block 7455, Lot 87, Borough of Brooklyn.

COMMUNITY BOARD #15BK

2017-277-BZ

APPLICANT – Law Office of Lyra J. Altman, for Freddi Baranoff & Edward Baranoff, owners.

SUBJECT – Application October 12, 2017 – 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.

PREMISES AFFECTED – 1022 East 23rd Street, Block 7604, Lot 52, Borough of Brooklyn.

COMMUNITY BOARD #14BK

2017-314-BZ

APPLICANT – Eric Palatnik, P.C., for 1571 Holding LLC, owner; 1571 Development LLC, lessee.

SUBJECT – Application December 12, 2017 – 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).

PREMISES AFFECTED – 1571 McDonald Avenue, Block 6564, Lot 60, Borough of Brooklyn.

COMMUNITY BOARD #12BK

2018-121-BZ

APPLICANT – NYC Mayor’s Office of Housing Recovery
SUBJECT – Application July 24, 2018 – 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 – 24 Frank Court, Block 08900, Lot 132, Borough of Brooklyn.

COMMUNITY BOARD #15BK

Carlo Costanza, Executive Director

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**REGULAR MEETING
TUESDAY MORNING, JUNE 26, 2018
10:00 A.M.**

Present: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.

SPECIAL ORDER CALENDARS

530-32-BZ

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

SUBJECT – Application March 23, 2018 – Amendment (§§11-412 & 11-413) of a previous granted variance to legalize a change in use of a portion of the ground floor of the existing building, from a UG9 banquet hall to UG6 supermarket, and to permit a minor interior enlargement in commercial floor area. C1-3/R6 zoning district.

PREMISES AFFECTED – 1029 Brighton Beach Avenue, Block 8709, Lot 60, 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 Sheta and Commissioner Scibetta.....5

Negative:0

THE RESOLUTION –

WHEREAS, this is an application, pursuant to ZR §§ 11-41 and 11-413, for an amendment to a variance, previously granted by the Board, to legalize a change in use and increase in commercial floor area of a portion of the ground floor of an existing building; and

WHEREAS, a public hearing was held on this application on June 26, 2018, 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 application was submitted to Community Board 7, Manhattan, in or around March 2018, but the Board was not in receipt of a recommendation regarding this application; and

WHEREAS, the subject site is located on the northeast corner of Brighton Beach Avenue and Brighton 11th Street, partially within an R6 (C1-3) zoning district and partially within an R6 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 133 feet of frontage along Brighton Beach Avenue, 273 feet of frontage along Brighton 11th Street, 22,620 square feet of lot area and is occupied by a two-story plus cellar building constructed as a theater; and

WHEREAS, the Board has exercised jurisdiction over the subject site since December 6, 1932, when, under the subject calendar number, the Board granted a variance to permit the approximately ten foot extension of a theater from a business district into a residence district on condition that the portions of the building extending into the residential use district be of similar design to the balance of the building— face brick with panels, that the lot line wall to the north be unpunctured and also of face brick with panels, that there be no openings from the building in the ten foot portion extending into the residential use area except windows and that there be no advertising signs within the residence use portion of the premises; and

WHEREAS, on January 11, 2000, under BSA Cal. No. 172-97-BZ, the Board granted a new variance, pursuant to ZR § 72-21, permitting the conversion of the first floor and mezzanine of the existing building from a theater to a Use Group 9 catering establishment for a term of two (2) years, expiring January 11, 2002, on condition that a traffic study report be provided within 120 days of the grant, the lease of an off-site parking facility remain in full effect at all times of the variance and the premises remain graffiti free at all times; and

WHEREAS, on December 9, 2003, under BSA Cal. No. 172-97-BZ, the Board denied an extension of the term of the variance, finding that the items submitted by the applicant were insufficient to warrant a grant of the requested relief; and

WHEREAS, the applicant now proposes to legalize the change in use of a portion of the first floor of the existing building to a Use Group 6 supermarket, pursuant to ZR § 11-413, and an amendment to the variance to reflect a conversion of 2,223 square feet of residential floor area within a portion of the zoning lot located completely within an R6 (C1-3) zoning district to Use Group 6 office, which is permitted as-of-right in a C1-3 zoning district pursuant to ZR § 32-15; and

WHEREAS, no alterations to the building envelope have been proposed and the total floor area of the building remains at 50,530 square feet (2.23 FAR); and

WHEREAS, pursuant to ZR § 11-41:

Whenever under the provisions of the 1916 Zoning Resolution as amended, either the Board of Standards and Appeals or the City Planning Commission with the approval of the Board of Estimate or the City Council, has authorized any *use* located in a district in which it is not permitted as-of-right by issuing a variance, exception or permit, such existing *use* established pursuant to such grant may be continued, changed, *extended*, *enlarged* or structurally altered only as provided in this Section or in Article VII, Chapter 3 or 4, provided that the lot area of the *zoning lot* occupied by such *use* is not increased; and

WHEREAS, ZR § 11-413 states:

Such *use* may be changed to a conforming *use* and in appropriate cases the authorizing agency may

1 Words/terms in italics refer to terms defined in Section 12-10 of the Zoning Resolution.

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permit such *use* to be changed to another *non-conforming use* which would be permitted under the provisions applicable to *non-conforming uses* as set forth in Sections 52-31 to 52-36, inclusive, relating to Change of Non-Conforming Use, provided that the authorizing agency finds that such change of *use* will not impair the essential character or the future use or development of the surrounding area; and

WHEREAS, pursuant to ZR § 52-34, in all residence districts, non-conforming uses listed in Use Group 6, 7, 8, 9, 10, 11B, 12, 13, 14 or 15 may be changed only to a conforming use or to a use listed in Use Group 6, and, pursuant to ZR § 52-36, in C1 districts, among others, non-conforming uses listed in Use Group 7, 8, 9, 10, 11B, 12, 13, 14 or 15 may be changed to a conforming use, of which Use Group 6 is one pursuant to ZR § 32-15; and

WHEREAS, in response to Board questions as to whether a parking analysis was required, the applicant argues that such an analysis is unnecessary because the conversion of a portion of the first floor to Use Group 6 would be permitted as-of-right were the subject site not under the Board's jurisdiction; and

WHEREAS, based on its review of the record, the Board has determined that the request to legalize the change in use on a portion of the first floor of the existing building to a Use Group 6 supermarket and an amendment of the plans to reflect Use Group 6 offices on the second floor mezzanine in a portion of the building located in an R6 (C1-3) zoning district 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 6, 1932, so that as amended this portion of the resolution shall read: "to legalize the conversion of the first floor to a Use Group 6 supermarket and an amendment of the Board-approved plans to reflect the conversion of 2,223 square feet of residential floor area to Use Group 6 office space on the second floor mezzanine; *on condition* that all work shall substantially conform to drawings as filed with this application, marked "Received March 28, 2018"- Seven (7) sheets; and *on further condition*:

THAT a new Certificate of Occupancy shall be obtained within one (1) year;

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, June 26, 2018.

MINUTES

55-01-BZ

APPLICANT – Judith M. Gallent, Esq., for 568 Broadway Property LLC, owner.

SUBJECT – Application March 21, 2017 – Extension of Term of a previously granted Special Permit (§73-36) which permitted the operation of a Physical Cultural Establishment (Bliss Spa) located on portions of the second and third floors of an eleven-story mixed use building which expired on April 1, 2017. M1-5B zoning district (SoHo Cast Iron Historic 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 Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:0

THE RESOLUTION –

WHEREAS, this is an application for an extension of term of a special permit, previously granted by the Board, for a physical culture establishment (“PCE”) and an amendment to permit a change in the hours of operation and a change in ownership; and

WHEREAS, a public hearing was held on this application on June 26, 2018, 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 northeast corner of Broadway and Prince Street, in an M1-5B zoning district, in Manhattan; and

WHEREAS, the Board has exercised jurisdiction over the subject site since August 7, 2001, when, under the subject calendar number, the Board granted a special permit to allow a PCE on portions of the second and third floors of an eleven-story mixed-use building for a term of ten (10) years, expiring April 1, 2007, 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 protection measures, including an automatic wet sprinkler system, a fire alarm system and a smoke detection system with all three systems connected to a Fire Department-approved central station, be provided and maintained in accordance with the Board-approved plans, that the hours of operation be limited to Monday to Friday, 8:30 a.m. to 8:30 p.m., Saturday, 9:00 a.m. to 6:30 p.m., and closed Sunday and that the above conditions appear on the certificate of occupancy; and

WHEREAS, on July 14, 2009, under the subject calendar number, the Board granted an extension of term of ten (10) years, expiring April 1, 2017, and an extension of

time to obtain a certificate of occupancy to January 14, 2010, on condition that there be no change in ownership or operating control of the PCE without prior application to and approval from the Board; and

WHEREAS, the term having expired, the applicant now seeks an extension of term and an amendment to permit a change in the hours of operation and a change in ownership; and

WHEREAS, the applicant represents that the PCE continues to occupy 8,408 square feet of floor area as follows: 4,131 square feet of floor area on the second floor, including treatment rooms, vanity, shower, sauna, dressing, lounge and locker-room areas as well as entry, retail and reception areas, and 4,277 square feet of floor area on the third floor, including treatment rooms, vanity, shower, sauna, dressing, lounge and locker-room areas as well as reception, offices and a staff locker room; and

WHEREAS, the applicant proposes to change the hours of operation from Monday to Friday, 8:30 a.m. to 8:30 p.m., Saturday, 9:00 a.m. to 6:30 p.m., and closed Sunday to Monday to Sunday, 9:00 a.m. to 9:00 p.m.; and

WHEREAS, the applicant proposes to change ownership of the PCE from Bliss World LLC to OSW Soho LLC; 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, based upon its review of the record, the Board has determined that the requested extension of term and amendment 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 7, 2001, as amended through July 14, 2009, so that as amended this portion of the resolution shall read: “to *permit* an extension of term of ten (10) years, expiring April 1, 2027, and changes in the hours of operation and ownership; *on condition* that all work and site conditions shall conform to drawings filed with this application marked “Received August 31, 2017”-Two (2) sheets; and *on further condition*:

THAT the term of this grant shall be limited to ten (10) years, expiring April 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 fire protection measures, including an automatic wet sprinkler system, a fire alarm system and a smoke detection system with all three systems connected to a Fire Department-approved central station, shall be provided and maintained in accordance with the Board-approved plans;

THAT the hours of operation shall be limited to Monday to Sunday, 9:00 a.m. to 9:00 p.m.;

THAT the above conditions shall appear on the certificate of occupancy;

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THAT a certificate of occupancy shall be obtained within four (4) years, by June 26, 2022;

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 26, 2018.

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 – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....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 term of a variance, previously granted by the Board; 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 May 16, 2017, August 22, 2017, November 14, 2017, January 30, 2018, And March 27, 2018, and then to decision on June 26, 2018; 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 8, Bronx, recommends approval of this application; and

WHEREAS, the Board has exercised jurisdiction over the subject site since June 23, 1953, when, under BSA

Calendar Number 375-33-BZ, the Board granted a variance to permit a gasoline service station for a term of fifteen (15) years, expiring June 23, 1968, on condition that all buildings and uses on the subject site be removed and the site be leveled substantially to the grade of Bailey Avenue and be arranged and constructed and designed as indicated on the Board-approved plans, including the planting areas, as indicated, that the walls with steel pickets be erected on the lot lines or off the lot lines, as indicated on such revised plan with masonry piers, that the accessory building have no cellar and in all other respects comply with all requirements of the Building Code therefor and be faced with face brick on all sides and of a design with gable roof as shown, that the number of gasoline storage tanks no exceed six 550-gallon tanks, that the pumps be of an approved low type and erected not nearer than 10 feet to the street building line, that curb cuts be restricted to two curb cuts to Bailey Avenue only, one 40 feet in width and one 30 feet in width, that the subject site where not occupied by accessory building, pumps and planting be paved with concrete or asphaltic pavement, that signs be restricted to a permanent sign attached to the front of the accessory building facing Bailey Avenue and to the illuminated globes of the pumps, excluding all roof signs and all temporary signs but permitting the erection within the building line near the intersection of West 233rd Street and Bailey Avenue of one 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 the intersection within the building line there be erected a block of concrete not less than 12 inches in height and extending for a distance of not less than 5 feet along either building line, that a similar block of concrete be constructed at the southerly end where shown, that such portable fire-fighting appliances be maintained as the Fire Commissioner requires and that before plans are filed with the borough superintendent, complete working drawings including a detailed design of the building be submitted for further consideration of the Board within six (6) months, by December 23, 1953; and

WHEREAS, on or about August 26, 1953, under BSA Calendar Number 375-33-BZ, the Board approved working drawings as being in substantial compliance with the requirements of the resolution; and

WHEREAS, on July 16, 1953, under BSA Calendar Number 375-33-BZ, the Board granted an extension of term of ten (10) years, expiring June 23, 1978, on condition that planting along Albany Crescent be restored and maintained, that trees be planted along the Albany Crescent frontage in accordance with the rules and regulations of the Department of Parks and that a new certificate of occupancy be obtained; and

WHEREAS, on November 21, 1978, under BSA Calendar Number 375-33-BZ, the Board granted an extension of term of ten (10) years, expiring June 23, 1988, on condition that a full-width sidewalk be installed along the West 233rd Street and Albany Crescent frontages , that the

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sidewalk be repaired where required, that there be no parking of cars on the sidewalk area and that a new certificate of occupancy be obtained within one (1) year, by November 21, 1979; and

WHEREAS, on July 20, 1999, under the subject calendar number, the Board granted a reinstatement of the variance for a term of ten (10) years, expiring July 20, 2009, on condition that signage be provided in accordance with the Board-approved plans, that the hours of operation be limited to 8:00 a.m. to 8:00 p.m. with no repair work on Sunday, that fencing and screening be provided in accordance with the Board-approved plans, that lighting be provided in accordance with the Board-approved plans and be positioned down and away from adjacent residential uses and that the above conditions appear on the certificate of occupancy; and

WHEREAS, the term having expired, the applicant now seeks a waiver of the Board's Rules of Practice and Procedure to permit the late filing of this application and an extension of term; and

WHEREAS, by letter dated March 23, 2018, the Fire Department states that it has no objection to this application; and

WHEREAS, in response to questions from the Board, the applicant submitted evidence of spruced-up plantings, resurfaced paving and newly installed 8-foot-high fencing with slats and clarified the plans with respect to trees, the gate and lighting; and

WHEREAS, because of the state of the subject site witnessed by the Board, a term of two (2) years is appropriate to ensure continued compliance with the Board's conditions; and

WHEREAS, based upon its review of the record, the Board has determined that the requested waiver of the Board's Rules of Practice and Procedure 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 *waive* the Rules of Practice and Procedure and *reopen* and *amend* the resolution, dated July 20, 1999, so that as amended this portion of the resolution shall read: "to *permit* an extension of term of two (2) years, expiring June 26, 2020; *on condition* that all work and site conditions shall conform to drawings filed with this application marked "Received February 14, 2018"-Nine (9)sheets; and *on further condition*:

THAT the term of this grant shall be limited to two (2) years, expiring June 26, 2020;

THAT the curbing around the planting area shall be made fixed, permanent and durable;

THAT the landscaping, paving and fencing shall be maintained and replaced as necessary to maintain an aesthetically pleasing appearance;

THAT signage shall comply with C1 zoning district regulations and in accordance with the Board-approved plans;

THAT the hours of operation shall be limited to 8:00

a.m. to 8:00 p.m. with no repair work on Sunday;

THAT fencing and screening shall be provided in accordance with the Board-approved plans,

THAT lighting shall be provided in accordance with the Board-approved plans and be positioned down and away from adjacent residential uses;

THAT a full-width sidewalk be maintained along the West 233rd Street and Albany Crescent frontages;

THAT the sidewalk be repaired where required;

THAT there shall be no parking of cars on the sidewalk area;

THAT planting along Albany Crescent shall be maintained;

THAT trees shall be maintained along the Albany Crescent frontage in accordance with the rules and regulations of the Department of Parks;

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 26, 2022;

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 26, 2018.

101-92-BZ

APPLICANT – Sheldon Lobel, P.C., for Portrem Realty Company, LLC, owner.

SUBJECT – Application December 2, 2016 – Extension of Term (§11-411) for the continued operation of the use of parking lot for non-commercial, non-transient parking which expired on October 26, 2013; Waiver of the Rules. C1-4/R8 zoning district.

PREMISES AFFECTED – 66-98 East Burnside Avenue, Block 2829, Lot 45, 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 Sheta and Commissioner Scibetta.....5

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 an extension of term of a variance, previously granted by the Board; and

WHEREAS, a public hearing was held on this application on February 13, 2018, after due notice by publication in *The City Record*, with continued hearings on May 1, 2018, and then to decision on June 26, 2018; and

WHEREAS, Commissioner Ottley-Brown performed an inspection of the site and surrounding neighborhood; and

WHEREAS, the Board has exercised jurisdiction over the subject site since May 7, 1957, when, under BSA Calendar Number 754-56-BZ, the Board granted a variance to permit the unbuilt upon portion of the subject site at the rear to be occupied for the parking of employees' and patrons' cars, without charge, and for parking by other persons in the neighborhood who desire such parking, at a rate to be established for a term of five (5) years, expiring May 7, 1962, on condition that such portion of the subject site be leveled substantially to the grade of Walton Avenue and the plot surfaced with clean gravel or steam cinders treated with a binder and properly rolled, that the extension of the present building formerly used as an oven be removed, that fences of the woven wire chain link type be erected on all lot lines not less than 5'-6" in height, that entrance be maintained at Walton Avenue only with curb cut opposite not exceeding 15 feet, that at the entrance at the building line there be gates of similar construction and suitable bumpers maintained at all points for protection of the wall and building, that there may be a sign attached to the fence near the entrance which shall not extend over the building line, shall not be illuminated and shall not exceed 15 square feet in area, that such portable fire-fighting appliances be maintained as the Fire Commissioner directs, that any differences in grade be maintained by means of slopes which shall be properly paved, or by retaining walls and that a certificate of occupancy be obtained within six (6) months, by November 7, 1957; and

WHEREAS, on November 6, 1957, under BSA Calendar Number 754-56-BZ, the Board amended the variance to permit as proposed the unbuilt upon portion of the subject site to be occupied for the parking and storage of motor vehicles of the pleasure car type only as indicated on the Board-approved plans; and

WHEREAS, on January 9, 1962, under BSA Calendar Number 754-56-BZ, the Board granted an extension of term of five (5) years, expiring January 9, 1967, on condition that a new certificate of occupancy be obtained; and

WHEREAS, on February 15, 1967, under BSA Calendar Number 754-56-BZ, the Board granted an extension of term of five (5) years, expiring February 15, 1972, on condition that a certificate of occupancy be obtained; and

WHEREAS, on May 2, 1972, under BSA Calendar Number 754-56-BZ, the Board granted an extension of term of five (5) years, expiring February 15, 1977, on condition that a new certificate of occupancy be obtained; and

WHEREAS, on October 26, 1993, under the subject calendar number, the Board granted a reinstatement of the

variance to permit a non-transient parking lot (Use Group 8) for a term of ten (10) years, expiring October 26, 2003, on condition that the site be maintained free of graffiti and debris, that the parking lot be paved in accordance with Building Code § 27-479, that street trees and fencing be provided and maintained in accordance with the Board-approved plans, that all lights be directed downward and away from adjacent residential uses, that if signs are provided for the parking lot, such signs be limited to 15 square feet and that the above conditions appear on the certificate of occupancy; and

WHEREAS, on April 27, 2004, under the subject calendar number, the Board granted an extension of term of ten (10) years, expiring October 26, 2013, on condition that the number of parking spaces on the site shall be limited to a maximum of 25, of which 11 spaces shall be made available for rental to neighborhood people as indicated on the previous certificate of occupancy, that the parking layout be approved by the Department of Buildings and that the above conditions appear on the certificate of occupancy; and

WHEREAS, the term having expired, the applicant now seeks a waiver of the Board's Rules of Practice and Procedure to permit the late filing of this application and an extension of term; and

WHEREAS, in response to questions from the Board, the applicant submitted evidence that the use has been continuous, that lighting levels are low along the perimeter, that plantings have been installed, that the fences are in place and that fewer than 10 percent of the visitors to the site access the commercial retail and eating or drinking establishment by personal vehicle; and

WHEREAS, based upon its review of the record, the Board has determined that the requested waiver of the Board's Rules of Practice and Procedure 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 *waive* the Rules of Practice and Procedure and *reopen* and *amend* the resolution, dated October 26, 1993, as amended through April 27, 2004, so that as amended this portion of the resolution shall read: "to *permit* an extension of term of ten (10) years, expiring October 26, 2023; *on condition* that all work and site conditions shall conform to drawings filed with this application marked "Received April 12, 2018"-One (1) sheet; and *on further condition*:

THAT the term of this grant shall be limited to ten (10) years, expiring October 26, 2023;

THAT landscaping shall be maintained and replaced as necessary to create a dense buffer zone;

THAT fencing shall be maintained;

THAT the number of parking spaces on the site shall be limited to a maximum of 25, of which 11 spaces shall be made available for rental to neighborhood people as indicated on the previous certificate of occupancy;

THAT the parking layout shall be as approved by the Department of Buildings;

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

THAT the parking lot shall be paved in accordance with Building Code § 27-479;

THAT street trees and fencing shall be provided and maintained in accordance with the Board-approved plans;

THAT all lights shall be directed downward and away from adjacent residential uses;

THAT if signs are provided for the parking lot, such signs shall be limited to 15 square 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 June 26, 2022;

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 26, 2018.

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 149th Street, Block 2623, Lot 140, Borough of Bronx.

COMMUNITY BOARD #1BX

ACTION OF THE BOARD – Laid over to August 7, 2018, at 10 A.M., for continued hearing.

40-06-BZ

APPLICANT – MP Design and Construction/Maria Maloney, for UDR 10 Hanover-LLC-Constantine Koukoulis, owner; 10 Hanover Sq Gym, LLC-Alex Reznik-Senior MGM Dir, lessee.

SUBJECT – Application June 9, 2017 – Extension of Term of a previously approved Special Permit (§73-36) which permitted the operation of a Physical Culture Establishment (Goldman-Sachs) on the cellar and sub-cellar levels in a 21-story mixed-use building which expired on August 22, 2016; Amendment to permit the change in operator to (Complete

Body) and a change in hours of operation; Waiver of the Rules. C5-5 (LM) zoning district

PREMISES AFFECTED – 10 Hanover Sq (aka 4-12 Hanover Sq. 110-124 Pearl St, 76-88 Water Street), Block 31, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #1M

ACTION OF THE BOARD – Laid over to August 21, 2018, at 10 A.M., for adjourned hearing.

254-13-BZ

APPLICANT – Law Offices of Marvin B. Mitzner LLC, for Lisjen Realty Inc., owner.

SUBJECT – Application March 29, 2018 – Amendment of a previously approved Variance (§72-21) permitting a development contrary to floor area (§23-141(a)), dwelling units (§23-22), lot coverage (§23-141(a)), front yard (§23-45(a)), side yard (§23-462(a)), and building height (§23-631(b)) regulations. The amendment seeks to increase the height of the elevator bulkhead contrary to the previously approved plans. R3-2 zoning district.

PREMISES AFFECTED – 2881 Nostrand Avenue, Block 7691, Lot 91, Borough of Brooklyn.

COMMUNITY BOARD #18BK

ACTION OF THE BOARD – Laid over to August 21, 2018, 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 – Application Withdrawn With Prejudice

THE VOTE TO WITHDRAW –

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

THE RESOLUTION –

WHEREAS, this is an application for recognition of a common law vested right and reinstatement of Alteration Permit No. 320526347 to facilitate the enlargement of a four-story residential building compliant with R7-1 zoning regulations applicable at the subject site prior to its rezoning in September 2013; and

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

WHEREAS, a public hearing was held on this application on February 28, 2017, after due notice by publication in *The City Record*; and

WHEREAS, at that hearing, the Board remarked that construction at the site did not appear to comply with the plans approved by the Department of Buildings prior to the rezoning, that evidence in the record was insufficient to substantiate the progress of construction at the site as of the rezoning date and that costs cited for purposes of establishing substantial expenditures were inconsistent and unsupported by back up, such as cancelled checks; and

WHEREAS, continued hearings were scheduled for May 16, 2017, August 8, 2017, and November 14, 2017, but those hearings were adjourned at the applicant’s request; and

WHEREAS, continued hearings scheduled for February 27, 2018, and May 1, 2018, were administrative adjourned due to the applicant’s failure to make timely submissions; and

WHEREAS, at the Executive Session on April 31, 2018, the Board noted that the May 1 hearing would constitute the fifth consecutive adjournment and that nothing had been submitted into the record on this application since 2017; and

WHEREAS, Board staff sent a letter to the applicant and their legal representative, dated May 1, 2018, stating that a failure to make a complete submission on June 6, 2018, and/or to appear at the continued hearing scheduled for June 26, 2018, could result in denial of the application or its dismissal for failure to prosecute; and

WHEREAS, no materials were submitted on this

application on June 6 and at the Executive Session on June 25, 2018, the Board expressed frustration with the applicant’s lack of responsiveness to the hearing process and the Board’s intention to decide the case on the merits; and

WHEREAS, after the review session, the applicant requested withdrawal of this application; and

WHEREAS, § 1-12.2 of the Board’s Rules of Practice and Procedure states, in relevant part:

The Board may consider a request to withdraw an application made by the applicant at any time before the Board’s final determination.

If the request to withdraw is made before the hearing has been closed, the Board may permit withdrawal without prejudice upon request; and

WHEREAS, though the request for withdrawal was made prior to the hearing on this application being closed, the request was not specifically made for a withdrawal without prejudice and the Board finds withdrawal with prejudice on the refiling of a future application for the same relief to be appropriate in this case; and

Therefore, it is Resolved, that the Board of Standards and Appeals accepts the withdrawal of this application with prejudice on the refiling of a future application for the same relief.

Adopted by the Board of Standards and Appeals, June 26, 2018.

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2017-320-BZY

APPLICANT – Kramer Levin Naftalis & Frankel LLP by Gary Tarnoff, for Sutton 58 Holding Company, LLC, owner.
SUBJECT – Application December 19, 2017 – Proposed extension of time to complete construction for a minor development pursuant to ZR §11-331 to renew building permits lawfully issued before November 30, 2017, the date of the modified tower-on-a-base regulation, to complete the required foundation of a proposed 64-story residential apartment building. R10 zoning district.

PREMISES AFFECTED – 428-432 East 58th Street, Block 1369, Lot 34, 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 Sheta and Commissioner Scibetta.....5

Negative:0

THE RESOLUTION –

WHEREAS, this is an application under ZR § 11-331 to renew building permits and authorize an extension of time for the completion of the foundation of a minor development under construction; and

WHEREAS, a public hearing was held on this application on April 10, 2018, after due notice by publication in *The City Record*, with a continued hearing on June 19, 2018, and then to decision on June 26, 2018; and

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

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

WHEREAS, New York City Councilmembers Ben Kallos and Keith Powers, New York State Senator Elizabeth Krueger, Manhattan Borough President Gale Brewer and U.S. Congresswoman Carolyn Maloney submitted testimony in opposition to this application stating, among other things, that After Hours Variance Permits issued to the site were invalid, that the applicant was able to pour a substantial amount of concrete at the site by closing the street without necessary permits, that work continued at the site after the effective date of the applicable zoning amendment, burying the evidence of what progress had actually been made by that date and, because ZR § 11-331 is designed to protect owners of real estate from unforeseen zoning challenges, it is not applicable in this case where the applicant acquired the property with knowledge of a zoning amendment that would render the development non-complying; these arguments are discussed more fully below; and

WHEREAS, the Board was also in receipt of more than 30 letters and hours of testimony in opposition to this application from individuals and organizations alike, including from the Friends of the Upper East Side Historic Districts, the Municipal Art Society of New York and the East River Fifties Alliance, an association of residents who

live in the vicinity of the subject site who were represented in these proceedings by counsel (“Opposition Counsel”); and

WHEREAS, the subject site is located on the south side of East 58th Street, between Sutton Place and First Avenue, in an R10 zoning district, in Manhattan; and

WHEREAS, the site is comprised of ten (10) tax lots and has approximately 261 feet of frontage along East 58th Street, 112 feet of frontage along East 57th Street and 37,501 square feet of lot area; and

WHEREAS, a Confirmatory Declaration of Zoning Lot Restrictions describing these lots as a single zoning lot (the “Zoning Lot”) was recorded with the Office of the City Register of the City of New York on February 17, 2017 (Document ID 2017021601077003); and

WHEREAS, the Zoning Lot is occupied by a 16-story residential building on Lot 19, a four-story mixed-use residential community facility building on Lot 22, a six-story residential building on Lot 29, a four-story single-family residence on Lot 129, a five-story multi-family residential building on Lot 30, a six-story multi-family residential building on Lot 31, a six-story multi-family residential building on Lot 33, a five-story multi-family residential building on Lot 36 and a six-story multi-family residential building on Lot 37; and

WHEREAS, the applicant proposes to develop Lot 34 (the “Development Site”), which was previously occupied by three residential buildings, with a 64-story residential building that cantilevers over portions of adjacent tax lots and rises to a height of 847’-4”, measured to the top of the elevator overrun (the “Proposed Development”); and

WHEREAS, the New York City Department of Buildings (“DOB”) issued permits to the Development Site for construction equipment and fencing (Permit No. 121191423-EQ-FN, the “Fencing Permit”) on April 28, 2017, and issued permits for excavation (Permit No. 121191423-01-FO-EA, the “Excavation Permit”) and foundation work (Permit No. 121191423-01-FO, “the Foundation Permit”) on May 1, 2017; the Excavation Permit and Foundation Permit were reissued on August 25, 2017, to update the name of the Development Site’s site safety manager; and

WHEREAS, also on May 1, 2017, DOB issued an Alteration Type 2 permit for a temporary dry fire standpipe riser (Permit No. 140603434-01-EW-SD, the “Standpipe Permit”); and

WHEREAS, on September 27, 2017, DOB issued an Alteration Type 2 permit for underground plumbing piping (Permit No. 121770146-01-PL, the “Plumbing Permit”); and

WHEREAS, on October 3, 2017, DOB issued a New Building permit for the Proposed Development (Permit No. 121191423-01-NB, the “New Building Permit”); and

WHEREAS, on October 13, 2017, DOB issued a plumbing permit for the installation of new mechanical ductwork and air conditioning unit (Permit No. 121191423-05-PL, the “NB Plumbing Permit”, collectively, with the Fencing Permit, Excavation Permit, Foundation Permit,

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Standpipe Permit, Plumbing Permit and New Building Permit, the “DOB Permits”); and

WHEREAS, on October 30, 2017, DOB approved a post-approval amendment to the New Building Permit to add two additional floors within the previously approved envelope of the Proposed Development; and

WHEREAS, in addition, DOB issued a total of fourteen (14) After Hours Work Variance Permits under Application No. 121191423 permitting work at the Development Site on Saturdays as follows: (A) three (3) After Hour Variance Permits for “excavation, drilling, installation of support of excavation, rebar placement, concrete placement, trucking, formwork and associated form work, safety carpentry, safety protection and equipment maintenance” on the cellar and first floor levels valid from 9:00 a.m. to 5:00 p.m. on June 3, 2017, June 10, 2017, June 17, 2017, June 24, 2017, and July 1, 2017; (B) two (2) After Hour Variance Permits for excavation, drilling, installation of support of excavation, rebar placement, concrete placement, trucking, form work and associated form work, safety carpentry, safety protection and equipment maintenance plus “underpinning work” for the cellar, first through 62nd floors and roof level valid from 9:00 a.m. to 5:00 p.m. on July 22, 2017, July 29, 2017, August 5, 2017, and August 12, 2017; (C) four (4) After Hour Variance Permits for excavation, drilling, installation of support of excavation, rebar placement, concrete placement, trucking, form work and associated form work, safety carpentry, safety protection and equipment maintenance, underpinning work plus “rock chopping” at the cellar, first through 62nd floors and roof level valid from 9:00 a.m. to 5:00 p.m. on August 19, 2017, August 26, 2017, September 2, 2017, September 9, 2017, September 16, 2017, September 23, 2017, September 30, 2017, and October 7, 2017; (D) one (1) After Hour Variance Permit for excavation, drilling, installation of support of excavation, rebar placement, concrete placement, trucking, formwork and associated form work, safety carpentry, safety protection and equipment maintenance, underpinning work and rock chopping plus “use of crane (CN# 0733/17), lifting equipment and building materials” valid from 9:00 a.m. to 5:00 p.m. on October 14, 2017 and October 21, 2017; (E) three (3) After Hour Variance Permits for “rebar & concrete placement, trucking, formwork & associated work, safety carpentry, safety protection & equipment maintenance and use of crane (CN# 0733/17). Lifting equipment and building materials” at the cellar, roof and first through 62nd floors valid from 9:00 a.m. to 5:00 p.m. on October 28, 2017, and November 4, 2017, and from 7:00 a.m. to 6:00 p.m. on November 11, 2017, and November 18, 2017; (F) one (1) After Hour Variance Permit, again for “rebar & concrete placement, trucking, formwork & associated work, safety carpentry, safety protection & equipment maintenance and use of crane (CN# 0733/17). Lifting equipment and building materials,” but valid at the cellar, first through 64th floors and roof level from 9:00 a.m. to 5:00 p.m. on November 25, 2017, and December 2, 2017 (collectively, the “After Hour Permits”);

and

WHEREAS, effective November 30, 2017 (the “Effective Date”), several sections of the Zoning Resolution were amended to modify the bulk regulations applicable within R10 zoning districts located in Community District 6 east of First Avenue and north of East 51st Street in Manhattan, including the Development Site; the revised sections apply a modified version of tower-on-a-base regulations to zoning lots fronting on narrow streets beyond 125 feet of a wide street on 10 blocks roughly defined by the Ed Koch Queensboro Bridge to the north, First Avenue to the west, East 51st Street to the south and the East River to the east (the “Zoning Amendment”); and

WHEREAS, the Zoning Amendment rendered the Proposed Development non-complying in several respects, including with regards to maximum permitted floor area and building height; and

WHEREAS, at approximately 5 p.m. on November 30, 2017, DOB posted a full stop work order at the Development Site under the New Building Permit’s Application Number (the “November Stop Work Order”); the DOB inspector noted that 80 percent of the Proposed Development’s foundation had been completed at the time; and

WHEREAS, the applicant now seeks the recognition of a statutory vested right to complete construction of the Proposed Development pursuant to ZR § 11-331; and

WHEREAS, ZR § 11-331 reads as follows:

11-331

Right to construct if foundations completed

If, before the effective date of an applicable amendment of this Resolution, a building permit has been lawfully issued, as set forth in paragraph (a) of Section 11-31, to a person with a possessory interest in a *zoning lot 1*, authorizing a minor development or a major development, such construction, if lawful in other respects, may be continued provided that:

- (a) in the case of a minor development, all work on foundations had been completed prior to such effective date; or
- (b) in the case of a major development, the foundations for at least one *building* had been completed prior to such effective date.

In the event that such required foundations have been commenced but not completed before such effective date, the building permit shall automatically lapse on the effective date and the right to continue construction shall terminate. An application to renew the building permit may be made to the Board of Standards and Appeals not more than 30 days after the lapse of such building permit. The Board may renew the building permit and authorize an extension of time limited to one

1 Words in italics refer to terms defined in Section 12-10 of the Zoning Resolution.

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term of not more than six months to permit the completion of the required foundations, provided that the Board finds that, on the date the building permit lapsed, excavation had been completed and substantial progress made on foundations; and

WHEREAS, with respect to lawfully issued building permits, ZR § 11-31(a) states:

A lawfully issued building permit shall be a building permit which is based on an approved application showing complete plans and specifications, authorizes the entire construction and not merely a part thereof, and is issued prior to any applicable amendment to this Resolution. In case of dispute as to whether an application includes 'complete plans and specifications' as required by this Section, the Commissioner of Buildings shall determine whether such requirement has been met; and

WHEREAS, pursuant to ZR § 11-31(c)(1), a "minor development" includes, among other things, "construction of any single *building* which will be *non-conforming* or *non-complying* under the provisions of any applicable amendment to this Resolution"; and

WHEREAS, the applicant submits that the Proposed Development was rendered non-complying upon the Effective Date and is a "minor development" pursuant to ZR § 11-31(c)(1); that the permits for the Proposed Development were lawfully issued based on plans for the entirety of the development that went through full plan examination at DOB and were not self-certified; that the party to whom the permits were issued had a possessory interest in the Development Site at the time that they were issued; that excavation work at the Development Site commenced on May 22, 2017, and was completed as of October 30, 2017, with a brief interruption in work between June 30, 2017, and July 18, 2017, when a full stop work order was in effect at the Development Site; and that the required foundations were commenced, but not completed, on the Effective Date, thus, the permits lapsed as of the Effective Date, but substantial progress had been made on foundations by that date and, thus, they are entitled to the requested relief; and

WHEREAS, DOB's letter dated March 8, 2018, confirmed that the permits issued under New Building Application No. 121191423, which include the New Building Permit, were lawfully issued; and

WHEREAS, the Board notes that the DOB Permits were issued prior to the Effective Date and that the subject application, filed on December 20, 2017, was timely filed within 30 days of the Effective Date; and

WHEREAS, in support of the argument that excavation was completed by October 30, 2017, the applicant submitted photographs showing the nearly daily progression of excavation at the Development Site, affidavits from the construction manager and the geotechnical engineer and special inspector for support of

excavation, daily reports, site observation reports, an excavation log tracking the number of 25 cubic yard trucks and type of soil excavated from the site daily between July 21, 2017, and October 10, 2017, and carting invoices indicating the date, time, materials and quantities of materials delivered to the Development Site between June 5, 2017, and October 13, 2017; and

WHEREAS, that the applicant completed excavation prior to the Effective Date of the Zoning Amendment is not contested by any party appearing in opposition to this application; and

WHEREAS, with regards to the required foundations, the applicant clarifies that the foundation designed for the Proposed Development includes a 10 foot thick foundation mat slab connected to bedrock by 55 rock anchors, seven footings at the southern end of the Development Site bearing directly onto bedrock or soil, a concrete wall around the perimeter of the excavated Development Site ranging from 1 foot to 2'-6" thick, and various non-structural components including waterproofing and a topping slab to protect the rock anchors; and

WHEREAS, in support of their contention that the required foundations were commenced, but not completed, on the Effective Date, the applicant submitted color-coded markups of plans for the Proposed Development's foundations showing progress as of November 30, 2017, and a concrete pour log with invoices tracking the date and volume of concrete poured at the Development Site; and

WHEREAS, the color-coded markup indicated that, as of November 30, 2017, support of excavation work (soldier piles and lagging, underpinning piers and tiebacks) was installed, all 55 rock anchors were drilled and assembled, all seven of the footings had been completed and the elevator pit, 10 foot thick foundation mat slab and all of the shear walls had been poured at the Development Site; and

WHEREAS, the applicant additionally submits that, up to the Effective Date, work on the Proposed Development's foundation had been proceeding for 147 days, approximately 92 percent of the total 160 days scheduled for foundation construction, that 2,125 cubic yards of concrete², approximately 87 percent of the 2,433 total cubic yards of concrete allocated for the Proposed Development's foundation, had been poured, and, in terms of costs, 93 percent of the \$10,002,200 total cost of foundation work had been incurred at the Development Site; and

WHEREAS, by letter dated December 21, 2017, the applicant advised the Board that the November Stop Work Order had been partially rescinded on December 18 to allow for site-safety work at the Development Site and advised that none of the site-safety work completed would be counted for purposes of determining whether substantial

² This amount reflects a total of 2,166 cubic yards of concrete, minus 30 cubic yards of concrete the applicant acknowledges was poured after permitted hours on November 18, 2017, and 11 cubic yards of concrete poured after the issuance of the November Stop Work Order.

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progress had been made on the Proposed Development's foundation on the Effective Date; and

WHEREAS, by letter dated March 30, 2018, the applicant stated that records in their control suggested that, in February 2016, while employed at Langan Engineering, the geotechnical engineer and special inspector for support of excavation for the Proposed Development, and prior to his appointment as a Board Commissioner, present Board Commissioner Dr. Nasr Sheta performed approximately one hour of work on a support of excavation design for a different project proposed at the Development Site by a prior owner; and

WHEREAS, in response to this disclosure by the applicant, by letter dated April 6, 2018, Opposition Counsel, appearing on behalf of the East River Fifties Alliance, requested Dr. Sheta's recusal from this application based on a likelihood that Dr. Sheta had "pre-existing perspectives with respect to Langan"; and

WHEREAS, at the public hearing on April 10, 2018, Board counsel remarked that Chapter 68 of the New York City Charter, the City's Conflict of Interest Law, does not have a pre-employment restriction for public servants, only looks to a public servant's current and future position and interests, therefore, as long as a public servant no longer retains an ownership interest in either their prior employer or projects on which they worked—neither of which Dr. Sheta retains with respect to Langan nor the now-abandoned formerly proposed development at the Development Site—the law does not prohibit public servants from participating in matters concerning prior employers or projects; and

WHEREAS, Opposition Counsel additionally requested that the applicant law firm appearing before the Board on this application be disqualified due to past and perhaps present work on behalf of the Mayor and the City of New York, which "would create the appearance of impropriety"; and

WHEREAS, at the April 10 public hearing, Board counsel also stated that as Opposition Counsel neither cites to any laws or rules necessitating the disqualification of the applicant nor alleges fraud or other misconduct committed by the applicant before the Board, it is not clear that the Board is the correct venue for such a claim; and

WHEREAS, with respect to the substance of the application, by separate letter dated March 30, 2018, Opposition Counsel alleged that an overwhelming majority of the work on the foundation was done in violation of New York City law and without lawful permits and, therefore, cannot be counted for purposes of establishing whether, pursuant to ZR § 11-331, substantial progress to the Proposed Development's foundation was made on the Effective Date; Opposition Counsel also stated that the Zoning Amendment deprived the Board of jurisdiction over this case; and

WHEREAS, specifically, Opposition Counsel contends that, in a rush to complete work on the foundation, the applicant closed the entirety of the subject block—East 58th Street, between First Avenue and Sutton Place—to

allow for a continuous pour of concrete at the Development site on Saturday, November 11, 2017, without seeking permission from the New York City Department of Transportation ("DOT"); that on Saturday, November 18, 2017, the applicant again improperly closed streets to continuously pour concrete at the Development Site and proceeded to work in excess of the hours of 7 a.m. to 6 p.m. permitted by the After Hours Permits, at least until 8:30 p.m.; and that the applicant unlawfully poured concrete on November 30, 2017, the Effective Date; and

WHEREAS, accordingly, Opposition Counsel submits that the 880 cubic yards of concrete poured on November 11, 893 cubic yards of concrete poured on November 18, 180 cubic yards poured on November 18 after 6 p.m., and 300 cubic yards of concrete poured on the Effective Date—a total of 2,253 cubic yards of concrete or 93 percent of the total cubic yardage the applicant allocated for the Proposed Development's foundation—was completed unlawfully and should be excluded from the Board's analysis for determining whether substantial progress was made in satisfaction of ZR § 11-331; and

WHEREAS, in response, the applicant submitted that the street was lawfully closed on November 11, 2017, and provided a copy of DOT Permit No. M02-2017313-E13 to close East 58th Street between First Avenue and Sutton Place on that date and that the concrete pour on November 18 proceeded in compliance with previously issued DOT Permit Nos. M02-2017305-B82, M02-2017305-B84 and M02-2017305-B85, which allowed the occupation of an 11 foot width of roadway adjacent to the south curb line directly in front of the Development Site and portions of the street in front of neighbors 426 East 58th Street and 434 East 58th Street; and

WHEREAS, by communication dated April 18, 2018, DOT's Deputy Director of Permit Management provided copies of the DOT Permit Nos. M02-2017313-E13, M02-2017305-B82, M02-2017305-B84 and M02-2017305-B85 (the "DOT Permits") to the Board confirming the issuance of these permits; and

WHEREAS, the applicant further represented that no violations were issued in connection with the alleged unlawful street closures and provided an executed contract for a New York Police Department Traffic Enforcement Agent to properly maintain the flow of traffic around the Development Site on November 18, 2017, which would not have been necessary had the street actually been closed, as well as an affidavit of a superintendent present at the Development Site on November 18, confirming that the street was, indeed, open that day, and attaching a photograph of the Development Site taken at approximately 9 a.m. showing a car driving down the streets and construction barriers located beyond the property line; and

WHEREAS, the applicant also averred that Opposition Counsel's claim that work proceeded at the Development Site until 8:30 p.m. on November 18 is unsupported by evidence and in fact, contrary to evidence submitted by the applicant, including site photographs, that the pour on that

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day continued until 6:25 p.m. and that Opposition Counsel's claim that the Board does not consider work performed on the Effective Date in statutory vesting cases, like this one, is contrary to numerous cases in which the Board has expressly considered work performed on the effective date up until the approximate time of the City Council vote on the particular amendment; and

WHEREAS, nevertheless, in subsequent submissions, the applicant provided indexed tables, identifying the date of each concrete pour, the concrete pour ticket number, the pour start time, the pour finish time and the volume of concrete poured and a breakdown of the material and labor costs associated with work that occurred after 6 p.m. on November 18 and after 4:08 p.m. on November 30, the approximate time that the City Council voted to approve the Zoning Amendment; and

WHEREAS, the applicant also revised its calculations regarding the progress of construction on November 30, 2017, to deduct 22 cubic yards of concrete poured after 6 p.m. on November 18, 66 cubic yards of concrete poured after 4:08 p.m. on November 30 and the approximately \$31,000 in costs associated with these overages, including any demobilization after the concrete pours were complete; and

WHEREAS, the applicant now estimates that on the Effective Date, 2,078 cubic yards⁴, approximately 85 percent of the total amount allocated for the foundation, was poured and 93 percent of the total cost of the foundation had been incurred, which the applicant asserts, still constitutes substantial progress; and

WHEREAS, finally, the applicant submitted a version of the previously submitted color-coded markups of foundation work in place at the Development Site as of November 30, 2017, signed and sealed by project engineers certifying that the work in place complies with the requirements of all applicable codes and regulations, as well as affidavits from the construction manager, geotechnical engineer and general contractor affirming that all construction at the Development Site as of November 30, 2017, fully complied with, without deviation from, the drawing and permits approved by DOB; and

WHEREAS, the Board finds that Opposition Counsel's assertion that concrete pours on November 11 and November 18, 2017, were done without the permission of DOT is not supported by the evidence; the applicant has

provided valid DOT Permits allowing the closure of all or a portion of the street and the photographs submitted by Opposition Counsel, purporting to show cement trucks lined up on East 58th Street on November 11 and November 18, 2017, are undated, taken from unspecified location(s) and, therefore, of little probative value as to the condition of East 58th Street on those dates; and

WHEREAS, the Board also finds that where the approximate time of enactment of a Zoning Amendment can be ascertained, it may be used to permit the inclusion of lawful construction performed at a site until that time for purposes of showing substantial progress on foundations; and

WHEREAS, therefore, the Board finds that construction at the Development Site on Saturday, November 11, 2017, from 7 a.m. to 6 p.m. on Saturday, November 18, 2017, and until 4:08 p.m. on November 30, 2017, the most conservative estimate for the time at which the Zoning Amendment became effective, was conducted lawfully pursuant to valid permits and, thus, properly included in the applicant's submission with regards to "substantial progress"; and

WHEREAS, with regards to the allegation that the Board has no authority to consider the subject application, Opposition Counsel submits that on or about November 15, 2017, the New York City Planning Commission issued a draft of the Zoning Amendment that included a provision that would have vested construction of the Proposed Development pursuant to the DOB Permits, permitted the continuation of construction as-of-right and redefined the Effective Date for purposes of the applicability of ZR § 11-331 to one year after the Zoning Amendment's date of adoption meantime (the "Special Vesting Provision"⁵), but that such provision was removed by the City Council prior to vote with the intent of preventing the construction of the 64-story Proposed Development, therefore, in considering this application, the Board is improperly overriding the action of the legislative branch of New York City government; and

WHEREAS, in response to this argument, the applicant refutes Opposition Counsel's claim that City Council has already "legislatively addressed" the subject

⁵ The Special Vesting Provision, originally proposed as ZR § 23-67(c) and titled "Vesting modifications," read as follows:

In the event that a building permit has been issued authorizing construction pursuant to the regulations of this Resolution in effect prior to [date of adoption], and foundations were commenced, but not completed before [date of adoption], such construction may continue, provided that all foundations have been completed prior to [date of adoption + 1 year]. Such date shall be the effective date for applying the provisions of Section 11-332 (Extension of period to complete construction).

³ The applicant revised the amount of concrete poured in excess of the hours permitted on November 18, 2017, originally contained in its analysis, from 30 cubic yards to 22 cubic yards and increased the deduction of concrete poured after the Effective Date from 11 cubic yards to 66 cubic yards.

⁴ This amount reflects a total of 2,166 cubic yards of concrete, minus 22 cubic yards of concrete the applicant now calculates was poured after permitted hours on November 18, 2017, and 66 cubic yards of concrete poured after 4:08 p.m. on November 30, 2017.

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application as incorrect as a matter of law and contradicted by the Zoning Amendment’s legislative record; and

WHEREAS, the applicant acknowledges that, while City Council did remove the Special Vesting Provision, City Council did not amend the Zoning Resolution to disturb ZR § 11-331 and cites to the transcript for the public hearing held on the Zoning Amendment before City Council’s Subcommittee on Zoning and Franchises (the “Subcommittee”) on November 20, 2017, wherein co-applicants for the Zoning Amendment, including a member of City Council, affirmed that ZR § 11-331 already provides an opportunity for the Proposed Development to vest by application to the Board and that the Special Vesting Provision was, thus, redundant and unnecessary in that it created a set of rules specific to and exclusively for the benefit of the Development Site; and

WHEREAS, in addition, the applicant submits a transcript of the Subcommittee meeting on the Zoning Amendment on November 21, 2017, at which the Councilmember Chair of the Subcommittee announced City Council’s modification of the Zoning Amendment text to remove the Special Vesting Provision “to cover a specific development” and acknowledged that the Proposed Development “continues to have the standard recourse already provided under the city’s existing zoning regulations to appeal to the BSA for more time to vest”; and

WHEREAS, the Board finds that the absence of the Special Vesting Provision from the Zoning Amendment did not extinguish the Board’s authority to consider the subject application pursuant to ZR § 11-331; and

WHEREAS, by letter dated April 9, 2018, Opposition Counsel suggested that the applicant is not entitled to invoke the vesting provisions of the Zoning Resolution because they had been fully aware of the pending application for a Zoning Amendment prior to acquiring the subject property, commenced construction anyway and raced to avoid having to comply with the Zoning Amendment; and

WHEREAS, in support of their contention that the Board should qualify such behavior as wrongful and, thus, deny the subject application, Opposition Counsel notes, *inter alia*, Board precedent in which the Board “disagreed that it is bound solely and completely by the language of ZR § 11-331 when reviewing applications made under this section,” (BSA Cal. No. 354-05-BZY (July 25, 2006); and

WHEREAS, further review of that resolution reveals that that statement was with regards to evidence that “impermissible development activity may have a direct nexus to the ability to complete excavation and make substantial progress on foundations prior to the zoning change,” specifically, that the Board can consider the credibility of an applicant’s submissions regarding substantial progress—in that case, the developer represented at hearings that mechanical demolition at the site had been limited to a single day, but time-stamped videos taken by neighbors directly contradicted this assertion and demonstrated that mechanical demolition had taken place at the site over several days; the Board, thus, concluded that

“to avoid such gamesmanship,” the Board “must have the latitude to evaluate on a case by case basis the effect, if any, that impermissible pre-excavation work at the site had on the ability to meet the technical thresholds set forth at ZR § 11-331”; and

WHEREAS, accordingly, the Board finds that the resolution cited by Opposition Counsel is, in fact, consistent with earlier resolutions issued by the Board in statutory vesting applications stating that arguments that a developer has acted in bad faith, sought to “beat the clock” by expediting excavation and foundation work, or attempted to undermine the hard work of the community in effecting a rezoning are irrelevant and may not be considered by the Board given the statutory framework of ZR § 11-331 and that where Opposition Counsel has failed, as they have here, to provide any convincing evidence that refutes the applicant’s submissions regarding the lawful progress made on the foundations up to the Effective Date or raise questions about the credibility of their representations to this Board, as the opposition did in BSA Cal. No. 354-05-BZY, the suggestion that the applicant “raced” to make substantial progress on the Proposed Development’s foundation is irrelevant to the subject inquiry; and

WHEREAS, Opposition Counsel additionally asserted that subsequent to the November Stop Work Order, DOB allowed foundation work to continue at the Development Site for an additional seven weeks, thereby allowing the applicant to “destroy the evidence with respect to the progress of the work prior to the Effective Date”; and

WHEREAS, the applicant adamantly denies this claim, asserting that there is substantial evidence in the record regarding the precise progress of construction at the Development Site as of the Effective Date, that they have never included any of the site-safety work completed after November 30, 2017,⁶ in their estimates of progress made on the Proposed Development’s foundation for purposes of statutory vesting and that Opposition Counsel’s credibility has been significantly and irreparably compromised “in light of the Opposition’s numerous intentional misrepresentations to the Board”; and

WHEREAS, the Board finds that the applicant has submitted substantial evidence regarding the conditions of the site as of the Effective Date—including multiple sets of observation reports, invoices, payment requisition slips and daily photographs of the Development Site—and that the applicant has appropriately omitted the additional site-safety work performed at the Development Site after November 30, 2017; and

WHEREAS, by e-mail dated April 23, 2018, as well as in oral testimony before the Board, Opposition Counsel expressed an intent to challenge the validity of the After Hour Permits issued by DOB on the basis that they were erroneously issued on the basis of public safety; and

6 The applicant submits that this work commenced on December 20, 2017, and was completed on January 31, 2018, a period of six (6) weeks.

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WHEREAS, in response, the applicant states that the After Hour Permits were issued for legitimate public safety reasons and that no violations were issued to the Development Site, at any point during construction, for illegal after-hours work; and

WHEREAS, the Board notes that, pursuant to Section 666(6) of the New York City Charter, the Board is empowered to hear and decide appeals of “any order, requirement, decision or determination of the commissioner of buildings,” including, but not limited to, the issuance of After Hours Variance Permits, and that such applications must be filed at the Board within thirty (30) days of the date of the determination—in this case, the dates on which the After Hours Variance Permit were issued—pursuant to § 1-06.3(a) of the Board’s Rules of Practice and Procedure (2 R.C.N.Y. § 1-06.3(a)); and

WHEREAS, the proscribed period in which Opposition Counsel may have appealed the issuance of the After Hours Permits to the Board having lapsed, the Board declines to consider Opposition Counsel’s desire to now challenge the validity of the After Hours Permits through this application for statutory vesting; and

WHEREAS, by letter dated May 9, 2018, Opposition argued, for the first time, that ZR § 11-331 is not applicable at the subject site and the applicant may not seek relief pursuant to that Section because the Proposed Development’s foundation is already complete as a result of DOB’s permission to continue site safety related work for several weeks after the Effective Date and raised questions as to whether the applicant complied in all respects with preconditions of the DOT Permits; and

WHEREAS, the Board finds that the DOB Permits lapsed as a matter of law on November 30, 2017, under ZR § 11-331, thereafter prohibited the applicant from proceeding with construction under the DOB Permits absent a Board grant of the subject relief and, per the language of ZR § 11-331, a developer may request an extension of time so long as work on the foundation has been commenced but not completed *before* the effective date, therefore, the applicant appropriately seeks the subject relief; and

WHEREAS, the Board finds that it is immaterial that DOB permitted work to continue at the site in the interest of safely securing the work in place because none of that work was submitted by the applicant in satisfaction of ZR § 11-331 or considered by the Board in rendering its decision in this case; and

WHEREAS, with regards to the DOT Permits, the Board notes the absence of sufficient evidence to support Opposition Counsel’s claim that construction at the Development Site failed to comply with the conditions of the DOT Permits; and

WHEREAS, the Board has considered all of the remaining arguments of parties in opposition to this application and finds them to be without merit; and

WHEREAS, in light of the foregoing, the Board finds that the substantial amount of evidence in the record supports the facts that, on the Effective Date, excavation at

the Development Site had been completed and substantial progress—not including any construction completed absent valid permits—made on the Proposed Development’s foundation; and

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *renew* New Building Permit No. 121191423-01-NB, as well as all related permits for various work types, either already issued or necessary to complete construction, and *grants* an extension of time to permit the completion of the required foundation for one term of six (6) months from the date of this decision, less the six (6) weeks during which work continued with DOB’s consent to complete site safety measures.

Adopted by the Board of Standards and Appeals, June 26, 2018.

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102-15-A

APPLICANT – Eric Palatnik, P.C., for Kathleen Spezio, owner.

SUBJECT – Application May 11, 2015 – Proposed enlargement of a building located partially within the bed of mapped unbuilt street, pursuant Article 3 Section 35 of the General City Law and waiver under ZR 72-10-(g) . R3-2/SRD zoning district.

PREMISES AFFECTED – 1088 Rossville Avenue, Block 7067, Lot 1, Borough of Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Laid over to August 21, 2018, at 10 A.M., for continued hearing.

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 September 27, 2018, at 10 A.M., for continued 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 September 13, 2018, at 10 A.M., for adjourned 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 September 13, 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 September 13, 2018, at 10 A.M., for adjourned hearing.

2017-232-A

APPLICANT – Land Planning & Engineering, for Neil Simon SHS Richmond Terrace, LLC, owner.

SUBJECT – Application August 4, 2017 – 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

PREMISES AFFECTED – 1632 Richmond Terrace, Block 187, Lot 42, Borough of Staten Island.

COMMUNITY BOARD #1SI

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta5
Negative:.....0

ACTION OF THE BOARD – Laid over to July 17, 2018, at 10 A.M., for decision, hearing closed.

2017-234-A

APPLICANT – Rothkrug Rothkrug & Spector LLP

SUBJECT – Application August 8, 2017 – Proposed construction of a self-storage facility not fronting a legally mapped street contrary to General City Law 36. M1-1 zoning district.

PREMISES AFFECTED – 266 Wild Avenue, Block 2645, Lot 1, Borough of Staten Island.

COMMUNITY BOARD #2SI

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta5
Negative:.....0

ACTION OF THE BOARD – Laid over to July 17, 2018, at 10 A.M., for decision, hearing closed.

MINUTES

2016-4473-A

APPLICANT – Law Offices of Marvin B. Mitzner LLC, for 72-74 E. 3rd Street Condo Corp., owner.

SUBJECT – Application December 30, 2016 – 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.

PREMISES AFFECTED – 72-74 East 3rd Street, Block 444, Lot 7501, Borough of Manhattan.

COMMUNITY BOARD #3M

ACTION OF THE BOARD – Laid over to August 21, 2018, at 10 A.M., for continued hearing.

ZONING CALENDAR

31-14-BZ

CEQR #14-BSA-117K

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 – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda and Commissioner Ottley-Brown.....3

Negative:0

Abstain: Commissioner Sheta and Commissioner Scibetta...2

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings ("DOB"), dated February 4, 2014, acting on Alteration Application No. 320589993, reads in pertinent part:

“Proposed change of use to school Use Group 3 in M1-2 zoning district, is contrary to section ZR 42-10”; and

WHEREAS, this is an application under ZR §§ 73-19 and 73-03 to permit, in an M1-2 zoning district, the operation of a school, contrary to ZR § 42-10; and

WHEREAS, this application has been brought on behalf of Bnos Square of Williamsburg (the “School”); and

WHEREAS, a public hearing was held on this application on October 28, 2014, after due notice by publication in *The City Record*, with continued hearings on January 6, 2015, April 14, 2015, and then closed on July 28, 2015. On December 6, 2016 the case was taken off-calendar. On September 19, 2017 the case was re-opened

and closed, and then to decision on June 26, 2018; 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 3, Brooklyn, recommends disapproval of this application, stating that the subject site is located in an M1-2 zoning district, that Home Depot is across the street, that a sanitation garage will be up the block and that financing for the subject building was for a house of worship; and

WHEREAS, the subject site is located on the east side of Spencer Street, between Myrtle Avenue and Willoughby Avenue, in an M1-2 zoning district, in Brooklyn; and

WHEREAS, the subject site has approximately 84 feet of frontage along Spencer Street, 100 feet of depth, 8,420 square feet of lot area and is occupied by a four-story, with cellar, community-facility building; and

WHEREAS, ZR 73-19 provides:

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 *street* 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 is also subject to and guided by

MINUTES

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, as to the threshold issue of whether the School qualifies as a school for purposes of ZR § 73-19, the applicant represents that the School meets the ZR § 12-10 "school" definition 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, a kindergarten and a child care service operating under a permit issued pursuant to the New York City Health Code; and

WHEREAS, further, the applicant submitted a copy of the School's Certificate of Filing for Article 43 School-Based Pre-School Instructional Program and accompanying letter from the New York City Department of Health ("DOH") as well as the School's Basic Educational Data System Code number; and

WHEREAS, with respect to ZR § 73-19(a), an applicant must demonstrate its 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 proposed school, within a district where the proposed school is permitted as-of-right; and

WHEREAS, the applicant submitted a detailed study of the School's programmatic needs, indicating that the School's preschool, elementary-school and middle-school divisions will relocate from the School's existing facility at 382 Willoughby Avenue, where the high-school division will remain, and that the subject building is necessary to accommodate approximately 500 students, consisting of two classes per grade for preschool through eighth grade; and

WHEREAS, the study further demonstrates that, in order to meet the School's educational program, the School requires a minimum of 25,000 square feet of floor area to allow for 21 classrooms, a computer room, library, gymnasium and lunch room; and

WHEREAS, thus, the applicant has demonstrated that its stated requirements related to size and configuration are justified by its programmatic needs; and

WHEREAS, the applicant represents that the School has conducted an exhaustive search for potential expansion sites but that there were no appropriate sites within a district where the School would be permitted as of right, including

nearby R6 and R7 zoning districts; and

WHEREAS, more specifically, the applicant states that 265 South 2nd Street was not financially feasible and was not in the subject neighborhood, that 139 Emerson Place was not financially feasible, that 45 Kosciuszko Street was not financially feasible, that 566 Dekalb Avenue was not financially feasible and that 276 Nostrand Avenue was limited in size and would require extensive construction to develop; and

WHEREAS, thus, 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 states that the subject building is located within 400 feet of the boundary of an R6B zoning district; and

WHEREAS, the Applicant submitted a radius diagram which reflects that the subject site is adjacent to an R6B zoning district; 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 states that, with respect to noise, monitoring has been conducted at the subject site, that the results of the noise analysis met applicable noise-exposure guidelines, that no window-wall noise attenuation is required and that there would be no adverse impacts related to noise; and

WHEREAS, the applicant states that an industrial source screening analysis has been completed, that this emissions and dispersion analysis determined that surrounding emission sources do not have the potential for adverse impacts; and

WHEREAS, the applicant states that a central HVAC system will serve the subject building to ensure that a closed-window condition can be maintained during all periods of school operation; and

WHEREAS, the Board finds that the conditions surrounding the site and the proposed building's use will adequately separate the proposed school use 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 proposed school will be located can be controlled so as to protect children traveling to and from the proposed school; and

MINUTES

WHEREAS, the applicant states that the Spencer Street is a one-way southbound street with a single moving lane and curbside loading and parking with two commercial warehouses located in close proximity to the subject site that generate truck traffic and loading activity using forklifts and “U boat” carts; and

WHEREAS, the applicant states that, in order to ensure the protection of children traveling to and from the School, all children should arrive and depart by school bus; and

WHEREAS, the applicant states that children will not be allowed to travel to or from the School unattended and will be escorted to and from school buses or accompanied by a parent or guardian; and

WHEREAS, the applicant states that children will travel to the School by private school buses, that a bus loading area will be provided in front of the subject building on Spencer Street in order to provide a safe and appropriate area for picking up and dropping off passengers without impeding the flow of traffic, that a school zone designations will be obtained from the New York City Department of Transportation (“DOT”) and added to the 84-foot frontage along Spencer Street to ensure that the curbside in front of the School will be available for school buses to drop off and pick up students during school hours; and

WHEREAS, the applicant states that school buses will be parked at a private parking lot located at 72 Nostrand Avenue, when not in use, for daytime and overnight parking; and

WHEREAS, the applicant states there will be staff monitors assigned to each bus and at the entrance to the School, that there will be a two-way radio system installed in the buses and the office to communicate with the designated dispatcher and transportation manager, that seven school buses will be used for transportation services with five in service at any time, that each bus route will be named by color in order to make the dismissal of students from the School more efficient with students assigned a different color based on the area in which they live; and

WHEREAS, the applicant states that the bus schedule for the School includes two morning arrival periods and three afternoon departure periods, that the first morning arrival period would begin at 8:15 a.m. with three 15-minute shifts at 8:15 a.m., 8:30 a.m. and 8:45 a.m., that the second morning arrival period would begin at 9:30 a.m. with three 15-minute shifts, that the first departure period would begin at 2:20 p.m. with three 15-minute shifts, that the second departure period would begin at 4:00 p.m. with two 15-minute shifts and that the third departure period would be at 5:00 p.m.;

WHEREAS, the Board finds that the above mentioned measures will control traffic so as to protect children going to and from the proposed school; and

WHEREAS, therefore, the Board finds that the requirements of ZR § 73-19(d) are met; and

WHEREAS, in response to the Board’s comments at hearing, the applicant clarified the School’s programmatic

needs with respect to occupancy of the lunch room, the proposed number of students and faculty and the number of offices; 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 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. 14BSA117K, dated June 22, 2018; 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 November 6, 2013, the New York City Landmarks Preservation Commission represents that no significant adverse impacts to architectural or archaeological resources would result from the proposed project; and

WHEREAS, by letter dated August 12, 2015, the New York City Department of Environmental Protection (“DEP”) states that the June 2015 Remedial Action Plan (“RAP”) and Construction Health and Safety Plan (“CHASP”) submitted by the Applicant’s consultant are acceptable on condition that the RAP and CHASP be revised to incorporate all DEP recommendations as listed in the letter; and

WHEREAS, DEP further stated that, at the completion of the project, a professional engineer-certified Remedial Closure Report shall be submitted to DEP for review and approval; and

WHEREAS, by letter dated December 30, 2015, the New York City Department of Environmental Protection (“DEP”) states that, based on the results of the revised Rooftop Play Area Noise analysis dated December 7, 2015, which include the potential impact of the playground on the nearest noise sensitive receptor, it was determined that the proposed project would not result in potential significant adverse noise impacts; and

WHEREAS, by letter dated June 21, 2018, DEP states that the proposed project would not result in any significant adverse air quality impact, that the air quality assessment included the analysis of potential air quality impacts from the proposed project on its surrounding area and potential

MINUTES

effects from nearby industrial sources on the proposed 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

WHEREAS, the Board finds that the evidence in the record supports the findings required to be made under ZR §§ 73-19 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion.

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 an M1-2 zoning district, the operation of a school, contrary to ZR § 42-10; *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked “Received August 14, 2015”-Eleven (11) sheets; and *on further condition*:

THAT a certificate of occupancy shall be obtained within four (4) years, by June 26, 2022;

THAT at the completion of the project, a professional engineer-certified Remedial Closure Report shall be submitted to the New York City Department of Environmental Protection for review and approval for the proposed project, which report shall indicate that all remedial requirements have been properly implemented, including installation of a vapor barrier and sub-slab depressurization system and transportation and disposal manifests for removal and disposal of soil in accordance with New York State Department of Environmental Conservation regulations;

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 26, 2018.

226-14-BZ

CEQR #15-BSA-067Q

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 76th Road, Block 6686, Lot 1, Borough of Queens.

COMMUNITY BOARD #8Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:0

THE RESOLUTION –

WHEREAS, the decision on behalf of the Queens Borough Commissioner, dated August 18, 2014, acting on Department of Buildings (“DOB”) Application No. 420161577 reads in pertinent part:

1. Proposed floor area exceeds maximum allowable contrary to ZR 24-11;
2. Proposed lot coverage is contrary to ZR 24-11;
3. Proposed front yard is contrary to ZR 24-34;
4. Proposed side yards are contrary to ZR 24-35; and

WHEREAS, this is an application under ZR § 72-21 to permit, on a site located in an R4 zoning district, the construction of a two-story plus cellar and basement Use Group 4 house of worship contrary to applicable bulk regulations pertaining to maximum floor area ratio, lot coverage, front yards and side yards set forth in ZR §§ 24-11, 24-34 and 24-35; and

WHEREAS, this application is filed on behalf of Shary Tefilah, a non-profit religious corporation, to facilitate the construction of a synagogue (the “Applicant”); 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 August 15, 2017, and November 14, 2017, and then to decision on June 26, 2018; and

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

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

WHEREAS, the subject site is located on the southeastern corner of 76th Road and 147th Street, in an R4 zoning district, in Queens; and

WHEREAS, the site has approximately 32 feet of frontage along 76th Street, 100 feet of frontage along 147th Street, 3,167 square feet of lot area and is occupied by a two story building having 1,237 square feet of floor area; and

MINUTES

WHEREAS, the Applicant proposes to demolish the existing building and construct a two-story plus cellar and basement community facility containing 6,928 square feet of floor area, a floor area ratio ("FAR") of 2.2, 76 percent lot coverage, a 12'-6" front yard along 76th Road, no front yard along 147th Street, a 10'-11" side yard parallel to 76th Road and no side yard along the lot line parallel to 147th Street; and

WHEREAS, at the subject site, a maximum of 6,334 square feet of floor area (2.0 FAR) and 60 percent lot coverage are permitted pursuant to ZR § 24-11, two front yards with a depth of at least 15 feet are required pursuant to ZR § 24-34 and two side yards of at least 10.81 feet are required pursuant to ZR § 24-35; and

WHEREAS, accordingly, the Applicant seeks the subject relief; and

WHEREAS, the Applicant submits that the proposed enlarged building is required to meet the needs of the burgeoning congregation, which, at 105 families, has already outgrown the existing space, and, accordingly, proposes a main sanctuary at the first floor with seating sufficient for 142 male and female congregants on the Sabbath and Jewish holidays, the days on which the building will reach maximum capacity; and

WHEREAS, the Applicant further submits that the subject proposal will provide sufficient space to fulfill the congregation's other needs, currently met through the rental of off-site facilities, which include spaces for prayer services, lectures, youth programming, Sunday and summer school education, a day care center and an office for the rabbi; and

WHEREAS, specifically, the Applicant additionally proposes a two classrooms, mechanical equipment and a refrigerated trash room in the cellar, a multi-purpose area with movable partitions and kitchen in the basement, and two classrooms and office space for the rabbi and his staff on the second floor; and

WHEREAS, the Applicant represents that prayer services are offered at the premises three times a day and lectures to groups of various sizes and ages; in particular, on the Sabbath and Jewish holidays, the multi-purpose room in the basement and the second floor classrooms will be utilized for youth programming, religious services and lectures; on Sundays, the cellar and basement classroom and multi-purpose areas will be used for Sunday schools for youth while the sanctuary on the first floor will be used, starting at 6:45 a.m., for prayer services and lectures and the second floor office spaces will be used by congregants conferring with the rabbi; on weekdays, the cellar and basement will be utilized by a daycare program for children of the congregation ages 2 to 5 while the first floor will host lectures and prayer services and the second floor will be used by the Rabbinical Court for meetings between the Rabbi and congregants; and during the summer months, the premises will be occupied by a summer study program for teen members of the congregation; and

WHEREAS, the Board acknowledges that the

Applicant, 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 to support the subject variance application; and

WHEREAS, specifically, as held in *Cornell University v. Bagnardi*, 68 NY2d 583 (1986), zoning boards must grant an educational or religious institution's application 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 are insufficient grounds for the denial of such applications; and

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

WHEREAS, the Applicant is a not-for-profit religious organization, the variance is needed to further its not-for-profit mission and, thus, 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 submits 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, that the proposed community facility use is permitted as-of-right at the subject premises; that the building's location on the corner helps to mitigate the fact that it is slightly larger than surrounding buildings; that the absence of a side yard along the shared lot line with the adjacent property is consistent with the surrounding area, where the majority of building are either semi-detached or attached; and

WHEREAS, with regards to traffic, the Applicant submits that the proposal will have no impact on traffic in the neighborhood because the building will be at full capacity on the Sabbath and Jewish holidays, days on which the orthodox congregation will not drive and, thus, will not utilize on-street parking spaces; additionally, the Applicant provided a report demonstrating that all of the congregants live within one-quarter mile, an approximately 8 minute walk, of the premises and a survey concluding that almost all of the congregants arrive to the subject site by foot; and

WHEREAS, with regards to materials, the Applicant states that the exterior of all sides of the proposed building will be faced with 4-inch brick veneer, as shown on the Board-approved plans; 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 the grounds for his 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

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and, in support of that assertion, submitted plans showing (1) an as-of-right community facility at the premises that would be less than 9 feet wide and, thus, unable to accommodate the congregation's needs and (2) a lesser variance scenario in which the proposed building complies with underlying floor area and floor area ratio regulations, but reduces the occupancy of the multi-purpose room in the basement and the main sanctuary at the first floor; 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. 15-BSA-067Q, dated January 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; 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, the New York City Landmark Preservations Commissioner ("LPC") conducted an environmental review of the site and reports that it has 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 R4 zoning district, the construction of a two-story plus cellar and basement Use Group 4 house of worship contrary to applicable bulk regulations pertaining to maximum floor area ratio, lot coverage, front yards and side yards set forth in ZR §§ 24-11, 24-34 and 24-35, *on condition* that all work shall substantially conform to drawings filed with this application marked "Received June 7, 2018"-Eleven (11) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum of 6,928 square feet of floor area (2.2 FAR), maximum lot coverage of 76 percent, a front yard fronting 76th Road with a minimum depth of 12'-6", a front yard fronting 147th Street with a minimum depth of 0

feet, a side yard along the lot line parallel to 76th Road with a minimum width of 10'-11" and a side yard along the lot line parallel to 147th Street with a minimum width of 0 feet, 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.

Adopted by the Board of Standards and Appeals, June 26, 2018.

2016-4301-BZ

CEQR #17-BSA-040K

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 – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings ("DOB"), dated October 13, 2016, acting on Alteration Application No. 321195121, reads in pertinent part:

1. ZR 23-142 The proposed lot coverage . . . is more than . . . permitted
2. ZR 23-142 The proposed open space . . . is less than . . . required
3. ZR 23-142(a) The proposed F.A.R. is in excess of . . . permitted
4. ZR 23-32 ZR 23-48 ZR 23-47 The proposed side yard #1 is less than . . . required The proposed side yard #2 is less than . . .

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required The total side yards are less than . . . required The rear yard is less than . . . required; 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 zoning regulations for lot coverage, open space, floor area ratio, side yards and rear yards, contrary to ZR §§ 23-142, 23-32, 23-48 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 continued hearings on September 12, 2017, November 21, 2017, January 30, 2018, April 17, 2018, and June 19, 2018, and then to decision on June 26, 2018; 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 Oxford Street, between Shore Boulevard and Oriental Boulevard, in an R3-1 zoning district, in a flood zone, in Brooklyn; and

WHEREAS, the subject site has approximately 25 feet of frontage along Oxford Street, 100 feet of depth, 2,500 square feet of lot area and is occupied by an existing single-family detached residence; and

WHEREAS, the Board has exercised jurisdiction over the subject site since March 5, 1985, when, under BSA Calendar Number 707-84-BZ, the Board granted a variance to permit a one-story vertical enlargement to a single-family residence that increases the degree of non-compliance with side yards, provides less than the required open space, creates a non-complying accessory parking space within the required front yard and with a balcony that encroaches into the rear yard and open space on condition that smoke detectors be installed on all levels and that said condition appear on the certificate of occupancy; 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

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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 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 from lot coverage of 41 percent to 45 percent, open space from 59 percent to 55 percent, 1,465 square feet of floor area (0.58 FAR) to 2,635 square feet (1.05 FAR), side yards from depths of 5" to 3'-4" and 2'-9" to 2'-9" and a rear yard with a depth of 39'4" to 20'-8" at the first floor and 24'-8" at the second floor; and

WHEREAS, the applicant states that, at the subject site, lot coverage may not exceed 35 percent under ZR § 23-142, open space must be at least 35 percent under ZR § 23-142, floor area ratio may not exceed 0.60 under ZR § 23-142, side yards must have minimum widths of 5 feet and rear yards must have a minimum depth of 30 feet under ZR § 23-47; and

WHEREAS, the applicant represents that the proposed building as enlarged is consistent with the built character of the neighborhood; and

WHEREAS, in support of this contention, the applicant surveyed single- and two-family residences in the surrounding area, finding that there are 28 with lot coverage of 46 percent or greater, that there are 24 with 1.10 FAR or greater, that there are 21 residences on the subject block with rear yards shallower than 20 feet and that every residence on the subject block has at least one side yard with a width of less than 5 feet; and

WHEREAS, the applicant also submitted a photographic streetscape montage, a contextual streetscape illustration, aerial photographs and a photographic neighborhood study demonstrating that the proposed building will fit in with the built conditions of the surrounding area; and

WHEREAS, based upon its review of the record and inspections of the subject site and surrounding neighborhood, the Board finds that the proposed building as enlarged will not alter the essential character of the neighborhood or district in which the subject building is located, nor impair the future use or development of the surrounding area; and

WHEREAS, in response to questions from the Board about the effect of the enlarged building on residences nearby, the applicant revised the building design to incorporate a setback at the second floor, increasing the rear yard depth to 24'8", and adding dormers at the attic level to improve the exterior aesthetics of the attic by lowering the ridge height and reducing the boiler room while increasing the attic's interior utility; and

WHEREAS, the applicant also clarifies that, had a special permit under ZR § 73-622 been available in 1985, only accessory parking would have been beyond the scope of ZR § 73-622 and that parking is not proposed to be located within the front yard; and

WHEREAS, the applicant submits that the subject site is located within a flood zone; and

WHEREAS, by Construction Code Determination dated May 22, 2018, DOB states that the request to determine that the proposed alteration complies with the applicable requirements of Appendix G of the 2014 New York City Building Code is approved on condition that the enclosed space below the Design Flood Elevation be useable solely for parking of vehicles, building access and storage and that wet-flood proofing in accordance with ASCE 24 be provided for each enclosed space below the DFE; and

WHEREAS, by Zoning Resolution Determination dated June 15, 2018, DOB states that the request to determine that the proposed alteration complies with the applicable requirements of Chapter 4 of Article VI of the Zoning Resolution is approved on condition that a certified survey be provided in order to verify the average curb level calculation under ZR § 64-334 and that, as the lowest occupiable floor is over 9 feet above curb level, two visual mitigation elements be provided in accordance with ZR § 64-61; 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 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-040K, dated November 9, 2016; and

WHEREAS, the Board finds that the evidence in the record supports the findings required to be made under ZR §§ 73-622 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion.

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 §§ 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 zoning regulations for lot coverage, open space, floor area ratio, side yards and rear yards, contrary to ZR §§ 23-142, 23-32, 23-48 and 23-47; *on condition* that all work and site conditions shall conform to drawings filed with this application marked "Received June 26, 2018"-Seventeen (17) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: lot coverage shall not exceed 45 percent, open space shall be at least 55 percent, floor area shall not exceed 2,635 square feet (1.05 FAR), side yards shall have

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minimum depths of 3'-4" and 2'-9" and the rear yard shall have minimum depths of 20'-8" at the first floor and 24'-8" at the second floor, as illustrated on the Board-approved plans;

THAT removal of existing joists or perimeter walls in excess of that shown on the Board-approved plans shall void the special permit;

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 26, 2022;

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 26, 2018.

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 45th Avenue. Block 5538, Lot 30. Borough of Queens.

COMMUNITY BOARD #11Q

ACTION OF THE BOARD – Laid over to August 14, 2018, at 10 A.M., for continued hearing.

2016-4468-BZ

APPLICANT – Bryan Cave LLP, for 27 East 61st 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 61st Street, Block 1376, Lot 24, Borough of Manhattan.

COMMUNITY BOARD #8M

ACTION OF THE BOARD – Laid over to August 21, 2018, at 10 A.M., for continued hearing.

2016-4472-BZ

APPLICANT – Sheldon Lobel, P.C., for Marino Plaza 63-12, LLC, owner; Body By Fitness Health Club 1 Inc., lessee.

SUBJECT – Application December 28, 2016 – 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 zoning district.

PREMISES AFFECTED – 245-01–245-13 Jamaica Avenue aka 245-13 Jericho Turnpike, Block 8659, Lot 1, Borough of Queens.

COMMUNITY BOARD #13Q

ACTION OF THE BOARD – Laid over to September 13, 2018, at 10 A.M., for adjourned hearing.

2017-228-BZ

APPLICANT – Fox Rothschild LLP, for Charles B. Wang Community Health Center, Inc., owner.

SUBJECT – Application July 17, 2017 – 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.

PREMISES AFFECTED – 131-66 40th Road, 131-68 40th Road, 40-46 College Point Boulevard, Block 5060, Lot(s) 37, 42, Borough of Queens.

COMMUNITY BOARD #7Q

ACTION OF THE BOARD – Laid over to August 21, 2018, at 10 A.M., for continued hearing.

2017-235-BZ

APPLICANT – Snyder & Snyder LLP on behalf of T-Mobile Northeast LLC, for 111th Avenue LLC, owner; T-Mobile Northeast LLC, lessee.

SUBJECT – Application August 9, 2017 – 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.

PREMISES AFFECTED – 111-02 Sutphin Boulevard, Block 11965, Lot 188, Borough of Queens.

COMMUNITY BOARD #12Q

ACTION OF THE BOARD – Laid over to August 21, 2018, at 10 A.M., for continued hearing.

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

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5135, Lot 1, Borough of Bronx.

COMMUNITY BOARD #10BX

ACTION OF THE BOARD – Laid over to September 13, 2018, at 10 A.M., for adjourned hearing.

REGULAR MEETING TUESDAY AFTERNOON, JUNE 26, 2018 1:00 P.M.

Present: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.

ZONING CALENDAR

2018-12-BZ

APPLICANT – Jay Goldstein, Esq., for 241 Bedford Associates LLC, owner; Flywheel Sports Inc., lessee.

SUBJECT – Application January 26, 2018 – Special Permit (§73-36) to permit the legalization of a physical cultural establishment (*Flywheel*) within a portion of the first floor of an existing building contrary to ZR §42-10. M1-2/R6B Greenpoint-Williamsburg Anti-Harassment District.

PREMISES AFFECTED – 173 N 3rd Street, (156 N 4th Street), Block 2352, Lot 9, 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 Sheta and Commissioner Scibetta.....5

Negative:0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated March 23, 2018, acting on Alteration Application No. 321191161, reads in pertinent part:

“As per 42-10 use (Physical Culture Establishment) is not permitted”; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to permit, in an M1-2/R6B zoning district and the Special Mixed Use District (MX-8), the legalization of a physical culture establishment on a portion of the first floor of the subject building, contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on June 26, 2018, after due notice by publication in *The City Record*, and then to decision on June 26, 2018; 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 north side of North 3rd Street, between Bedford Avenue and Driggs Avenue, in an M1-2/R6B zoning district and the Special Mixed Use District (MX-8), in Brooklyn; and

WHEREAS, the subject site has approximately 250 feet of frontage along North 3rd Street, 162 feet of frontage along Bedford Avenue, 150 feet of frontage along North 4th Street, 53,500 square feet of lot area and is occupied by a four-story residential building on Lot 5, a two-story commercial building on Lot 90 and a two-story, with mezzanine and penthouse, mixed-use commercial and residential building on Lot 9, in which the PCE is located on a portion of the first floor; 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

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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 3,405 square feet of floor space on a portion of the first floor, used for reception, retail, an office, restrooms, a cycling studio, lockers and shower rooms; and

WHEREAS, the PCE has been in operation as Flywheel since April 2017, with the following hours of operation: 6:00 a.m. to 9:00 p.m., daily; and

WHEREAS, the applicant represents that the PCE use is consistent with the vibrant mixed-use area in which it is located, that the PCE use is fully contained within the envelope of an existing building and that the subject site has pedestrian access to rapid transit facilities within the vicinity; and

WHEREAS, in addition, the applicant submits that sound attenuation measures—including partitions at the cycling studio isolated with two layers of 5/8” sheetrock in studio and two layers outside studio with glue and 4” sound-attenuated batt insulated, 4” isolated mat subfloor with neoprene isolators, fiberglass batting and perimeter isolation boards at all edges and penetrations at the studio ceiling and partitions sealed with mineral fiber insulation and caulked—have been provided within the space so as to not disturb other tenants in the building; and

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

WHEREAS, the applicant states that the PCE provides one group exercise rooms, used for instructional spinning 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 submitted evidence 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 June 21, 2018, the Fire Department represents 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 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 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. 18-BSA-091K, dated January 30, 2018; and

WHEREAS, the Board finds that the evidence in the record supports the findings required to be made under ZR §§ 73-36 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion; 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 without a special permit.

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 §§ 73-36 and 73-03 *to permit*, in an M1-2/R6B zoning district and the Special Mixed Use District (MX-8), the legalization of a physical culture establishment on a portion of the first floor of the subject building, contrary to ZR § 42-10; *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked “Received March 27, 2018”-Three (3) sheets and “January 30, 2018”-Three (3) sheets; and *on further condition*:

THAT this grant shall be limited to a term of 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

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maintained 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 remain 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 June 26, 2028;

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 26, 2018.

2018-28-BZ

CEQR #18-BSA-102Q

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 130-20 Farmers LLC, owner; Blink Farmers Boulevard, Inc. lessee.

SUBJECT – Application February 21, 2018 - Special Permit (§73-36) to permit the operation of a physical cultural establishment (*Blink Fitness*) to operate within a new commercial building to occupy a portion of the first floor and the entire second floor contrary to ZR §32-10. C2-3/R5D zoning district.

PREMISES AFFECTED – 130-20 Farmers Boulevard, Block 12542, Lot 3, 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, Commissioner Sheta and Commissioner Scibetta.....5
Negative:0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated February 5, 2018, acting on New

Building Application No. 421517264, reads in pertinent part:

“Proposed Physical Culture Establishment . . . is contrary to section 32-10 ZR”; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to permit, on a site partially in an R5D (C2-3) zoning district and partially in an R3X zoning district, the operation of a physical culture establishment on a portion of a first floor and second floor of a three-story, with cellar, commercial building under construction, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on June 26, 2018, after due notice by publication in *The City Record*, and then to decision on the same date; and

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

WHEREAS, the subject site is located on the west side of Farmers Boulevard, between 130th Road, Merrick Boulevard and 131st Avenue, partially in an R5D (C2-3) zoning district and partially in an R3X zoning district in Queens; and

WHEREAS, the subject site has approximately 200 feet of frontage along Farmers Boulevard, 124 feet of frontage along 130th Road, 36 feet of frontage along Merrick Boulevard, 67 feet of frontage along 131st Avenue, 27,730 square feet of lot area and is vacant; 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

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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 14,913 square feet of floor space as follows: 716 square feet of floor area on the first floor, used for accessible entry, and 14,197 square feet of floor area on the second floor, including a cardiovascular-fitness, stretching and weight-training areas, locker rooms, an office and a break room; and

WHEREAS, the PCE will operate as Blink Fitness, with the following 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 PCE use is consistent with the vibrant commercial area in which it is located, that the PCE use will be fully contained within the envelope of a new commercial development and that there are comparable commercial uses, including automobile

service stations, a car wash, restaurants, pharmacies and retail uses, within the vicinity; and

WHEREAS, in addition, the applicant submits that sound attenuation measures, including rubber flooring in activity areas and demising walls with batt insulation, will be provided within the space so as to ensure that the sound levels in other portions of the building will not exceed a maximum level of 45 dBA; and

WHEREAS, the Board finds that the PCE use is so located as not to 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 the PCE will be 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—will be installed in the entire PCE space; and

WHEREAS, in response to the Board's comments at hearing, the applicant revised the drawings to reflect the zoning district boundary and that neither the PCE use nor accessory off-street parking is proposed to be located the portion of the subject site within an R3X zoning district; 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 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. 18-BSA-102Q, dated February 22, 2018; and

WHEREAS, the Board finds that the evidence in the record supports the findings required to be made under ZR §§ 73-36 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion.

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 §§ 73-36 and 73-03 to *permit*,

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on a site partially in an R5D (C2-3) zoning district and partially in an R3X zoning district, the operation of a physical culture establishment on a portion of a first floor and second floor of a three-story, with cellar, commercial building under construction, contrary to ZR § 32-10; *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked "Received June 26, 2018"-Five (5) sheets; and *on further condition*:

THAT this grant shall be limited to a term of ten (10) years, expiring June 26, 2028;

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 June 26, 2022;

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 26, 2018.

2017-131-BZ

APPLICANT – Sheldon Lobel, P.C., for Congregation Divrei Yoel, owner.

SUBJECT – Application April 18, 2018 – 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 §§24-36 & 23-47 (Required Rear Yards), and ZR 23-33(b) permitted obstructions in rear yard. R7A zoning district.

PREMISES AFFECTED – 77-85 Gerry Street, Block 2266, Lot(s) 46,47,48,49, Borough of Brooklyn.

COMMUNITY BOARD #1BK

ACTION OF THE BOARD – Laid over to September 13, 2018, at 10 A.M. for continued hearing.

2017-298-BZ

APPLICANT – Jay A Segal, Greenberg Traurig LLP, for 14 White Street Owner LLC, owner.

SUBJECT – Application November 9, 2017 – 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.

PREMISES AFFECTED – 14 White Street, Block 191, Lot 8, Borough of Manhattan.

COMMUNITY BOARD #1M

ACTION OF THE BOARD – Laid over to August 21, 2018, at 10 A.M. for continued hearing.

2018-18-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Garichi LLC, owner.

SUBJECT – Application February 7, 2018 – Re-instatement (§11-411) of a previously approved variance permitted retail uses which expired on June 18, 2001; Amendment (§11-411) to permit the enlargement of one of the existing buildings; Waiver of the Board's Rules. R5 zoning district. PREMISES AFFECTED – 2250 Linden Boulevard, Block 4359, Lot(s) 1, 6, Borough of Brooklyn.

COMMUNITY BOARD #5BK

ACTION OF THE BOARD – Laid over to September 27, 2018, at 10 A.M. for continued hearing.

2018-41-BZ

APPLICANT – Jay Goldstein, Esq., for David Janklowicz, owner.

SUBJECT – Application March 16, 2018 – Special Permit (§73-622) to permit the enlargement of a one family home contrary to ZR §23-141 (FAR and Open Space); ZR §23-461 (a) (side yard) and ZR §23-47 (rear yard). R2 zoning district.

PREMISES AFFECTED – 1238 East 29th Street, Block 7646, Lot 60, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Laid over to August 14, 2018, at 10 A.M. for continued hearing.

Carlo Costanza, Executive Director

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*CORRECTION

This resolution adopted on July 11, 2017, under Calendar No. 2017-57-BZ and printed in Volume 102, Bulletin Nos. 28-29, is hereby corrected to read as follows:

2017-57-BZ

CEQR #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

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 25,959 square feet, a floor area ratio (“FAR”) of 3.71 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

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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 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

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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 25,959 square feet of floor area (3.71 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 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.

***The resolution has been amended to correct the part which read:...** *square feet of floor area to 25,625 square feet, a floor area ratio ("FAR") of 3.66...* **now reads:...** *square feet of floor area to 25,959 square feet, a floor area ratio ("FAR") of 3.71....* **Corrected in Bulletin No. 27, Vol. 103, dated July 6, 2018.**

BULLETIN

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July 27, 2018

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Tuesday, July 17, 2018**

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107-13-A	638 East 11 th Street, Manhattan
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2017-39-BZ	271 Church Street, Manhattan
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2017-300-BZ	1275 Woodrow Road, Staten Island
2017-20-BZ	550 5 th Avenue, Brooklyn
2017-246-BZ	61/63 Crosby Street, Manhattan

DOCKETS

New Case Filed Up to July 17, 2018

2018-101-BZ

21 West End Avenue, intersection of West 61st Street and West End Avenue, Block 01171, Lot(s) 164, Borough of **Manhattan, Community Board: 7**. Special Permit (§73-36) to permit the operation of a Physical Culture Establishment (Central Rock Gym) to occupy portions of the cellar and ground floor of an existing 45-story condominium building contrary to ZR §32-10. C4-7 zoning district. C4-7 district.

2018-102-A

241 Grand Street, Located mid-block on the northern side of Grand Street between Driggs Avenue and Roebing Street, Block 02382, Lot(s) 0027, Borough of **Brooklyn, Community Board: 1**. Application to acquire vested rights under common law requesting the renewal of all building permits relating to the proposed development, as issued originally on March 11, 2009 in connection with Permit No. 302156798-01-AI in the then R6 zoning district. R6B zoning district. R6B/C2-4 district.

2018-103-BZ

936 Avenue R, Located on the south side of Avenue R between East 9th Street and Coney Island Avenue, Block 06685, Lot(s) 0015, Borough of **Brooklyn, Community Board: 15**. Special Permit (§73-622) to permit the enlargement of an existing single-family home, contrary to ZR §23-47 (less than the required rear yard). R5 (Special Ocean Parkway) and R5 (Special Ocean Parkway Sub-district). R5 district.

2018-104-BZ

1234-1238 East 22nd Street, Located on the west side of East 22nd Street between Avenue K and Avenue L, Block 07621, Lot(s) 72, 74, Borough of **Brooklyn, Community Board: 14**. Special Permit (§73-622) to permit the enlargement of an existing single-family home, contrary to floor area and open space (§23-141); side yard requirements (§23-461) and less than the required rear yard (§23-47). R2 zoning district. R2 district.

2018-105-A

150-87 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) 22, 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.

2018-106-BZ

124 Hastings Street, Premise located between Hampton Avenue and Oriental Boulevard, Block 08750, Lot(s) 0336, Borough of **Brooklyn, Community Board: 15**. Special Permit (§73-622) to permit the enlargement of an existing two-family residence to be converted to a single-family home, contrary to floor area, lot coverage and open space (§23-142); side yard requirements (§§23-461) and less than the required rear yard (§23-47). R3-1 zoning district. R3-1 district.

2018-107-BZ

1441 South Avenue, Premises located within the Staten Island Industrial Park, Block 02165, Lot(s) 0120, Borough of **Staten Island, Community Board: 2**. Variance (§72-21) to permit a school campus (UG 3) (Integration Charter Schools) contrary to ZR §42-00. M1-1 zoning district. M1-1 district.

2018-108-BZ

1 Wall Street, Located on Wall Street, Broadway, Exchange Place and New Streets, Block 00023, Lot(s) 0007, Borough of **Manhattan, Community Board: 1**. Special Permit (§73-36) to permit the operation of a physical cultural establishment (Life Time) to be located on 72,630 square feet of the ground floor, and portions of three below-grade levels of a mixed-use residential and commercial building contrary to ZR §32-10. C5-5 Special Lower Manhattan District (One Wall Street – North Tower is designated as an Individual New York City Landmark). C5-5 district.

2018-109-BZ

9-03 44th Road, located on an entire block bounded by 44th Road, 9th Street, 44th Avenue and 10th Street., Block 00451, Lot(s) 1, Borough of **Queens, Community Board: 2**. Special Permit (§73-19) to permit the operation of a school (UG 3) (Our World Neighborhood Charter Schools (OWN) contrary to ZR §42-00. M1-4 zoning district. M1-4 district.

2018-110-BZ

17 Abbey Court, Located on Plumb Beach Channel Shoreline, Lois Avenue, Block 08845, Lot(s) 1984, Borough of **Brooklyn, Community Board: 3**. 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. R-4 district.

DOCKETS

2018-111-BZ

18 Neutral Avenue, Block 04093, Lot(s) 0009, Borough of **Staten Island, Community Board: 5**. 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.

2018-112-BZ

26 Milbank Road, Located on Neutral Avenue, Cedar Grove Avenue, Block 04092, Lot(s) 0058, Borough of **Staten Island, Community Board: 5**. 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.

2018-113-BZ

27 State Road, Block 16340, Lot(s) 0050, Borough of **Queens, Community Board: 4**. 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.

2018-114-BZ

394 Beach 25th Street, Located on Camp Road, Deerfield Road, Block 15776, Lot(s) 0006, Borough of **Queens, Community Board: 4**. 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.R4A zoning district. R4A district.

2018-115-BZ

715 Cross Bay Boulevard, Located on Noel Road, West 8 Road, Block 15133, Lot(s) 0023, Borough of **Queens, Community Board: 4**. 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.R3-2 zoning district. R3-2 district.

2018-116-BZ

1982 Utica Avenue, The premise is located on the northeast corner of Utica Avenue and Avenue L, Block 07847, Lot(s) 0044, Borough of **Brooklyn, Community Board: 18**. Special Permit (§73-211) to permit the operation of an Automotive Service Station (UG 16B) with an accessory convenience store contrary to ZR §32-35. C2-2/R3-2 zoning district. R3-2/C2-2 district.

2018-117-BZ

2060 63rd Street, Located on the south side of 63rd Street, between 20th Avenue and 21st Avenue, Block 05542, Lot(s) 0030, Borough of **Brooklyn, Community Board: 11**. Special Permit (§73-622) to permit the enlargement of an existing two family, two-story home contrary to ZR §23-142 (floor area ratio) and ZR §23-461 (side yard requirements). R5 zoning district. R5 district.

2018-118-BZ

710 Avenue W, Located on the south side of Avenue W between East 7th Street and Coney Island Avenue., Block 07184, Lot(s) 0003, Borough of **Brooklyn, Community Board: 15**. Special Permit (§73-622) to permit the enlargement of an existing one family home contrary to ZR §23-142 (floor area ratio, lot coverage, rear yard and open space). R4 Special Ocean Parkway district. 15 district.

2018-119-BZ

8701 4th Avenue, Located on the southeast corner of intersection of 4th Avenue and 87th Street, Block 06050, Lot(s) 0008, Borough of **Brooklyn, Community Board: 10**. Special Permit (§73-36) to permit the operation of a physical cultural establishment (Dolphin Fitness) to be located on a portion of the first floor and the entirety of the second floor of a commercial building contrary to ZR §32-10. C4-2A Special Bay Ridge District. C4-2A district.

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

CALENDAR

REGULAR MEETING AUGUST 14, 2018, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, August 14, 2018, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

SPECIAL ORDER CALENDAR

30-58-BZ

APPLICANT – Vassalotti Associates Architects, LLP, for Maximum Properties, Inc., owner.

SUBJECT – Application April 26, 2018 – Extension of Term (§11-411) of a variance permitting the operation of an automotive service station (UG 16B) which expired on March 12, 2017; Waiver of the Rules. C2-1/R3-1 zoning district.

PREMISES AFFECTED – 184-17 Horace Harding Expressway, Block 7067, Lot 50, Borough of Queens.

COMMUNITY BOARD #11Q

340-04-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for WG Staten Island Realty LLC, owner.

SUBJECT – Application February 9, 2018 – Amendment of a previously approved Variance (§72-21) which requested bulk variance to allow the construction of a drug store without the required parking contrary to Z.R. §§33-23(B) and 36-21. The amendment seeks to change the use from a drug store (UG6) PRC-B to a food store (UG 6) PRC-A. C4-1 zoning district.

PREMISES AFFECTED – 1579 Forest Avenue, Block 1053, Lot 149, Borough of Staten Island.

COMMUNITY BOARD #1SI

163-14-A thru 165-14-A

APPLICANT – Ponte Equities Inc.

SUBJECT – Application July 13, 2018 – Compliance Hearing.

PREMISES AFFECTED – 502, 504 and 506 Canal Street, Block 595, Lot(s) 40, 39, 38, Borough of Manhattan.

COMMUNITY BOARD #1M

APPEALS CALENDAR

2018-127-A

APPLICANT – NYC Mayor’s Office of Housing Recovery
SUBJECT – Application August 1, 2018 – Proposed reconstruction of a storm damaged home that is located within the bed of a mapped street, contrary to General City Law § 35. The property is within a street widening line where there is no interference with a City Capital improvement project. C3A/Special Coastal Risk District.

PREMISES AFFECTED – 20-08 Demerest Road, Block 11550, Lot 104, Borough of Queens.

COMMUNITY BOARD #14Q

REGULAR MEETING AUGUST 14, 2018, 1:00 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, August 14, 2018, 1:00 P.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

ZONING CALENDAR

268-14-BZ

APPLICANT – Akerman LLP, for Kenfa Madison, LLC; Two Deer Group, LLC, owner.

SUBJECT – Application October 31, 2014 – Variance (§72-21) proposed enlargement of the existing Use Group 6, eating and drinking establishment at the subject site. R1-2 zoning district.

PREMISES AFFECTED – 231-06/10 Northern Boulevard, Block 8164, Lot(s) 22, 122, 30, 130, 43 15, 230, Borough of Queens.

COMMUNITY BOARD #11Q

231-15-BZ

APPLICANT – Vincent L. Petraro, PLLC, for Destem Realty and Petra Broadway, LLCs, owner.

SUBJECT – Application September 25, 2015 – Variance (§72-21) Propose nine story, mixed use (residential, community facility and retail building) 120 unit multiple dwelling with UG 4 doctor's office, and UG 6 retail pharmacy, contrary to ZR 22-10 (UG 6 in a Res ZD), ZR 23-145 (Residential Floor Area), ZR 23-22 (Permitted Dwelling Units), and ZR 23-633 (wall height and total height). R6 zoning district.

PREMISES AFFECTED – 5278 Post Road, Block 5835, Lot(s) 3055/3060, Borough of Bronx.

COMMUNITY BOARD #8BX

CALENDAR

2017-321-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for ERY North Tower RHC Tenant LLC, owner; Equinox Hudson Yards, Inc., lessee.

SUBJECT – Application December 19, 2017 – Special Permit (§73-36) to permit the operation of a Physical Cultural Establishment (*Equinox*) located on the first, fourth, fifth and sixth floors of a proposed 72-story mixed-use building contrary to ZR §32-10. C6-4 Special Hudson Yards District.

PREMISES AFFECTED – 560 W. 33rd Street, Block 702, Lot 150, Borough of Manhattan.

COMMUNITY BOARD #4M

2018-4-BZ

APPLICANT – Law Office of Lyra J. Altman, for Laura Betesh and Isaac A. Cabasso, owners.

SUBJECT – Application January 16, 2018 – Special Permit (§73-622) for the enlargement of an existing single-family home contrary ZR §23-142 (floor area, open space and lot coverage); ZR §23-48 (side yards) and ZR §23-47 (rear yard). R4 zoning district.

PREMISES AFFECTED – 2213 East 13th Street, Block 7374, Lot 79, Borough of Brooklyn.

COMMUNITY BOARD #15BK

2018-7-BZ

APPLICANT – Law Office of Lyra J. Altman, for Eli Halabi, owner.

SUBJECT – Application January 18, 2018 – Special Permit (§73-622) for the enlargement of an existing single-family home contrary ZR §23-142 (floor area, open space and lot coverage); ZR §23-461 (side yards) and ZR §23-47 (rear yard). R4 zoning district.

PREMISES AFFECTED – 291 Avenue W, Block 7151, Lot 30, Borough of Brooklyn.

COMMUNITY BOARD #15BK

2018-29-BZ

APPLICANT – Law Office of Lyra J. Altman, for Brenda Zanziper and Yerachmiel Zanziper, owners.

SUBJECT – Application February 27, 2018 – Special Permit (§73-621) to permit the enlargement of an existing single-family home contrary to ZR §23-142 (floor area ratio, lot coverage and open space). R3-2 zoning district.

PREMISES AFFECTED – 1637 Madison Place, Block 7702, Lot 28, Borough of Brooklyn.

COMMUNITY BOARD #18BK

2018-62-BZ

APPLICANT – Sheldon Lobel, P.C., for RFK/K 77 Sands Owner, LLC; Brooklyn Laboratory Charter Schools, lessees.

SUBJECT – Application April 30, 2018 – Special Permit (§73-19) to permit the operation of a school (UG 3) (Brooklyn Laboratory Charter School) to be located on portions of the first, the second through fifth floors and part of the twelfth floor of an existing building contrary to ZR §42-10. M1-6 zoning district.

PREMISES AFFECTED – 73-77 Sands Street, Block 77, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #2BK

Carlo Costanza, Executive Director

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**REGULAR MEETING
TUESDAY MORNING, JULY 17, 2018
10:00 A.M.**

Present: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.

SPECIAL ORDER CALENDARS

436-53-BZ

APPLICANT – Sheldon Lobel, P.C., for RNA Turnpike Realty LLC, owner.

SUBJECT – Application January 13, 2016 – Extension of Term (§11-411) of a variance permitting the operation of an Automotive Service Station (UG 16B) which expired on February 24, 2014; Amendment (§11-412) to permit the enlargement of the existing building and to permit the conversion of the repair bays to an accessory convenience store; Waiver of the Rules. R3-2 zoning district.

PREMISES AFFECTED – 141-50 Union Turnpike, Block 6634, Lot 34, Borough of Queens.

COMMUNITY BOARD #8Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

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, and an amendment to permit the enlargement of an existing gasoline service station (Use Group 16) and the conversion of the subject building to an accessory convenience store; and

WHEREAS, a public hearing was held on this application on March 27, 2018, after due notice by publication in *The City Record*, with a continued hearing on May 22, 2018, and then to decision on July 17, 2018; and

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

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

WHEREAS, the subject site is located on the south side of Union Turnpike, between Grand Central Parkway and Main Street, in an R3-2 zoning district, in Queens; and

WHEREAS, the Board has exercised jurisdiction over the subject site since February 24, 1954, when, under the subject calendar number, the Board granted a variance to permit the erection and maintenance of a gasoline service station (lubritorium), auto wash (non-automatic), motor

vehicle repairs, storage and sale of accessories and office and to permit the parking of cars waiting to be serviced for a term of fifteen (15) years, expiring February 24, 1969, on condition that there be erected on all interior lot lines a brick masonry wall to a total height of not less than 5’-6”, properly coped and with no openings therein and except that such wall may be reduced to a height of 4’-0” within 10 feet of the Union Turnpike building line and that the balance of the subject site at the rear, not proposed to be included, remain unoccupied and be properly fenced and kept clean and neat with suitable landscaping; and

WHEREAS, on May 11, 1954, under the subject calendar number, the Board approved working plans as being in substantial accord with the requirements of its resolution on condition that the gasoline pumps be of a low approved type; and

WHEREAS, on May 7, 1957, under the subject calendar number, the Board amended the variance to allow that the number of gasoline storage tanks may be a total of 12 such approved tanks; and

WHEREAS, on February 18, 1969, under the subject calendar number, the Board granted an extension of term of ten (10) years, expiring February 24, 1979, on condition that the tall lighting mast on the easterly side of the subject site removed and that a new certificate of occupancy be obtained; and

WHEREAS, on May 7, 1974, under the subject calendar number, the Board amended the variance to allow minor modifications to the gasoline pumps; and

WHEREAS, on January 30, 1979, under the subject calendar number, the Board granted an extension of term of ten (10) years, expiring February 24, 1989, on condition that a new certificate of occupancy be obtained within one (1) year, by January 30, 1980; and

WHEREAS, on December 20, 1983, under the subject calendar number, the Board amended the variance to eliminate the uses of auto washing, lubrication, office, accessory sales and minor repairs with hand tools only, within the existing building, to add retail store (Use Group 6) with accessory parking and business signs and to change the front façade of the building on condition that the hours of operation for the retail store be restricted to 7:00 a.m. to 11:00 p.m., seven days per week, that all signs substantially comply with the C1 zoning district regulations, that all refuse be stored in containers within an enclosed area, that the subject site be swept daily and all litter and refuse be removed and 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 September 11, 1984, under the subject calendar number, the Board amended the variance to permit, in conjunction with a change to self-service pumps for the sale of gasoline in accordance with the condition of the resolution granted under BSA Calendar Number 489-84-A, the erection of a new 50’-0” x 50’-0” steel canopy, to add one additional gasoline pump island, to install new self-serve pumps and to change the office and sales area of the

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accessory building to an attendant's office and office 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 February 7, 1989, under the subject calendar number, the Board granted an extension of term of five (5) years, expiring February 24, 1994, and amended the variance to eliminate the three (3) approved repair bays and to install two (2) pits to provide a quick lube service, to enlarge the existing building so as to provide a waiting room for patrons, to change the interior layout of the accessory building and to eliminate a portion of the planting area along the easterly lot line on condition that the hours of operation be from 8:00 a.m. to 6:00 p.m., Monday through Saturday, and closed on Sunday, 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 February 7, 1990; and

WHEREAS, on January 13, 1998, under the subject calendar number, the Board granted an extension of term of ten (10) years, expiring February 24, 2004, and amended the variance to indicate changes in the elevation of the front, east and west ends of the building on condition that there be no outdoor storage, that the landscaping be installed and maintained, that the buffer area be maintained free of debris, that the signs be limited to those shown on the Board-approved drawings, that the oil changing hours be limited to 8:00 a.m. to 6:00 p.m., Monday through Saturday, and closed Sunday, that the lighting be directed down and away from the residential properties, that the subject 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 December 13, 2005, under the subject calendar number, the Board granted an extension of term of ten (10) years, expiring February 24, 2014, on condition that all landscaping be installed and maintained as indicated on the Board-approved plans, that the site be cleaned and maintained on a regular basis, that no more than 112 square feet of accessory business signage be permitted on the site and that the above conditions be listed on the certificate of occupancy; and

WHEREAS, the term having expired, the applicant now seeks a waiver of the Board's Rules of Practice and Procedure to allow the late filing of this application, an extension of term and an amendment to permit the enlargement of an existing gasoline service station (Use Group 16) and the conversion of the subject building to an accessory convenience store; and

WHEREAS, the applicant proposes to enlarge the subject building from 1,695 square feet of floor area to 2,347 square feet of floor area; and

WHEREAS, in response to community concerns about the reduction of the landscaped area, the Board directed the applicant to provide additional landscaping to the rear and east of the subject building; and

WHEREAS, the applicant also notes that the exterior

of the subject building will be stone cladding, lipped limestone cladding and concrete tile cladding, that the landscaping will consist of dense shrubbery, that the proposed convenience store constitutes an accessory use in accordance with DOB Technical Policy and Procedure Notice #10/99, that the spread of lighting at the subject site will not affect nearby residences and that illegal signage has been removed; and

WHEREAS, by letter dated June 27, 2018, the Fire Department states that it has no objection to this application; and

WHEREAS, based upon its review of the record, the Board has determined that the requested waiver of the Board's Rules of Practice and Procedure, extension of term and amendment are appropriate with certain conditions as set forth below.

Therefore it is Resolved, that the Board of Standards and Appeals does hereby *waive* the Rules of Practice and Procedure and *reopen* and *amend* the resolution, dated February 24, 1954, as amended through December 13, 2005, so that as amended this portion of the resolution shall read: "to *permit* an extension of term of ten (10) years, expiring February 24, 2024, and to *permit* the enlargement of an existing gasoline service station (Use Group 16) and the conversion of the subject building to an accessory convenience store; *on condition* that all work and site conditions shall conform to drawings filed with this application marked "Received June 27, 2018"-Seven (7) sheets; and *on further condition*:

THAT the term of this grant shall be for ten (10) years, expiring February 24, 2024;

THAT all landscaping shall be installed and maintained as indicated on the Board-approved plans;

THAT the site shall be cleaned and maintained on a regular basis;

THAT all signs shall substantially comply with the C1 zoning district regulations and shall be limited to those shown on the Board-approved drawings;

THAT there shall be no outdoor storage;

THAT the buffer area shall be maintained free of debris;

THAT the lighting shall be directed down and away from the residential properties;

THAT the subject site shall be maintained graffiti free;

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 appear on the certificate of occupancy;

THAT a certificate of occupancy shall be obtained within four (4) years, by July 17, 2022;

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

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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, July 17, 2018.

166-12-A & 107-13-A

APPLICANT – NYC Board of Standards and Appeals.
SUBJECT – Application June 19, 2018 – Motion to review original Board decision.

PREMISES AFFECTED – 638 East 11th Street, Block 393, Lot(s) 25, 26, 27, Borough of Manhattan.

COMMUNITY BOARD #1M

ACTION OF THE BOARD – Resolution Reviewed, Revised and Re-issued.

THE VOTE –

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

THE RESOLUTION –

WHEREAS, at public hearing on June 19, 2018, the Board made a motion, for good cause pursuant to § 1-12.6 of the Board’s Rules of Practice and Procedure, to review its decision in the subject calendar numbers, dated October 17, 2017, issued March 8, 2018 (the “Resolution”), at its public hearing held on July 17, 2018; and

WHEREAS, the Board provided notice of the hearing to review the Resolution to the New York City Department of Buildings (“DOB”), which filed BSA Cal. No. 166-12-A, an application to revoke Certificate of Occupancy No. 103703226 issued to the subject premises (the “CO Revocation Appeal”) as well as a motion to reargue that application pursuant to § 1-12.4 of the Board’s Rules of Practice and Procedure (the “Rules”), and the representative of the owner of the premises (the “Appellant”), who filed BSA Cal. No. 107-13-A, an application to recognize a common law vested right to continue construction at the site subsequent to an amendment to the Zoning Resolution that excluded Use Group 4 medical offices from the list of permitted obstructions in the subject premises’ required rear yard (the “Common Law Vested Right Appeal”; together, the “Appeals”) as well as motions to reargue both BSA Cal. Nos. 166-12-A and 107-13-A under the same provision of the Board’s Rules; and

WHEREAS, the Board moved to review the Resolution after denying both DOB’s and the Appellant’s requests to reargue the Appeals on June 19, 2018¹; and

WHEREAS, at the executive session for the July 17

hearing, held on July 16, 2018, the Board discussed ways in which the Resolution could be amended to more specifically describe the Board’s determinations on the Appeals as well as clarify the steps by which DOB and the Appellant could ensure compliance of the premises with the Zoning Resolution and Building Code; and

WHEREAS, the Resolution has been reviewed, revised accordingly and re-issued separately from this decision; and

Therefore, it is Resolved, that the Board of Standards and Appeals amends the resolution issued under BSA Cal. Nos. 166-12-A and 107-13-A, dated October 17, 2017, as revised July 17, 2018.

Adopted by the Board of Standards and Appeals, July 17, 2018.

1 A single resolution was issued for those decisions under BSA Cal. Nos. 166-12-A and 107-13-A (June 19, 2018).

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166-12-A & 107-13-A

APPLICANT – NYC Board of Standards and Appeals.
SUBJECT – Application June 19, 2018 – Review of Board decision adopted October 17, 2017, pursuant to §1-12.6 of Board’s Rule and §666(8) of the City Charter.
PREMISES AFFECTED – 638 East 11th Street, Block 393, Lot(s) 25, 26, 27, Borough of Manhattan.

COMMUNITY BOARD #1M

ACTION OF THE BOARD – Application for Common Law Vested Right Denied as to Rear Building (BSA Cal. No. 107-13-A) and Application for Revocation of Certificate of Occupancy Denied in Part as to Front Building and Granted in Part as to Rear Structure (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 cellar structure 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 of East 11th Street, between Avenue B and Avenue C, in an R8B residential 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, DOB-approved plans represent that the site is occupied by a seven-story plus cellar mixed-use community facility and residential building located at the zoning lot’s “front lot line,” as such term is defined in ZR § 12-10 (the “Front Building”), and a one-story plus cellar community facility structure located at the zoning lot’s rear lot line and extending 20’-9” into the required 30-foot rear yard (the “Rear Structure,” together, the “Development”); and

WHEREAS, Certificate of Occupancy No. 103703226F describes a seven-story building with 36 dwelling units and a

floor-by-floor listing stating that there are medical offices in the cellar, first floor and first floor mezzanine and that there are apartments on the second to seventh floors duplexing to the seventh floor mezzanine, but there is no mention of the cellar and first floor community facility Rear Structure in the required rear yard, which is connected to the seven-story plus cellar Front Building by a bridge; 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 [sic] WALL. REMOVE EXTERIOR
SIDE WALL TO THE 2ND FLOOR

existing party walls as shown on drawings filed herewith. No change in use or [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” (Permit No. 103745388, 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 (Permit No. 103744067, 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” at the cellar, first floor and first floor mezzanine level (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; and

WHEREAS, on May 27, 2004, a zoning lot description

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.”

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and ownership statement 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 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 in a “residence district,” as defined in ZR § 12-10, 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 Foundation Permit was signed off and, on July 15, 2008, Final Certificate of Occupancy No. 103703226F was issued indicating a total of 36 dwelling units in a seven-story building and UG 4 medical offices in the cellar, first floor and first floor mezzanine 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

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WHEREAS, by letter dated February 3, 2012, DOB informed representatives of the Appellant that the CO was issued in error and that its underlying permit lapsed by operation of law on September 9, 2004, when the premises were rezoned; 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 Appellant filed the Vested Right Application 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 first floor and cellar levels of 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 floors² of the Rear Structure, 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 Structure, 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 Structure and that respondent has history of non-compliance (ECB Violation No. 35032321P); and

WHEREAS, the Board notes that, although the inspectors issuing the above-mentioned violations referred to the Rear Structure as the “rear building” and to residential occupancy in the cellar, first and second floors of the “rear building,” none of the temporary certificates of occupancy or

² 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 Structure constitutes a second “story.”

the CO distinguish the Front Building from the Rear Structure and that Temporary Certificates of Occupancy Nos. 103703226T005 through 103703226T007 and the CO generally describe a cellar, first floor and first floor mezzanine at the site; 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 removal of the mezzanine from the Rear Structure 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 of the Rear Structure 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

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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 Structure 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 Structure, 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 Structure 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 Structure 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 Structure 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 Structure, 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

STATUTORY AND 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

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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 AD2d 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 AD2d 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) recoument 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, 52 AD2d at 15; and

APPELLANT'S POSITION

WHEREAS, the Appellant acknowledges that the ZR Amendment prohibited the medical office use and, both before and after the ZR Amendment, rooms used for living or sleeping purposes in the Rear Structure, but that neither the owner of the premises nor DOB noticed this change as to the medical offices 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 Structure was contrary to applicable zoning regulations; and

WHEREAS, the Appellant states that the foundation of the Rear Structure 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"³ 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 Structure 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 Survey; re-alleges that the foundations of the Rear Structure 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 Structure 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 Structure's foundations were "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 Structure's foundation; (6) a letter, dated January 11, 2017, from the structural engineer of record for the

³ 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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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 Structure 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 Structure 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 Structure prior to September 9, 2004, including approximately \$691,000 spent on the Rear Structure 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 Structure, 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 Structure 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 Structure 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 Structure 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 Vil. Of Asharokan v. Pitassy, 119 AD2d 404, 417 (2d Dept 1986; see also Jayne Estates, Inc. v. Raynor, 22 NY2d 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 Structure as contrary to ZR §§ 23-44 and 24-33, the second story of the Rear Structure 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 Structure 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 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 Foundation 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 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 building 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 any foundation walls or structure at

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636 East 11th Street or a foundation for the Rear Structure; 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 11th 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 irrelevant and, in any event, neither the Rear Structure 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 Structure was rendered non-complying because its bulk, where such bulk contained medical offices, was not permitted in the required rear yard in an R8B residence district as a permitted obstruction; and

WHEREAS, because ZR § 24-33 makes references to uses that would render a portion of a building in the required rear yard at the subject site a "permitted obstruction," the Board finds that this provision is both a bulk and a use regulation, despite its location in Article II, Chapter 4, which is primarily devoted to bulk regulations applicable in a residence district, as opposed to Article II, Chapter 2, which is devoted to use regulations applicable in a residence district; and

WHEREAS, the Board makes note of the following list,

though not exhaustive, of use regulations found in the bulk provisions of the Zoning Resolution: ZR § 23-35 (Special Provisions for Zoning Lots Containing Certain Community Facility Uses in Lower Density Growth Management Areas) (requiring application of particular lot area and lot width regulations to zoning lots containing buildings used for ambulatory diagnostic or treatment health care facilities and child care service); ZR § 23-65(a) (Tower Regulations) (stating that tower-on-base bulk regulations are applicable where building contains more than 25 percent of its total floor area in residential use); ZR § 24-111 (Maximum Floor Area Ratio for Certain Community Facility Uses) (setting forth maximum floor area ratios for zoning lots occupied by philanthropic or non-profit institutions with sleeping accommodations and long-term care facilities); ZR § 33-012 (Special Provisions for Certain Community Facility Uses) (setting forth bulk provisions for buildings containing long-term care facilities or philanthropic or non-profit institutions with sleeping accommodations); ZR §§ 33-431 (In C1 or C2 Districts with Bulk Governed by Surrounding Residence District) and 33-432 (In Other Commercial Districts) (prohibiting commercial buildings or portions thereof occupied by non-residential uses listed in various Use Groups from exceeding certain heights or number of stories, whichever is less); ZR § 33-452 (Community Facility Buildings in C1 or C2 Districts When Mapped Within R7-2, R8, R9 or R10 Districts) (prohibiting any portion of a mixed-use commercial and community facility building occupied by commercial use from penetrating the sky exposure plane); and ZR § 35-33 (Location of Open Space) (permitting open space required for a residential building or residential portion of a mixed-us building to be located on the roof of buildings occupied by particular uses); and

WHEREAS, accordingly, as of the Effective Date, the Rear Structure was also rendered non-conforming because its proposed UG 4 medical office use was no longer included among the list of uses that would have rendered the Rear Structure a permitted obstruction; and

WHEREAS, the Board finds, based on the substantial evidence in the record, that neither the Rear Structure 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, pursuant to Putnam, a vested right can lapse when such right has been abandoned either through an overt act or some failure to act that implies that the owner neither claims nor retains any interest in the subject matter of the development or when considerations of public safety, health and welfare indicate that the enforcement of present zoning regulations would provide an overriding benefit to the public; 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

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WHEREAS, the Board also finds that the failure to occupy the UG 4 medical office space in the Rear Structure with UG 4 medical offices 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, accordingly, the Board finds that the Appellant abandoned its right to occupy the Rear Structure with UG 4 medical offices; and

WHEREAS, as originally approved by DOB, the Rear Structure is both non-conforming and non-complying and should either be removed or made to conform with current zoning regulations; the Board notes that the Zoning Amendment specifically rendered UG 4 medical office use in the Rear Structure both non-complying and non-conforming; and

WHEREAS, the Board notes that Certificate of Occupancy No. 103703226F describes a seven-story building with 36 dwelling units and that the floor by floor listing of occupancies indicates medical offices in the cellar, first floor and first floor mezzanine levels and apartments on the second to seventh floors; that there is no mention of a structure in the required rear yard containing a cellar and a first floor level that is connected to the Front Building by a bridge; and, thus, an architect or other building professional tasked with discerning the actual location of the medical offices would be unable to do so upon reviewing Certificate of Occupancy No. 103703226F alone; and

WHEREAS, in its experience, the Board has seen certificates of occupancy that describe a myriad of other structures on a lot and limitations to their use and notes that some residential lots are issued certificates of occupancy that indicate the presence of both the residence and the accessory one-car garage on the lot; and

WHEREAS, accordingly, the Board finds that the subject site should have a certificate of occupancy that better describes the built condition of the subject site and the limitations on their use heretofore determined by the Board; and

Therefore, it is Resolved, that 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* as to the Rear Building and that the application to revoke Certificate of Occupancy No. 103703226F, filed under BSA Cal. No. 166-12-A, is *denied in part* as to the Front Building and *granted in part* as to the Rear Structure, insofar as the UG 4 medical offices indicated on the cellar, first floor and mezzanine levels of the Rear Building are non-complying and non-conforming; and the parties are instructed to undertake the following actions:

The Appellant shall submit to the Department of Buildings plans sufficient to bring the Front Building and Rear Structure located at the subject site into full compliance with, *inter alia*, the Zoning Resolution and Building Code and DOB, upon finding that the plans cure existing objections including, but not limited to, the lack of a secondary means of

egress from the Front Building, shall issue permits for all necessary work;

Upon the satisfactory completion of all necessary work, the Department of Buildings shall issue a new certificate of occupancy or otherwise modify Certificate of Occupancy No. 103703226F to reflect that the subject site is occupied by a Front Building and a one-story plus cellar Rear Structure that relies on the Front Building for egress, access and fire and mechanical systems, but not for vertical circulation, separated from the Front Building by 24 feet and the rear wall of which is located at the rear lot line;

The new or modified certificate of occupancy shall maintain a listing of the uses permitted in the Front Building on a floor by floor basis and add, with regards to the Rear Structure, this portion of the building does not and shall not contain a mezzanine and that occupancy by UG 4 medical offices, rooms used for living or sleeping purposes, residential use or any other uses not specifically permitted under the permitted obstruction regulations set forth in ZR §§ 23-44 or 24-33, effective as of the date of this revised resolution, is prohibited;

The Appellant may elect, in the alternative, to demolish the Rear Structure, in which case the new or modified certificate of occupancy shall explicitly state that “one (1) building,” the Front Building, is present on the premises;

Certificate of Occupancy No. 103703226F remains valid with regards to the Front Building until such time as another, either new or modified, certificate of occupancy is issued in compliance with the aforementioned conditions;

The Board is not an enforcement agency and DOB, equipped as it is with the power to issue violations, criminal summonses and other aggressive, but legal, means, should use these means to require the property owner to make these essential corrections; and

Accordingly, nothing in this resolution shall be deemed to estop DOB from enforcing against the subject site as DOB may deem necessary, including, but not limited to, filing a new appeal with the Board (the Board shall not accept any further applications under the subject calendar numbers).

Adopted by the Board of Standards and Appeals, October 17, 2017.

Adopted by the Board of Standards and Appeals, as revised, July 17, 2018.

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2017-31-BZ

CEQR #17-BSA-076Q

APPLICANT – Akerman, LLP for ROCK 34, Inc., owner.
SUBJECT – Application January 27, 2017 – Variance (§72-21) to permit the development of a three-story, three-family residential building on a narrow corner lot contrary to ZR §23-45 (front yard) and ZR §23-462 (a) (required side yards). R5 zoning district.

PREMISES AFFECTED – 107-17 34th Avenue, Block 1722, Lot 27, Borough of Queens.

COMMUNITY BOARD #3Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated June 23, 2017, acting on New Building Application No. 421332917, reads in pertinent part:

“Proposed front yard along 108th Street is less than required per ZR 23-45(a); . . . Proposed one side yard . . . is less than required per ZR 23-462”; and

WHEREAS, this is an application under ZR § 72-21 to permit, in an R5 zoning district, the development of a residential building that does not comply with zoning regulations for front yards and side yards, contrary to ZR § 23-45 and 23-462; and

WHEREAS, a public hearing was held on this application on April 10, 2018, after due notice by publication in *The City Record*, with continued hearings on May 8, 2018, and then to decision on July 17, 2018; and

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

WHEREAS, Community Board 3, Queens, recommends approval of this application on condition that two trees be located from the driveway, that the curb cut be widened to ensure safe parking, that the cellar not be used as an additional dwelling unit, that proper drainage be ensured in the parking area and that exterior security lighting be placed in a manner that will not be an obstruction to neighboring properties; and

WHEREAS, the subject site is located on the northwest corner of 34th Avenue and 108th Street, in an R5 zoning district, in Queens; and

WHEREAS, the subject site has approximately 25 feet of frontage along 34th Avenue, 100 feet of frontage along 108th Street, 2,500 square feet of lot area and is vacant; and

WHEREAS, the applicant proposes to develop a three-story, with cellar, three-family residential building with a front yard with a depth of 5 feet along 108th Street and a side yard with a depth of 3 feet along 34th Avenue; and

WHEREAS, the applicant states that, at the subject site, two front yards with minimum depths of 10 feet are required under ZR § 23-45 and that side yards must have minimum depths of 8 feet under ZR § 23-462; and

WHEREAS, the applicant states that the following are unique physical conditions that create practical difficulties in developing the site in compliance with the applicable regulations: the site’s being vacant, the narrow width of the subject site and the subject site’s status as a corner lot; and

WHEREAS, in support of the contention that these physical conditions are unique, the applicant studied the surrounding area, determining that the subject site is the only vacant, narrow corner lot in the study area with a width of 25 feet or less that is unimproved; and

WHEREAS, the applicant submitted evidence that the subject site has been vacant since the enactment of the Zoning Resolution, that all but three of the narrow corner lots within the study area were improved with buildings prior to the enactment of the Zoning Resolution and that those improved, narrow lots have non-complying yards; and

WHEREAS, the applicant notes that compliance with applicable regulations for side yards is impracticable because an as-of-right development would have a severely restricted building width of 7 feet—further constrained by the addition of a necessary interior staircase—that would not result in a functional residential building, thereby rendering the subject site virtually unusable; and

WHEREAS, the Board finds that the above unique physical conditions create practical difficulties or unnecessary hardship in complying strictly with applicable zoning regulations that are not created by general circumstances in the neighborhood or district; and

WHEREAS, the applicant states that the proposed variance will not alter the essential character of the neighborhood because the proposed three-story building is compatible in size and bulk with other residential buildings in the surrounding area, which is characterized by a mix of attached and detached one-, two- and three-story single-family residences, community facilities and retail use; and

WHEREAS, in support of this contention, the applicant surveyed yards in the vicinity, finding that all of the corner lots within the surrounding area have non-complying front yards; and

WHEREAS, the applicant further determined that nearly all of the residential buildings on the blocks fronting on 34th Avenue and 108th Street are similarly sized, two- or three-story multiple dwellings, some with ground floor retail; and

WHEREAS, the applicant notes that, all other corner lots with in the surrounding area, are occupied by buildings that do not comply with the two 10-foot front yard and two 8-foot side yard requirements; and

WHEREAS, with respect to adjacent properties, the applicant notes that the proposed building will not impair the use of such properties because of the distance between the proposed building and adjacent buildings; and

WHEREAS, in particular, the proposed building will

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be located 13 feet from the adjacent building to the west and 32 feet from the adjacent building to the north; and

WHEREAS, in response to the Board's questions at hearing, the applicant submitted additional evidence demonstrating that the massing of the proposed building will fit in with the built character of the surrounding neighborhood; and

WHEREAS, in response to community concerns and as directed by the Board at hearing, the applicant submits that the two existing trees adjacent to and within the proposed driveway will be relocated, that the curb cut along 108th Street will have a width of 15 feet, which will provide sufficient space for vehicles to maneuver in and out of the parking area, that the drawings for the cellar indicate that there will be no living, sleeping or cooking in the cellar, that the parking area will have sufficient drainage as required for plan approval by the Department of Environmental Protection and the Department of Buildings and that all exterior security lighting will be placed in a manner that will not be an obstruction to neighboring properties by having all light fixture pointed downwards to minimize impacts to neighboring properties; and

WHEREAS, the Board finds that the proposed variance will not alter the essential character of the neighborhood or district in which the subject site is located; 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 practical difficulties claimed have not been created by the owner or a predecessor in title because the subject site was owned separately and individually from all other properties on December 15, 1961; and

WHEREAS, in support of this contention, the applicant also searched records of property ownership, historic tax maps and other historic maps dating to 1914 illustrating the subject site with dimensions as it currently exists; and

WHEREAS, in response to questions from the Board at hearing, the applicant further submits that developing the subject site together with Lot 23, which was held in common ownership from 1991 to 1997, would not have alleviated the practical difficulties claimed because the irregular shape of a merged site would still have resulted in a residential development with an extremely narrow building width because of the applicable yard requirements; and

WHEREAS, the Board finds that the above practical difficulties or unnecessary hardship have not been created by the owner or by a predecessor in title; and

WHEREAS, the applicant states that the proposed variance is the minimum necessary to permit a productive use of the subject site; and

WHEREAS, the Board finds that the proposed variance is the minimum necessary to afford relief within the intent and purposes of the Zoning Resolution; 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. 17BSA076Q, dated January 27, 2017; and

WHEREAS, 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 of discretion.

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 *permit*, in an R5 zoning district, the development of a residential building that does not comply with zoning regulations for front yards and side yards, contrary to ZR § 23-45 and 23-462; *on condition* that all work, operations and site conditions shall conform to drawings filed with this application marked "Received November 17, 2017"-Nine (9) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: there shall be a front yard with a minimum depth of 5 feet along 108th Street and a side yard with a minimum depth of 3 feet along 34th Avenue;

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 17, 2022;

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 17, 2018.

2017-39-BZ

CEQR #17-BSA-084M

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

ACTION OF THE BOARD – Application granted on

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condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated July 31, 2017, acting on Alteration Application No. 122902868, reads in pertinent part:

“Proposed Physical Culture Establishment . . . is contrary to ZR 32-10”; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to permit, in a C6-2A zoning district, the legalization of a physical culture establishment, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on January 30, 2018, after due notice by publication in *The City Record*, with a continued hearing on May 8, 2018, and then to decision on July 17, 2018; and

WHEREAS, Commissioner Ottley-Brown performed an inspection 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 northeast corner of Church Street and Franklin Street, in a C6-2A zoning district, in Manhattan; and

WHEREAS, the subject site has approximately 75 feet of frontage along Church Street, 75 feet of frontage along Franklin Street, 5,637 square feet of lot area and is occupied by a 17-story, with cellar and sub-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 subject PCE occupies 5,242 square feet of floor space as follows: 692 square feet of floor area on the first floor, including a lobby area, juice bar, retail area and dining area, 205 square feet of floor area at the mezzanine level, including mechanical equipment, 3,093 square feet of floor space in the cellar, including fitness studios, and locker rooms with restrooms and showers, and 1,252 square feet of floor space in the sub-cellar, including a fitness studio and storage; and

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WHEREAS, the PCE has been in operation as the Tracy Anderson Method since September 28, 2016, with the following hours of operation: 5:30 a.m. to 10:00 p.m., Monday through Friday, and 7:00 a.m. to 3:00 p.m., Saturday and Sunday; and

WHEREAS, the applicant represents that the PCE use is consistent with the vibrant commercial area in which it is located, that the PCE use is fully contained within the envelope of an existing building and that the PCE use does not attract any significant additional traffic to the surrounding area; and

WHEREAS, in addition, the applicant submits that sound attenuation measures, including two layers of gypsum wallboard on each side of metal studs with a sound-attenuation blanket and resilient under-layment padding beneath the flooring, have been provided within the space so as to not disturb other tenants in the building; and

WHEREAS, the Board finds that the PCE use is so located as not to 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; 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 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 May 8, 2018, 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 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 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-084M, dated February 8, 2017; and

WHEREAS, the Board finds that the evidence in the record supports the findings required to be made under ZR §§ 73-36 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion; 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 without a special permit.

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 §§ 73-36 and 73-03 *per*mit, in a C6-2A zoning district, the legalization of a physical culture establishment, contrary to ZR § 32-10; *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked “Received March 20, 2018”-Eight (8) sheets; and *on further condition*:

THAT this grant shall be limited to a term of ten (10) years, expiring September 28, 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 maintained 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 remain 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 July 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, July 17, 2018.

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933-28-BZ

APPLICANT – Gerard J. Caliendo, R.A., AIA, for RB Auto Repair/Roger Budhu, owner.

SUBJECT – Application October 16, 2015 – Extension of Term, Amendment & Waiver (11-413) for an extension of the term of a variance which permitted the operation of an automotive repair facility and gasoline service station (UG 16) and an Amendment for the legalization of the enlargement with an insulated corrugated metal enclosure. R5 zoning district.

PREMISES AFFECTED – 125-24 Metropolitan Avenue, Block 9271, Lot 4, Borough of Queens.

COMMUNITY BOARD #9Q

ACTION OF THE BOARD – Laid over to September 13, 2018, at 10 A.M., for postponed hearing.

240-55-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for DLC Properties, owner.

SUBJECT – Application January 24, 2018 – Request for a Re-Hearing pursuant to § 1-12.5 of the Board's Rules for an application which was dismissed for lack of prosecution on November 21, 2017. The application seeks 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 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 27, 2018, at 10 A.M., for continued hearing.

131-97-BZ

APPLICANT – Pryor Cashman LLP, for Ricky's Bronx Property, LLC, owner; McDonald's Corporation, lessee.

SUBJECT – Application June 29, 2016 – Amendment to re-instate and eliminate the term of a previously approved Variance (72-21) which permitted an eating and drinking establishment (UG 6) with an accessory drive-through facility, which expired on January 27, 2003; change the hours of operation, enlarge the existing building, and reduce the parking from 9 to 8 spaces; Waiver of the Rules. R1-2 zoning district.

PREMISES AFFECTED – 1600 Boston Road, Block 2967, Lot 42, Borough of Bronx.

COMMUNITY BOARD #3BX

ACTION OF THE BOARD – Laid over to September 13, 2018, at 10 A.M., for continued hearing.

309-09-BZ

APPLICANT – Eric Palatnik, P.C., for Yong Lin, owner.

SUBJECT – Application April 20, 2018 – Extension of Time to Complete Construction of a previously approved Variance (§72- 21) to permit construction of a four-story (three levels and a basement) eight-unit multiple dwelling that does not provide a required side yard, contrary to ZR § 23-51 which expired on May 3, 2015; Amendment to permit a height increase from an approved 34'-8" to 37'-8"; Waiver of the Rules. C2-3/R5 and R6A zoning districts.

PREMISES AFFECTED – 2173 65th Street, Block 5550, Lot 40, Borough of Brooklyn.

COMMUNITY BOARD #11BK

ACTION OF THE BOARD – Laid over to September 13, 2018, at 10 A.M., for postponed hearing.

210-13-BZ

APPLICANT – Sheldon Lobel, P.C., for MDL & S, LLC, owner; Physique LLC, lessee.

SUBJECT – Application February 1, 2018 – Extension of Time to Obtain a Certificate of Occupancy of a previously approved Variance (§72-21) the operation of a physical culture establishment (*The Physique*) which expired on January 22, 2015; Waiver of the Rules. C1-4/R7A zoning district.

PREMISES AFFECTED – 43-12 50th Street, Block 138, Lot 25, Borough of Queens.

COMMUNITY BOARD #2Q

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:0

ACTION OF THE BOARD – Laid over to August 14, 2018, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

2017-232-A

APPLICANT – Land Planning & Engineering, for Neil Simon SHS Richmond Terrace, LLC, owner.

SUBJECT – Application August 4, 2017 – 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

PREMISES AFFECTED – 1632 Richmond Terrace, Block 187, Lot 42, 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,

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Commissioner Ottley-Brown, Commissioner Sheta and
Commissioner Scibetta.....5
Negative:0
THE RESOLUTION –

WHEREAS, the decision of the Deputy Borough
Commissioner, dated July 21, 2017, acting on Department of
Buildings Application No. 520304616 reads in pertinent part:

GCL 36; BC 501.3.1: 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 three-story plus cellar Use Group 16 storage
facility with frontage solely on Richmond Terrace, an
improved street not duly placed on the official New York City
map, contrary to General City Law (“GCL”) § 36; and

WHEREAS, a public hearing was held on this
application on May 1, 2018, after due notice in *The City
Record*, with a continued hearing on June 26, 2018, and then
to decision on July 17, 2018; and

WHEREAS, Commissioner Ottley-Brown performed an
inspection of the site and the surrounding area; and

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

WHEREAS, the subject site is located on the east side of
Richmond Terrace, between Tompkins Court and Alaska
Street, in an M1-1 zoning district, on Staten Island; and

WHEREAS, the site has approximately 198 feet of
frontage along Richmond Terrace, 13 feet of frontage along
Tompkins Court, 46,634 square feet of lot are and is occupied
by a two-story Use Group 6 commercial building that is
proposed to be enlarged, both horizontally and vertically, and
converted to a three-story plus cellar Use Group 16 storage
facility; and

WHEREAS, the applicant submits that the proposed
enlargement and conversion will comply with all zoning
regulations applicable at the subject site, including those
relating to required parking spaces and loading berths, and
that the building will be fully sprinklered; and

WHEREAS, by letter dated November 30, 2017, the
Office of the Borough President of Staten Island states that an
Opinion of Dedication, dated June 6, 1944, was issued for
Richmond Terrace between Arlington Avenue and Broadway,
which includes the subject portion of Richmond Terrace,
declaring that Richmond Terrace between those boundaries
has been dedicated to the use of the public at widths varying
from about 41.25 feet to 80 feet; and

WHEREAS, a survey of the site submitted by the
applicant represents that Richmond Terrace is paved and has
an average width of approximately 29 feet along the frontage

of the subject site; and

WHEREAS, by letter dated September 26, 2017, the
New York City Department of Environmental Protection
(“DEP”) states that, based on DEP maps, there are 10-inch
and 24-inch diameter City water main, an 8-inch diameter
sanitary sewer and 84-inch diameter interceptor sewer in
Richmond Terrace between Tompkins Court and Alaska
Street; that the Latest Drainage Plan No: PRD-E, Sheet 3 of 3,
dated May 1973, shows two 10-inch diameter sanitary sewers,
a 24/30-inch diameter storm sewer and an 84-inch diameter
interceptor sewer in the bed of Richmond Terrace fronting the
subject site; that the proposed internal sanitary and storm
pipes will be constructed as per Site Connection Proposal
ID#5659, approved on September 15, 2017; that the applicant
has submitted a plan showing the proposed extension of the
existing development; that the owner will maintain the sewer
and water connections and they will not be maintained by the
City of New York; and that based on the above, DEP has no
objections to the subject application; and

WHEREAS, in addition, at the request of the Fire
Department, the applicant proposed a 12-foot gate along the
portion of the subject site fronting Tompkins Court for
emergency and Fire Department use only; and

WHEREAS, by letter dated April 30, 2018, the Fire
Department states that it has no objections to this application
on condition that the entire building development be fully
sprinklered; that the frontage space located at the main front
entrance have roadway markings indicating “NO STANDING
ANYTIME-FIRE ZONE”; that all Siamese connection
locations be maintained free from all obstructions and have a
serviceable hydrant within 100 feet; that an approved sign be
posted in the vicinity of the main front entrance indicating the
direction and distance to all Siamese locations; and that the
internal fire lane indicated on the approved plans have “NO
STANDING ANYTIME” signs posted in compliance with
New York City Fire Code Section 503.2.7.2.1 and this lane be
dedicated exclusively for emergency vehicle access with
approved signage posted at both entry points stating, “FDNY
USE ONLY”; 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 July 21, 2017, acting on DOB Application No.
520304616, 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 July 17, 2018”-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 proposed internal sanitary and storm pipes
shall be constructed as per Site Connection Proposal ID#5659,
approved by the New York City Department of Environmental
Protection (“DEP”) on September 15, 2017;

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THAT the owner of the subject site shall maintain the sewer and water connections at the subject site, which shall not be maintained by the City of New York;

THAT the entire proposed development shall be fully sprinklered;

THAT the frontage space located at the main front entrance shall have roadway markings indicating "NO STANDING ANYTIME-FIRE ZONE," as indicated on the BSA-approved plans;

THAT all Siamese connection locations shall be maintained free from all obstructions and have a serviceable hydrant within 100 feet;

THAT an FDNY-approved sign shall be posted in the vicinity of the main front entrance indicating the direction and distance to all Siamese locations;

THAT the internal fire lane indicated on the approved plans shall have "NO STANDING ANYTIME" signs posted in compliance with New York City Fire Code Section 503.2.7.2.1 and the lane shall be dedicated exclusively for emergency vehicle access with approved signage posted at both entry points stating, "FDNY USE ONLY";

THAT a certificate of occupancy shall be obtained within four (4) years, by July 17, 2022;

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, July 17, 2018.

2017-234-A

APPLICANT – Rothkrug Rothkrug & Spector LLP
SUBJECT – Application August 8, 2017 – Proposed construction of a self-storage facility not fronting a legally mapped street contrary to General City Law 36. M1-1 zoning district.

PREMISES AFFECTED – 266 Wild Avenue, Block 2645, Lot 1, 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 Sheta and Commissioner Scibetta.....5
Negative:0

THE RESOLUTION –

WHEREAS, the decision of the Deputy Borough Commissioner, dated July 17, 2017, acting on Department of Buildings Application No. 520305875 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 the General City Law;
- B) Proposed construction does not have at least 8 percent 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 application to permit the construction of four-story Use Group 16 storage facility with frontage only on Wild Avenue, an improved street not duly placed on the official New York City map, contrary to General City Law ("GCL") § 36; and

WHEREAS, a public hearing was held on this application on May 15, 2018, after due notice in *The City Record*, with a continued hearing on June 26, 2018, and then to decision on July 17, 2018; and

WHEREAS, Community Board 2, Staten Island, recommends disapproval of the subject application, commenting that the Community Board is opposed to construction that does not front on a legally mapped street; and

WHEREAS, the subject site is bound by Wild Avenue to the west, Dean Avenue to the east, Cartledge Avenue to the north and Walton Avenue to the south, and is located approximately 226 feet south of the southeastern corner of Wild Avenue and Beresford Avenue, in an M1-1 zoning district, on Staten Island; and

WHEREAS, neither Cartledge Avenue, Dean Avenue nor Walton Avenue are open, paved or improved streets; and

WHEREAS, the site has approximately 251 feet of frontage along Wild Avenue, 250 feet of frontage along Dean Avenue, 128,032 square feet of lot coverage and is currently vacant; and

WHEREAS, the applicant seeks the subject relief to develop a four-story Use Group 16 self-storage building that will front only on Wild Avenue, an existing street not duly placed on the official New York City map; and

WHEREAS, the applicant submits that the proposed development will comply with all zoning regulations applicable in the subject zoning district, including those relating to accessory parking and loading berths, and that the proposed building will be sprinklered in conformance with the New York City Fire Code; and

WHEREAS, by letter dated December 14, 2005, the Office of the Borough President of Staten Island states that an Opinion of Dedication was issued for a 60 feet wide portion of Wild Avenue between Walton Avenue and Beresford Avenue as in-use on November 17, 1925, but that while Dean Avenue and Walton Avenue each have a record width of 50 feet at the subject site, neither street has a final mapped width nor a title or opinion of dedication; and

WHEREAS, a survey of the site submitted by the applicant represents that Wild Avenue is paved to a width of approximately 38 feet at the subject location; and

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WHEREAS, by letter dated July 17, 2018, the New York City Department of Environmental Protection (“DEP”) states that there is a 12 inch diameter city water main and 12 inch diameter sanitary sewer in Wild Avenue at the subject location, but that there are no sewers or water mains inside the subject lot; that the latest Drainage Plan dated October 8, 1924, showing the location, sizes and grades of a system of temporary sanitary sewers in Linoleumville in the Third Ward, shows 12 inch diameter sanitary sewer in the bed of Wild Avenue at the subject location; that the proposed sanitary and storm for the proposed structure will be discharged as per the certified Site Connection Proposal (SCP) ID # 6911, dated March 30, 2018, and that all sanitary, storm and water connections will be maintained by the owners of the subject site, not the City of New York, and on those bases, DEP has no objection the subject application.

WHEREAS, by communication dated July 16, 2018, the Fire Department states that the lanes around the building shown on the site plan submitted by the applicant are fire lanes and Fire Apparatus Access Roads pursuant to the New York City Fire Code and are therefore required to conform to the minimum standard for commercial occupancy, specifically, the lane at the front of the building must run parallel to it and be at least 30 feet wide; and

WHEREAS, the applicant subsequently revised the site plan to indicate a 30 foot by 30 foot unobstructed area at the front of the proposed building designated for Fire Department purposes and grass pavers to be installed at the landscaped area fronting Wild Avenue in order to allow for a wider drivable surface at the front of the proposed building; 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 July 17, 2017, acting on DOB Application No. 520305875, 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 July 17, 2018”-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 proposed building shall be fully sprinklered;

THAT the proposed sanitary and storm for the proposed structure shall be discharged as per the certified Site Connection Proposal (SCP) ID # 6911, dated March 30, 2018;

THAT all sanitary, storm and water connections will be maintained by the owners of the subject site, not the City of New York, and on those bases;

THAT the 30 foot square area at the front of the proposed building be maintained open and unobstructed, as indicated on the Board-approved plans;

THAT grass pavers shall be installed and maintained as shown on the Board-approved plans;

THAT a certificate of occupancy shall be obtained

within four (4) years, by July 17, 2022;

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, July 17, 2018.

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2017-285-A

APPLICANT – Rosenberg Estis, P.C., for Committee for Environmental Sound Development/ Amsterdam Avenue Redevelopment Associates, LLC, owner.

SUBJECT – Application October 26, 2017 – 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.

PREMISES AFFECTED – 200 Amsterdam Avenue, Block 1158, Lot 133, Borough of Manhattan.

COMMUNITY BOARD #7M

ACTION OF THE BOARD – Appeal denied.

THE VOTE TO GRANT –

I. ZONING LOT:

Affirmative: Commissioner Ottley-Brown.....1
Negative: Vice-Chair Chanda, Commissioner Sheta, and Commissioner Scibetta.....3
Recused: Chair Perlmutter.....1

II. OPEN SPACE:

Affirmative:.....0
Negative: Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....4
Recused: Chair Perlmutter.....1

THE RESOLUTION –

WHEREAS, the building permit issued by the Department of Buildings (“DOB”) on September 27, 2017, under New Building Application No. 122887224 (the “Permit”), authorizes construction of a 55-story residential and community-facility building with 112 dwelling units and a total height of 668 feet (the “New Building”) by Amsterdam Avenue Redevelopment Associates, LLC (the “Owner”) on a development site with 110,794 square feet of lot area (the “Development Site”); and

WHEREAS, this is an appeal for interpretation under Section 72-11 of the Zoning Resolution of the City of New York (“ZR” or the “Zoning Resolution”) and Section 666(6)(a) of the New York City Charter, brought on behalf of the Committee for Environmentally Sound Development (“Appellant”), alleging errors in the Permit pertaining to (i) whether the Development Site complies with the Zoning Resolution’s “zoning lot” definition and (ii) whether ground-level open areas on the Development Site comply with the Zoning Resolution’s “open space” regulations; and

WHEREAS, for the reasons that follow, a majority of the Board denies this appeal; and

WHEREAS, a public hearing was held on this application on March 27, 2018, after due notice by

publication in *The City Record*, with a continued hearing on June 5, 2018, and then to decision on July 17, 2018; and

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

WHEREAS, Community Board 7, Manhattan, submitted testimony in support of this appeal, stating that the New Building is inappropriate and out of context with the surrounding neighborhood, that no rational person could view the Development Site as a single lot and that a significant portion of the open space claimed is unavailable to the public; and

WHEREAS, 170 West End Avenue Condominium (the “Condominium”), a residential condominium located on the subject block outside the bounds of the Development Site and represented by counsel in this appeal, states that it takes no position with respect to the issues presented in this appeal insofar as they do not implicate the Condominium’s accessory parking and that 26 off-street parking spaces located behind the New Building are lawful and permitted under the Zoning Resolution; and

WHEREAS, New York State Assemblymember Richard N. Gottfried and State Senator Brad Hoylman submitted testimony in support of this appeal, stating that the project fails to comply with the “zoning lot” definition because it is not comprised of whole tax lots and fails to comply with applicable “open space” regulations and that these compliance failures are an abuse of zoning regulations that render the New Building contextually out of scale; and

WHEREAS, New York State Assemblymember Linda B. Rosenthal, State Senator Brad Holyman and Comptroller Scott M. Stringer submitted testimony in support of this appeal, stating that creative interpretations of the Zoning Resolution slowly chip away at the quality of life and character of the City’s residential areas; and

WHEREAS, a majority of the New York City Council submitted testimony in support of this appeal, stating that divorcing zoning lots from the tax lots on a block makes ensuring compliance with the Zoning Resolution dramatically more difficult and that having zoning lot lines coincide with tax lot lines promotes clarity and transparency; and

WHEREAS, New York City Comptroller Scott M. Stringer submitted testimony in support of this appeal, stating that the Owner creatively interpreted the City’s zoning regulations to create a tower on the Upper West Side by merging various tax lots to create one zoning lot and by claiming the neighboring property’s open space as its own and that the City must do more to prevent the construction of inappropriately sited towers throughout the City and ensure that all development complies with the intent and letter of the law; and

WHEREAS, Manhattan Borough President Gale A. Brewer submitted testimony in support of this appeal, stating that interpreting the Zoning Resolution in such a way as to allow for the New Building is a mistake, makes for bad public policy and goes against the spirit and intent of the

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Zoning Resolution; and

WHEREAS, New York City Council Member Helen Rosenthal submitted testimony in support of this appeal, stating that the Development Site runs counter to the most logical interpretation of the text of the Zoning Resolution in an unprecedented manner, that divorcing zoning lots from tax lot lines would make ensuring compliance with the Zoning Resolution dramatically more difficult and that the Development Site inappropriately counts inaccessible and unusable area as open space; and

WHEREAS, the American Institute of Architects New York Chapter submitted testimony in opposition to this appeal, stating that professionals that work on buildings, such as architects, need a predictable set of zoning rules in order to design and program buildings and that as-of-right zoning affords architects and their clients that predictability; and

WHEREAS, the Municipal Art Society of New York submitted testimony in support of this appeal, stating that the Development Site does not comply with the “zoning lot” definition because it contains two entire tax lots and small portions of four tax lots; and

WHEREAS, the Real Estate Board of New York submitted testimony in opposition to this appeal, stating that the City’s as-of-right framework embodied in the Zoning Resolution is meant to encourage predictability in an industry where financing needs predictability, especially when market conditions can be unpredictable, that the Permit was only granted after an exhaustive DOB review, including a rigorous audit, and that this appeal is based on a faulty interpretation of the Zoning Resolution; and

WHEREAS, the New York Building Congress submitted testimony in opposition to this appeal, stating that granting this appeal would be unprecedented and clearly stifle current and future investment, that the process for reviewing and approving the Permit was transparent and consistent with the City’s procedures and that two other buildings have been permitted to be built as-of-right on the same lot: 170 Amsterdam and 180 Amsterdam; and

WHEREAS, Landmark West! submitted testimony in support of this appeal, stating that the Permit is invalid because allowing the merger of portions of tax lots in order to take advantage of certain development rights relating to the merged lots is erroneous; and

WHEREAS, a practicing architect and planner submitted testimony in opposition to this appeal, stating that the Zoning Resolution regulates the real-estate industry in accordance with the City’s public and planning policies, that the key to its success has been the ability it gives owners and builders to proceed with as-of-right development, that the Department of City Planning invests substantial resources in evaluating and updating the Zoning Resolution both to reflect its evolving planning goals for the City and to correct errors and inconsistencies in the text and that City Planning takes action to legislatively clarify or amend the text when it disagrees with an interpretation; and

WHEREAS, PNC Real Estate submitted testimony in

opposition to this appeal, stating that zoning lot mergers have been considered “as of right” actions and that ensuring that the decisions of city government not be reversed is important to the lending and investment communities; and

WHEREAS, Association for a Better New York submitted testimony in opposition to this appeal, stating that upholding the Permit ensures a measure of predictability and confidence in the issuance of as-of-right building permits and that there is a consistent history of allowing partial zoning lot mergers; and

WHEREAS, the Sierra Club New York City Group submitted testimony in support of this appeal, stating that the Development Site does not comply with applicable “open space” requirements; and

WHEREAS, the West 68th Street Block Association Inc. submitted testimony in support of this appeal, stating that the New Building will have negative impacts on light, air, infrastructure and other quality-of-life necessities in the community; and

WHEREAS, West End Preservation Society submitted testimony in support of this appeal, stating that the Development Site does not comply with the “zoning lot” definition because it consists of portions of tax lots; and

WHEREAS, a planner submitted testimony in support of this appeal, stating that zoning lots are composed of one or more tax lots and that there is insufficient data on zoning lots; and

WHEREAS, the Board also received letters and heard testimony from neighbors, organizations and concerned members of the public in support of and in opposition to this appeal; and

BACKGROUND AND PROCEDURAL HISTORY

WHEREAS, the subject block is bounded by Amsterdam Avenue, West 66th Street, West End Avenue and West 70th Street; and

WHEREAS, the subject block includes five buildings located at 140 West End Avenue, 150 West End Avenue, 160 West End Avenue, 170 West End Avenue and 180 West End Avenue, which were developed on a single parcel of land; and

WHEREAS, said parcel of land was subdivided in April 1987 into two separate parcels: one improved with existing buildings and one unimproved (the “Parcel”); and

WHEREAS, the Parcel was merged in May 1987 with adjacent land parcels located at 162 Amsterdam Avenue, 170 Amsterdam Avenue and 200 West End Avenue, forming a larger parcel that was again enlarged in 2007 with land located at 200 Amsterdam Avenue to form a combined land parcel (the “Combined Land Parcel”); and

WHEREAS, in 2015, the Combined Land Parcel was subdivided to form two separate land parcels, the first of which was entitled “Zoning Lot 1” by the Declaration with Respect to Subdivision of Zoning Lot, City Register File No. 2015000209093, dated as of June 11, 2015 (the “Zoning Lot Declaration”); and

WHEREAS, the second land parcel, entitled “Zoning Lot 2” by the Zoning Lot Declaration, is the subject of this

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appeal: the Development Site; and

WHEREAS, the Development Site is located on the west side of Amsterdam Avenue, between West 70th Street and West 66th Street, partially in an R8 (C2-5) zoning district and partially in an R8 zoning district, in Manhattan; and

WHEREAS, the Development Site has approximately 110,794 square feet of lot area, 153 feet of frontage along Amsterdam Avenue, 224 feet of frontage along West End Avenue, 100 feet of frontage along West 70th Street, 800 feet of depth and is improved with an existing 27-story building with work begun on the New Building; and

WHEREAS, on September 27, 2017, DOB issued the Permit to allow construction of the New Building on the Development Site in accordance with the DOB-approved plans (the "Plans"), and Appellant commenced this appeal on October 27, 2017; and

ZONING PROVISIONS

WHEREAS, ZR § 12-10 (italicized words in original to indicate defined terms) defines a "zoning lot" as follows:

A "zoning lot" is either:

- (a) a lot of record existing on December 15, 1961 or any applicable subsequent amendment thereto;
- (b) a tract of land, either unsubdivided or consisting of two or more contiguous lots of record, located within a single *block*, which, on December 15, 1961 or any applicable subsequent amendment thereto, was in single ownership;
- (c) a tract of land, either unsubdivided or consisting of two or more lots of record contiguous for a minimum of ten linear feet, located within a single *block*, which at the time of filing for a building permit (or, if no building permit is required, at the time of the filing for a certificate of occupancy) is under single fee ownership and with respect to which each party having any interest therein is a party in interest (as defined herein); or
- (d) a tract of land, either unsubdivided or consisting of two or more lots of record contiguous for a minimum of ten linear feet, located within a single *block*, which at the time of filing for a building permit (or, if no building permit is required, at the time of filing for a certificate of occupancy) is declared to be a tract of land to be treated as one *zoning lot* for the purpose of this Resolution. Such declaration shall be made in one written Declaration of Restrictions covering all of such tract of land or in separate written Declarations of Restrictions covering parts of such tract of land and which in the aggregate cover the entire tract of land comprising the *zoning lot*. Any Declaration of Restrictions or Declarations of

Restrictions which individually or collectively cover a tract of land are referred to herein as "Declarations". Each Declaration shall be executed by each party in interest (as defined herein) in the portion of such tract of land covered by such Declaration (excepting any such party as shall have waived its right to execute such Declaration in a written instrument executed by such party in recordable form and recorded at or prior to the recording of the Declaration). Each Declaration and waiver of right to execute a Declaration shall be recorded in the Conveyances Section of the Office of the City Register or, if applicable, the County Clerk's Office of the county in which such tract of land is located, against each lot of record constituting a portion of the land covered by such Declaration.

A *zoning lot*, therefore, may or may not coincide with a lot as shown on the official tax map of the City of New York, or on any recorded subdivision plat or deed.

Parcels within City-owned tracts of land located in Broad Channel within the boundaries of Community Board 14 in the Borough of Queens that were numerically identified for leasing purposes on maps filed in the Office of Borough President prior to December 15, 1961, may be considered as individual lots of record as of September 10, 1981.

- (e) For purposes of the provisions of paragraph (c) hereof:
 - (1) Prior to issuing a building permit or a certificate of occupancy, as the case may be, the Department of Buildings shall be furnished with a certificate issued to the applicant therefor by a title insurance company licensed to do business in the State of New York showing that each party having any interest in the subject tract of land is a party in interest (as defined herein); except that where the City of New York is a fee owner, such certificate may be issued by the New York City Law Department; and
 - (2) A "party in interest" in the tract of land shall include only (W) the fee owner thereof, (X) the holder of any enforceable recorded interest superior to that of the fee owner and which could result in such holder obtaining possession of all or substantially all of such tract of land, (Y) the holder of any enforceable recorded interest in all or substantially all of such tract of land which would be adversely affected by

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- the development thereof and (Z) the holder of any unrecorded interest in all or substantially all of such tract of land which would be superior to and adversely affected by the development thereof and which would be disclosed by a physical inspection of the tract of land.
- (f) For purposes of the provisions of paragraph (d) hereof:
- (1) Prior to issuing a building permit or a certificate of occupancy, as the case may be, the Department of Buildings shall be furnished with a certificate issued to the applicant therefor by a title insurance company licensed to do business in the State of New York showing that each party in interest (excepting those parties waiving their respective rights to join therein, as set forth in this definition) has executed the Declaration and that the same, as well as each such waiver, have been duly recorded; except that where the City of New York is a fee owner, such certificate may be issued by the New York City Law Department;
 - (2) The Buildings Department, in issuing a building permit for construction of a *building or other structure* on the *zoning lot* declared pursuant to paragraph (d) above or, if no building permit is required, in issuing a certificate of occupancy for such *building or other structure*, shall accept an application for same from and, if all conditions for issuance of same are fulfilled, shall issue same to any party to the Declaration;
 - (3) By their execution and recording of a Declaration, the parties to the Declaration, and all parties who have waived their respective rights to execute such Declaration, shall be deemed to have agreed that no breach by any party to the Declaration, or any agreement ancillary thereto, shall have any effect on the treatment of the tract of land covered by the Declaration as one *zoning lot* for purposes of this Resolution and such tract of land shall be treated as one *zoning lot* unless such *zoning lot* is subdivided in accordance with the provisions of this Resolution; and
 - (4) A “party in interest” in the portion of the tract of land covered by a Declaration shall include only (W) the fee owner or owners thereof, (X) the holder of any enforceable recorded interest in all or

part thereof which would be superior to the Declaration and which could result in such holder obtaining possession of any portion of such tract of land, (Y) the holder of any enforceable recorded interest in all or part thereof which would be adversely affected by the Declaration, and (Z) the holder of any unrecorded interest in all or part thereof which would be superior to and adversely affected by the Declaration and which would be disclosed by a physical inspection of the portion of the tract of land covered by the Declaration.

A *zoning lot* may be subdivided into two or more *zoning lots*, provided that all resulting *zoning lots* and all *buildings* thereon shall comply with all of the applicable provisions of this Resolution. If such *zoning lot*, however, is occupied by a *non-complying building*, such *zoning lot* may be subdivided provided such subdivision does not create a new *non-compliance* or increase the degree of *non-compliance* of such *building*.

Where ownership of a *zoning lot* or portion thereof was effected prior to the effective date of this amendment, as evidenced by an attorney’s affidavit, any *development*, *enlargement* or alteration on such *zoning lot* may be based upon such prior effected ownership as then defined in the *zoning lot* definition of Section 12-10. Such prior leasehold agreements shall be duly recorded prior to August 1, 1978.

Prior to the issuance of any permit for a *development* or *enlargement* pursuant to this Resolution a complete metes and bounds of the *zoning lot*, the tax lot number, the block number and the ownership of the *zoning lot* as set forth in paragraphs (a), (b), (c) and (d) herein shall be recorded by the applicant in the Conveyances Section of the Office of the City Register (or, if applicable, the County Clerk’s Office) of the county in which the said *zoning lot* is located. The *zoning lot* definition in effect prior to the effective date of this amendment shall continue to apply to Board of Standards and Appeals approvals in effect at the effective date hereof; and

WHEREAS, ZR § 12-10 defines “open space,” in pertinent part, as follows:

“Open space” is that part of a *zoning lot*, including *courts* or *yards*, which is open and unobstructed from its lowest level to the sky and is accessible to and usable by all persons occupying a *dwelling unit* or a *rooming unit* on the *zoning lot*; and

WHEREAS, ZR § 25-64 provides, in relevant part: Restrictions on the use of open space for parking and driveways are set forth in this Section, in

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accordance with the provisions of Section 23-12 (Permitted Obstructions in Open Space). . . .

- (c) In R6, R7, R8, R9 and R10 Districts without a letter suffix, driveways, private streets, open *accessory* off-street parking spaces, unenclosed *accessory* bicycle parking spaces or open *accessory* off-street loading berths may not use more than 50 percent of the required *open space* on any *zoning lot*. The provisions of this paragraph, (c), shall not apply to *Quality Housing buildings*; and

WHEREAS, ZR § 23-12 states, in relevant part: In the districts indicated, the following obstructions shall be permitted in any *open space* required on a *zoning lot*:

- (e) Driveways, private streets, open *accessory* off-street parking spaces, unenclosed *accessory* bicycle parking spaces or open *accessory* off-street loading berths, provided that the total area occupied by all these items does not exceed the percentages set forth in Section 25-64 (Restrictions on Use of Open Space for Parking); and

ISSUES PRESENTED

WHEREAS, there are two issues¹ in this appeal: (i) whether the Development Site complies with the Zoning Resolution's "zoning lot" definition and (ii) whether ground-level open areas on the Development Site comply with the Zoning Resolution's "open space" requirements; and

APPELLANT'S POSITION

WHEREAS, Appellant states that this appeal should be granted because the Development Site does not comply with the requirements of the "zoning lot" definition of ZR § 12-10 and because the ground-level open areas on the Development Site do not meet the "open space" definition and applicable zoning requirements under ZR §§ 12-10, 25-64 and 23-12; and

I. ZONING LOT

WHEREAS, Appellant states that the Development Site does not comply with the "zoning lot" definition because it does not consist of lots of record, meaning entire tax lots as shown on the official tax map of the City of New York; and

WHEREAS, Appellant states that paragraph (d) of the "zoning lot" definition requires that the lots to be merged by declaration into a single zoning lot must be "lots of record" and that "lot," "of record" and "lot of record" are undefined

¹ Appellant also requests revocation of the Permit; however, Appellant has not presented the Board with a timely, signed final determination from DOB refusing to revoke the Permit as required by the Board's Rules of Practice and Procedure. See 2 Rules of the City of New York ("RCNY") § 1-06.3(a). Furthermore, as discussed herein, Appellant has failed to demonstrate that the Permit violates any applicable provision of law, so the Board need not—and does not—consider revocation of the Permit in this appeal.

by the Zoning Resolution; and

WHEREAS, Appellant states that "lot of record" in subdivision (a) of the "zoning lot" definition means "a lot as shown on the official tax map" and that lots shown on the tax map are entire tax lots, the dimensions of which generally correspond with deeds of ownership recorded in the City Register's Office; and

WHEREAS, Appellant states that "of record" in subdivisions (b), (c) and (d) has the same meaning: tax lots shown on the official tax map; and

WHEREAS, Appellant states that the Development Site does not consist of a series of tax lots, but of disparate, isolated bits and pieces of tax lots strung together with narrow threads made up of other bits and pieces of lots; and

WHEREAS, Appellant states that portions of the various tax lots that make up the Development Site are not, themselves, "lots," as the term is used in the "zoning lot" definition; and

WHEREAS, Appellant states that the parts of the tax lots were also not "of record" prior to the creation of the Development Site and that, for something to be "of record," it must be recorded; and

WHEREAS, Appellant states that *609 Bayside Drive, Queens*, BSA Cal. No. 229-06-A (Jan. 13, 2009), identified by the Owner as supporting the Owner's position, is distinguishable from the Development Site because Breezy Point's lots were unique, were established prior to December 15, 1961, and does not stand for the proposition that a partial tax lot is a lot of record; and

WHEREAS, Appellant states that, for two or more lots to be declared a zoning lot, they must be contiguous for a minimum of 10 linear feet and they must be "lots of record" pursuant to paragraph (d) of the "zoning lot" definition; and

WHEREAS, Appellant states that the Development Site does not consist of "two or more lots of record" because the phrase "two or more" necessarily indicates that fractions of tax lots are not permitted under paragraph (d) of the "zoning lot" definition; and

WHEREAS, Appellant states that, because the Development Site is not composed of entire tax lots, it does not meet paragraph (d) of the "zoning lot" definition; and

WHEREAS, Appellant states that the Development Site is also not an "unsubdivided" "tract of land" because an unsubdivided tract of land is a single lot of record, meaning a single tax lot; and

WHEREAS, Appellant states that the Department of City Planning's *Zoning Handbook* translates "a tract of land, either unsubdivided or consisting of two or more lots of record . . . within a single *block*" from the Zoning Resolution into "plain English" as "a tract of land comprising a single tax lot or two or more adjacent tax lots within a block"²; and

² The disclaimer to the *Zoning Handbook* (2011) explicitly states that it "provides a brief overview of the zoning rules and regulations of New York City and is not intended to serve as a substitute for the actual regulations which are to

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WHEREAS, Appellant concludes, therefore, that an “unsubdivided tract of land” is equivalent to a single lot of record, which is equivalent to a single tax lot; and

WHEREAS, Appellant states that the passing reference to “parts of tax lots” in a DOB Memorandum issued by Irving E. Minkin, P.E., Acting Commissioner, dated May 18, 1978 (the “Minkin Memorandum”), entered into the record by the Owner in this appeal, is unavailing because elsewhere it references “Tax Lot(s)” and states “as shown on the Tax Map of the City of New York”; and

WHEREAS, Appellant states that the phrase “parts of tax lots” does not appear in the “zoning lot” definition or anywhere else in the Zoning Resolution and that such language cannot be imported into the text by interpretation; and

WHEREAS, accordingly, Appellant states that, because the Development Site includes parts of tax lots, it is neither an “unsubdivided” “tract of land” nor does it “consist[] of two or more lots of record” and, accordingly, does not meet paragraph (d) of the “zoning lot” definition; and

II. OPEN SPACE

WHEREAS, Appellant states that ground-level open areas on the Development Site do not meet the “open space” definition and do not comply with zoning regulations for permitted obstructions; and

WHEREAS, Appellant states that the “odd bits, pieces and strips of open space” do not meet the “open space” definition because said areas are not “accessible to and usable by” residents of the Development Site; and

WHEREAS, Appellant states that ZR § 23-151 only provides for the quantity—not quality—of open space but that the ground-level open areas are not “usable” in any meaningful sense as the word is used in the “open space” definition, ZR § 12-10; and

WHEREAS, Appellant states that ZR § 78-52 gives indication of the intended use and purpose of required unobstructed open space by requiring that, in large-scale residential developments, “common open space” “shall include both active and passive recreation space providing a range of recreational facilities and activities” and “be landscaped”; and

WHEREAS, Appellant states that parking spaces³ and

be found in the Zoning Resolution The City disclaims any liability for errors that may be contained herein and shall not be responsible for any damages, consequential or actual, arising out of or in connection with the use of this information.”

³ Appellant also states that the existing parking spaces are not a joint facility under ZR § 25-52 that would be a permitted obstruction under ZR § 23-12. DOB states that the Plans neither reflect that accessory parking spaces are to be provided for the New Building nor propose or show existing open parking spaces on the Development Site. The Owner states that it is exploring the establishment of a joint parking facility in the rear yard area. However, the Board is only

driveways that exist on the Development Site “may be presumed” to be accessory parking for occupants of residential buildings located on the same block but not within the Development Site; and

WHEREAS, Appellant states that, because the existing parking spaces are accessory to and used by persons occupying dwelling units off the Development Site, said parking spaces cannot also be used by persons occupying dwelling units on the Development Site; and

WHEREAS, Appellant states that, although generally driveways and open accessory parking spaces are permitted obstructions in required open space under ZR §§ 23-12 and 25-64, portions of the driveways and parking spaces located on the Development Site are actually accessory to residential buildings off the Development Site, contrary to the “accessory use” definition in ZR § 12-10; and

WHEREAS, accordingly, Appellant states that the Development Site’s ground-level open areas do not comply with the Zoning Resolution’s “open space” requirements; and

DOB’S POSITION

WHEREAS, DOB states that this appeal should be denied because the Development Site meets DOB’s currently-in-effect “historical interpretation” of the “zoning lot” definition of ZR § 12-10 and because the ground-level open areas on the Development Site meet the “open space” definition and applicable zoning requirements of ZR §§ 12-10, 25-64 and 23-12; and

I. ZONING LOT

WHEREAS, DOB states that the Development Site complies with DOB’s currently-in-effect “historical interpretation” of paragraph (d) of the “zoning lot” definition because it complies with the Minkin Memorandum; and

WHEREAS, DOB states that the Minkin Memorandum is currently applicable to construction applications and that the Minkin Memorandum reflects a “longstanding, plausible, and consistent” interpretation of the “zoning lot” definition; and

WHEREAS, DOB states that the Minkin Memorandum summarizes the applicability of 1977 zoning amendments, which added paragraph (d) to the “zoning lot” definition, regarding what constitutes a zoning lot, and notes that the Minkin Memorandum states that “a single zoning lot, which may consist of one or more tax lots or parts of tax lots”; and

WHEREAS, DOB states that this interpretation that a zoning lot may consist of parts of tax lots is supported by the “zoning lot” definition of ZR § 12-10, which 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”; and

WHEREAS, DOB states that, since a zoning lot has

considering the issues presented as they pertain to construction authorized by the Permit pursuant to the Plans approved for the New Building, which do not propose a joint facility.

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not historically needed to coincide with a tax map, it seems that tax lots could be bifurcated by zoning lot lines⁴; and

WHEREAS, accordingly, DOB states that, while Appellant's proffered interpretation that zoning lots cannot include partial tax lots promotes clarity and transparency, the Development Site complies with DOB's currently-in-effect "historical interpretation" of paragraph (d) of the "zoning lot" definition; and

II. OPEN SPACE

WHEREAS, DOB states that, according to the Plans, the Development Site provides the required 77,643 square feet of open space for residents of the Development Site; and

WHEREAS, DOB states that ground-level open areas comply with the "open space" definition of ZR § 12-10

4 DOB submitted further testimony in support of a draft Buildings Bulletin, which is non-final, not in effect, not before the Board and beyond the scope of this appeal. See 2 RCNY § 1-06.3(a). In so doing, DOB states that the Minkin Memorandum is an erroneous interpretation of the "zoning lot" definition and that, because of a need to clarify the requirements for forming zoning lots, DOB is in the process of writing a Buildings Bulletin to set forth the administrative procedures and forms required to create and verify the formation of a zoning lot. DOB states that, under its not-in-effect "current interpretation," the Minkin Memorandum is erroneous because the "zoning lot" definition indicates that zoning lots cannot consist of partial tax lots, because partial tax lots cannot be lots "of record," because the evidence previously relied upon by DOB (that zoning lots can consist of partial tax lots) is erroneous and because interpreting zoning lots to only allow tax lots in the entirety makes for good public policy by promoting clarity and transparency. DOB states that "lots of record" refer only to complete tax lots because a Declaration of Restrictions must be recorded "against each lot of record constituting a portion of the land covered by such Declaration" under paragraph (d) of the "zoning lot" definition. DOB states that the 1961 "zoning lot" definition did permit zoning lots to contain partial tax lots, though the 1977 amendment added a requirement that zoning lots may only contain entire tax lots, that this explains the Minkin Memorandum's error, that the term "unsubdivided" refers to a single tax lot and that the "may or may not coincide" language reflects that a zoning lot may consist of two or more tax lots. However, nothing in the record indicates that what DOB describes as its "current interpretation" is currently in effect or being applied to applications for development or enlargement or that the Minkin Memorandum has been rescinded or superseded. To the contrary, statements in the record indicate that the Buildings Bulletin setting forth DOB's not-in-effect "current interpretation" is still in draft—not final—form. Accordingly, the Board considers this appeal with the understanding that, as represented by DOB, in issuing the Permit, DOB applied the Minkin Memorandum's interpretation to the Development Site.

because they will be "accessible to and usable by" residents of the Development Site; and

WHEREAS, DOB states that, contrary to Appellant's analogy to the "common open space" provision of ZR § 78-52, which requires "active and passive recreation space" for large-scale residential developments, the general "open space" definition, which is applicable to the Development Site, contains no such requirement; and

WHEREAS, DOB states that Appellant's analogies to ZR §§ 136-324 and 141-33 similarly fail because they contain specific requirements for "publicly accessible" open space and for "special" open space, which are distinct from the general definition of "open space"; and

WHEREAS, DOB states that driveways are permitted obstructions in required open space under ZR §§ 23-12 and 25-64; and

WHEREAS, DOB states that ZR § 25-64 adds the limitation that driveways and other specified permitted obstructions "may not use more than 50 percent" of the open space required; and

WHEREAS, DOB states that the Plans indicate that the Development Site's open space contains 12.6 percent permitted obstructions, which is less than the 50 percent maximum; and

WHEREAS, DOB states that Appellants would add the word "accessory" before word "driveways" in ZR §§ 23-12 and 25-64 but that neither provision states "accessory driveways," while providing that other obstructions (bicycle parking spaces, off-street loading berths and open off-street parking spaces) must be accessory, suggesting that driveways need not be "accessory" to qualify as permitted obstructions under ZR §§ 23-12 and 25-64; and

WHEREAS, DOB states that, according to the Plans, no accessory parking spaces are proposed for the New Building and that, to the extent parking spaces would be proposed in the rear yard of the New Building, the Plans would need to be revised to reflect their existence with their legality to be demonstrated by the Owner; and

WHEREAS, in response to questions from the Board at the first hearing regarding whether non-compliance with "open space" provisions would render the Permit invalid, DOB states that open space requirements must be satisfied at the time of permit issuance and during the final inspection prior to the issuance of a certificate of occupancy; and

WHEREAS, in response to questions from the Board at the second hearing regarding the status of the parking, DOB states that the parking in the Development Site's open space is lawful permitted parking accessory to 170 West End Avenue because the 26 parking spaces located on the Development Site were lawfully established prior to 1961 as accessory parking spaces serving 170 West End Avenue; and

WHEREAS, accordingly, DOB states that the Development Site's ground-level open areas comply with applicable "open space" requirements of ZR §§ 12-10, 25-64 and 23-12; and

OWNER'S POSITION

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WHEREAS, the Owner states that this appeal should be denied because the Development Site, which includes parts of tax lots, meets the “zoning lot” definition of ZR § 12-10 and because ground-level open areas on the Development Site meet the “open space” definition and applicable zoning requirements of ZR §§ 12-10, 25-64 and 23-12; and

I. ZONING LOT

WHEREAS, the Owner states that the Development Site complies with paragraph (d) of the “zoning lot” definition because it is an unsubdivided tract of land that was “declared to be a tract of land to be treated as” a single zoning lot; and

WHEREAS, the Owner states that a “lot of record” may be something other than a tax lot and that a zoning lot may be an unsubdivided portion of land that does not correspond to lots of record; and

WHEREAS, the Owner states that the City’s first zoning regulations, the Building Zone Resolution (1916), as amended through 1960, originally defined “lot” as synonymous with a development plot—any plot of land that could or would be developed—and subsequently clarified its definition to be “a parcel or plot of ground which is or may be occupied by a building and accessory buildings including the open spaces required by this resolution”; and

WHEREAS, the Owner states that the reports *Plan for Rezoning the City of New York* (Oct. 1950) by Harrison, Ballard & Allen and *Zoning New York City: A Proposal for a Zoning Resolution for the City of New York Submitted to the City Planning Commission* (Aug. 1958) by Voorhees Walker Smith & Smith evince a clear distinction between zoning lots and tax lots intended to allow real-estate developers wide latitude and flexibility in distributing bulk across a parcel of land, delineated from surrounding parcels by the boundaries of a zoning lot, not a tax lot; and

WHEREAS, the Owner states that the comprehensive amendment to the Zoning Resolution (1961) codifies this flexibility while protecting the lawful status of existing buildings and of tracts of land that would be rendered non-complying by implementation of this comprehensive amendment; and

WHEREAS, the Owner states that, in *609 Bayside Drive, Queens*, BSA Cal. No. 229-06-A (Jan. 13, 2009), as upheld in *Golia v. Srinivasan*, 95 A.D.3d 628, 630 (N.Y. App. Div. 2012), treatment by DOB and by the Board of a plot of land in the Breezy Point Cooperative as a separate zoning lot distinct from the cooperative’s larger, single tax lot indicates that a partial tax lot can be a “lot of record” as referenced in the “zoning lot” definition; and

WHEREAS, the Owner states that, as added in 1977, paragraph (d) of the “zoning lot” definition allows for the complex assemblage of contiguous parcels of land to be declared a single zoning lot and does not contain any requirement that said parcels correspond to entire tax lots; and

WHEREAS, the Owner states that, as used in the “zoning lot” definition, an “unsubdivided” tract of land

refers to something other than a single lot of record and something other than two or more lots of record; and

WHEREAS, the Owner states that there are few, but scant, instances where the Zoning Resolution uses the term “tax lot” and that these references generally refer to recording requirements or perform a tracking function associated with (E) designations’ environmental restrictions; and

WHEREAS, the Owner states that the Minkin Memorandum indicates that a “single zoning lot . . . may consist of one or more tax lots or parts of tax lots” and that “boundaries of such zoning lot may or may not coincide with its comprising tax lots”; and

WHEREAS, the Owner states that tax lots and zoning lots serve different purposes: tax lots are established to identify owners to whom tax bills may be sent and zoning lots are delineated for applying zoning regulations to a parcel of land; and

WHEREAS, in response to questions from the Board at the first hearing regarding the meaning of “lot of record,” the Owner states that the more reasonable meaning of “lot of record” is either its historic and common meaning as a lot that, if located within the City of New York, has been recorded in the office of the City Register or as a lot shown on DOB’s records as available for development or already developed; and

WHEREAS, the Owner states that a memorandum issued by Department of City Planning Counsel William Valletta (Dec. 28, 1987) (the “Valletta Memorandum”) shows that “lot of record” does not equate to “tax lot” and that a zoning lot may contain a partial tax lot because it takes care to use general expressions such as “constituent parts of a zoning lot” and “the lot or its other constituent” when describing a lot of record, suggesting that tax lots are not the sole unit of measurement; and

WHEREAS, in response to questions from the Board at the second hearing regarding whether paragraph (d) of the “zoning lot” definition allows for parts of “lots of record,” the Owner states that a zoning lot may be composed of both whole and partial “lots of record,” even assuming that “lot of record” means a tax lot as used in paragraph (d) of the “zoning lot” definition because an “unsubdivided” “tract of land” can include a single whole “lot of record” or a combination of whole and partial “lots of record”; and

WHEREAS, accordingly, the Owner concludes that the Development Site complies with paragraph (d) of the “zoning lot” definition; and

II. OPEN SPACE

WHEREAS, the Owner states that the Development Site provides the required amount of open space because, as approved by DOB, the Development Site must provide a minimum of 77,642 square feet of open space, that 86,972 square feet of open space is provided by ground-level open areas and that the ground-level open areas comply with the “open space” definition of ZR § 12-10 because they will be “accessible to and usable by” residents of the Development Site; and

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WHEREAS, the Owner refers to a private agreement between all parties in interest on the Development Site, which states that “all owners and permitted occupants of any buildings within the Combined Zoning Lot, a non-exclusive right of access to the Vacant Land Parcel, but only to the extent necessary for the Vacant Land Parcel to constitute ‘open space’ under the Zoning Resolution,” as evidence that occupants of the Development Site are assured access; and

WHEREAS, the Owner states that the ground-level open areas are usable, that ZR § 78-52, cited by Appellant, has no applicability to the Development Site since this provision only applies to large-scale residential developments and that there is no minimum dimension requirement applicable to the Development Site’s open space; and

WHEREAS, the Owner states that 16,157 square feet of the Development Site classified as open space (18.58 percent) is obstructed by driveways, which complies with the 50 percent maximum permitted by ZR §§ 25-64 and 23-12; and

WHEREAS, the Owner states that there are no open accessory off-street parking spaces obstructing the Development Site’s open space and that eliminating the disputed parking area (approximately 6,623 square feet) from the open space calculations would not reduce the Development Site’s open space below the 77,642 square feet required; and

WHEREAS, accordingly, the Owner states that ground-level open areas meet the “open space” definition of ZR § 12-10 and that obstructions within the Development Site’s open space are permitted under ZR §§ 25-64 and 23-12; and

DISCUSSION

WHEREAS, because this is an appeal for interpretation, pursuant to ZR § 72-11, the Board “may make such . . . determination as in its opinion should have been made in the premises in strictly applying and interpreting the provisions of” ZR §§ 12-10, 25-64 and 23-12; and

WHEREAS, however, a majority of the Board finds that Appellant has failed to demonstrate that the Development Site does not comply with the Zoning Resolution’s “zoning lot” definition, and the Board unanimously finds that Appellant has failed to demonstrate that ground-level open areas on the Development Site do not comply with the Zoning Resolution’s “open space” requirements; and

I. ZONING LOT

WHEREAS, a majority of the Board⁵ finds that the Development Site meets paragraph (d) of the “zoning lot” definition based upon the record in this appeal; and

WHEREAS, by structuring the “zoning lot” definition

with paragraphs (a)–(d) connected by “either . . . or,” the Zoning Resolution affords substantial flexibility in defining the boundaries a “zoning lot,” ZR § 12-10; and

WHEREAS, here, strictly applying and interpreting the “zoning lot” definition turns on whether the Development Site meets paragraph (d); and

WHEREAS, at the outset, the text of paragraph (d) states in part that a zoning lot is “a tract of land, either unsubdivided or consisting of two or more lots of record”; and

WHEREAS, in other words, paragraph (d) of the “zoning lot” definition requires that a zoning lot be an “unsubdivided” “tract of land” or a “tract of land” “consisting of two or more lots of record”; and

WHEREAS, this text provides neither definitions of the terms “tract of land,” “unsubdivided” or “lots of record” nor reference to “tax lots”; and

WHEREAS, however, as surface land, the Development Site is “land,” ZR § 12-10; and

WHEREAS, as discussed herein, a majority of the Board concludes that—based upon the record in this appeal—the Development Site is a “tract of land” that is “unsubdivided”⁶ for the purposes of the Zoning Resolution when considering the text with regard to the following: (a) the location and demarcation of the land in question; (b) the purposes of delineating of the land in question; (c) the assemblage and constituents of the land in question; (d) the evidence in the record; and (e) the position presented by a minority of the Board; and

A. Location and Demarcation

WHEREAS, the following pertinent part of the “zoning lot” definition relates to the location and demarcation of the land in question:

A “zoning lot” is . . . (d) a tract of land . . . located within a single block, which at the time of filing for a building permit . . . is declared to be a tract of land to be treated as one zoning lot for the purpose of this Resolution . . . Each Declaration . . . shall be recorded in the Conveyances Section of the Office of the City Register . . . against each lot of record constituting a portion of the land covered by such Declaration. . . .

[A] complete metes and bounds of the *zoning lot*, the tax lot number, the block number and the ownership of the *zoning lot* as set forth in paragraph[] . . . (d) herein shall be recorded by the applicant in the Conveyances Section of the Office of the City Register [(underlined emphasis added)]; and

WHEREAS, the Development Site is “land” “located

⁵ As indicated by the Board’s vote and as discussed further herein, a minority of the Board finds that the Development Site does not comply with the Zoning Resolution’s “zoning lot” definition.

⁶ Because a majority of the Board finds that the Development Site is an “unsubdivided” “tract of land” based on the record in this appeal, the Board expresses no opinion as to whether the Development Site “consist[s] of two or more lots of record contiguous for a minimum of ten linear feet,” ZR § 12-10.

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within a single *block*,”⁷ ZR § 12-10, bounded by Amsterdam Avenue, West 66th Street, West End Avenue and West 70th Street, as illustrated on Zoning Map 8c,8 which map is incorporated into the Zoning Resolution; and

WHEREAS, the Development Site has been “declared to be a tract of land to be treated as one *zoning lot* for the purpose of this Resolution,” ZR § 12-10, as evidenced by the Zoning Lot Declaration; and

WHEREAS, the Zoning Lot Declaration contains a metes and bounds description of the Development Site, referred to therein as Zoning Lot 2, in Exhibit I:

Description of Zoning Lot 2

All those certain lots, pieces or parcels of land, situate, lying and being in the Borough of Manhattan, City, County and State of New York, Bounded and Described as follows:

Beginning at a point on the westerly side of Amsterdam Avenue, distant 100'5" (100.42') southerly from the corner formed by the intersection of the westerly side of Amsterdam Avenue and the southerly side of West 70th Street; running thence southerly along the westerly side of Amsterdam Avenue 152'8-7/8" (152.73'); thence westerly 110'; thence southerly 58'8-1/8" (58.67'); thence westerly 69'0-1/2" (69.04'); thence westerly, along the arc of a circle bearing to the left, having a radius of 63'9" (63.75'); thence northerly 65'10-3/4" (65.89'); thence westerly 164'; thence southerly 46'; thence westerly 46'; thence westerly 68'; thence southerly 172'4" (172.33'); thence easterly 68'; thence southerly 148'; thence westerly 68'; thence southerly 74'2" (74.17'); thence westerly 13'11" (13.92'); thence northerly 108'3" (108.25'); thence westerly 98'1" (98.08'); thence northerly 59'8" (59.67'); thence westerly 151'1" (151.08'); thence southerly 59'8" (59.76'); thence westerly 48'7" (48.58'); thence northerly 158'3-1/2" (158.29'); thence easterly 37'; thence southerly 60'10-1/2" (60.88'); thence easterly 162'8" (162.67'); thence northerly 60'10-1/2" (60.88'); thence easterly 98'1" (98.08'); thence northerly 164'; thence westerly 48'; thence thence northerly 18'11" (18.96'); thence westerly 179'9" (179.75'); thence southerly 12'11"; thence westerly 100'; thence northerly 223'10" (223.83'); thence easterly 100'; thence southerly 200'10" (200.83'); thence easterly 545'; thence northerly 120'5" (120.42'); thence easterly 155' to the westerly side of Amsterdam Avenue, the point or place of beginning; and

WHEREAS, the Zoning Lot Declaration defines Zoning Lot 2—that is, the Development Site—as “a zoning lot comprised of Tax Lots 133, 134, p/o 1101–1107 f/k/a 70; p/o 1201–1208 f/k/a 80; 1501–1672 f/k/a 65; p/o 1001–1007 f/k/a 1; p/o 1401–1405 f/k/a 30, and more particularly described on *Exhibit I*” above; and

WHEREAS, in the Property Data section, the Zoning Lot Declaration’s Recording and Endorsement Cover Page and continuation pages state the following: Lots 133 (Entire Lot), 134 (Entire Lot), 1001 (Partial Lot), 1002 (Partial Lot), 1003 (Entire Lot), 1004 (Partial Lot), 1005 (Partial Lot), 1006 (Partial Lot), 1007 (Partial Lot), 1401 (Partial Lot), 1402 (Partial Lot), 1403 (Partial Lot), 1404 (Partial Lot), 1101 (Partial Lot), 1102 (Partial Lot), 1103 (Partial Lot), 1104 (Partial Lot), 1105 (Partial Lot), 1106 (Partial Lot), 1107 (Partial Lot), 1201 (Partial Lot), 1201 (Partial Lot), 1203 (Partial Lot), 1204 (Partial Lot), 1205 (Partial Lot), 1206 (Partial Lot), 1207 (Partial Lot), 1208 (Partial Lot), 1501 (Partial Lot), 1502 (Partial Lot), 1503 (Partial Lot), 1504 (Entire Lot), 1505 (Partial Lot), 1506 (Partial Lot), 1507 (Partial Lot), 1508 (Partial Lot), 1509 (Partial Lot), 1509 (Partial Lot), 1510 (Partial Lot), 1511 (Partial Lot), 1512 (Partial Lot), 1513 (Partial Lot), 1514 (Partial Lot), 1515 (Partial Lot), 1516 (Partial Lot), 1517 (Partial Lot), 1518 (Partial Lot), 1519 (Partial Lot), 1520 (Partial Lot), 1521 (Partial Lot), 1522 (Partial Lot), 1523 (Partial Lot), 1524 (Partial Lot), 1525 (Partial Lot), 1526 (Partial Lot), 1527 (Partial Lot), 1528 (Partial Lot), 1529 (Partial Lot), 1530 (Partial Lot), 1531 (Partial Lot), 1532 (Partial Lot), 1533 (Partial Lot), 1534 (Partial Lot), 1535 (Partial Lot), 1536 (Partial Lot), 1537 (Partial Lot), 1538 (Partial Lot), 1539 (Partial Lot), 1540 (Partial Lot), 1541 (Partial Lot), 1542 (Partial Lot), 1543 (Partial Lot), 1544 (Partial Lot), 1545 (Partial Lot), 1546 (Partial Lot), 1547 (Partial Lot), 1548 (Partial Lot), 1549 (Partial Lot), 1550 (Partial Lot), 1551 (Partial Lot), 1552 (Partial Lot), 1553 (Partial Lot), 1554 (Partial Lot), 1555 (Partial Lot), 1556 (Partial Lot), 1557 (Partial Lot), 1558 (Partial Lot), 1559 (Partial Lot), 1560 (Partial Lot), 1561 (Partial Lot), 1562 (Partial Lot), 1563 (Partial Lot), 1564 (Partial Lot), 1565 (Partial Lot), 1566 (Partial Lot), 1567 (Partial Lot), 1568 (Partial Lot), 1569 (Partial Lot), 1570 (Partial Lot), 1571 (Partial Lot), 1572 (Partial Lot), 1573 (Partial Lot), 1574 (Partial Lot), 1575 (Partial Lot), 1576 (Partial Lot), 1577 (Partial Lot), 1578 (Partial Lot), 1579 (Partial Lot), 1580 (Partial Lot), 1581 (Partial Lot), 1582 (Partial Lot), 1583 (Partial Lot), 1584 (Partial Lot), 1585 (Partial Lot), 1586 (Partial Lot), 1587 (Partial Lot), 1588 (Partial Lot), 1589 (Partial Lot), 1590 (Partial Lot), 1591 (Partial Lot), 1592 (Partial Lot), 1593 (Partial Lot), 1594 (Partial Lot), 1595 (Partial Lot), 1596 (Partial Lot), 1597 (Partial Lot), 1598 (Partial Lot), 1599 (Partial Lot), 1600 (Partial Lot), 1601 (Partial Lot), 1602 (Partial Lot), 1603 (Partial Lot), 1604 (Partial Lot), 1605 (Partial Lot), 1606 (Partial Lot), 1607 (Partial Lot), 1608 (Partial Lot), 1609 (Partial Lot), 1610 (Partial Lot), 1611 (Partial Lot), 1612 (Partial Lot), 1613 (Partial Lot), 1614 (Partial Lot), 1615 (Partial Lot), 1616 (Partial

7 The Zoning Resolution defines a “block” as “a tract of land bounded by . . . streets.” ZR § 12-10.

8 The Zoning Resolutions defines “zoning maps” as “the maps incorporated into the provisions of this Resolution in accordance with the provisions of Section 11-14 (Incorporation of Maps).” ZR § 12-10.

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Lot), 1617 (Partial Lot), 1618 (Partial Lot), 1619 (Partial Lot), 1620 (Partial Lot), 1621 (Partial Lot), 1622 (Partial Lot), 1623 (Partial Lot), 1007 (Partial Lot), 1625 (Partial Lot), 1626 (Partial Lot), 1627 (Partial Lot), 1628 (Partial Lot), 1629 (Partial Lot), 1630 (Partial Lot), 1631 (Partial Lot), 1632 (Partial Lot), 1633 (Partial Lot), 1634 (Partial Lot), 1635 (Partial Lot), 1636 (Partial Lot), 1637 (Partial Lot), 1638 (Partial Lot), 1639 (Partial Lot), 1640 (Partial Lot), 1641 (Partial Lot), 1642 (Partial Lot), 1643 (Partial Lot), 1644 (Partial Lot), 1645 (Partial Lot), 1646 (Partial Lot), 1647 (Partial Lot), 1648 (Partial Lot), 1649 (Partial Lot), 1650 (Partial Lot), 1651 (Partial Lot), 1007 (Partial Lot), 1653 (Partial Lot), 1654 (Partial Lot), 1655 (Partial Lot), 1656 (Partial Lot), 1657 (Partial Lot), 1658 (Partial Lot), 1659 (Partial Lot), 1660 (Partial Lot), 1661 (Partial Lot), 1662 (Partial Lot), 1663 (Partial Lot), 1007 (Partial Lot), 1665 (Partial Lot), 1666 (Partial Lot), 1667 (Partial Lot), 1669 (Partial Lot), 1671 (Partial Lot), 1672 (Partial Lot), 1405 (Partial Lot), 1007 (Partial Lot) and 1007 (Partial Lot); and

WHEREAS, accordingly, the Zoning Lot Declaration's Recording and Endorsement Cover Page and continuation pages indicate the Zoning Lot Declaration has been recorded in the Office of the City Register "against each lot of record constituting a portion of the land covered by such Declaration" in accordance with paragraph (d) of the "zoning lot" definition, ZR § 12-10; and

WHEREAS, contrary to assertions made by Appellant and DOB, it is unclear from the record in this appeal that the Zoning Lot Declaration cannot be recorded against "Partial [Tax] Lot[s]" in light of the Zoning Lot Declaration's Recording and Endorsement Cover Page and continuation pages; and

WHEREAS, the Zoning Lot Declaration's description of the Development Site corresponds to the Zoning Lot Description and Ownership Statement, City Register File No. 2017000053112, dated January 26, 2017, which contains "a complete metes and bounds of the *zoning lot*, the tax lot number[s], the block number and the ownership of the *zoning lot*," ZR § 12-10 (final paragraph of "zoning lot" definition); and

WHEREAS, contrary to assertions made by Appellant and DOB, it is unclear from the record in this appeal that the Zoning Lot Description and Ownership Statement cannot be recorded against "Partial [Tax] Lot[s]" in light of the Zoning Lot Description and Ownership Statement's Recording and Endorsement Cover Page and continuation pages; and

WHEREAS, accordingly, as set forth in the Zoning Lot Description and Ownership Statement, there is a single legal description with dimensions set forth in "metes and bounds" for the Development Site, which description has been recorded in the Office of the City Register, ZR § 12-10 (final paragraph of "zoning lot" definition); and

B. Purposes of Delineation

WHEREAS, turning again to ZR § 12-10, the following text pertains to the purposes of delineating of the land in question:

A "zoning lot" is . . . (d) a tract of land, either unsubdivided or consisting of two or more lots of record contiguous for a minimum of ten linear feet . . . , which . . . is declared to be a tract of land to be treated as one zoning lot for the purpose of this Resolution.

A *zoning lot*, therefore, may or may not coincide with a lot as shown on the official tax map of the City of New York, or on any recorded subdivision plat or deed [(underlined emphasis added)]; and

WHEREAS, as one specifically delineated land parcel, described by metes and bounds, the Development Site is "a" single "tract of land," ZR § 12-10; and

WHEREAS, no categorical rule appears in the provisions of the Zoning Resolution that a "tract of land" need be a tax lot; and

WHEREAS, the Zoning Lot Description and Ownership Statement indicates that the Development Site is a land assemblage involving multiple owners and multiple tax lot numbers; and

WHEREAS, the Zoning Lot Declaration indicates that, as a whole, the Development Site is "to be treated as one *zoning lot* for the purpose of" the Zoning Resolution, ZR § 12-10; and

WHEREAS, the Zoning Lot Declaration indicates that the Development Site has been subdivided from the Combined Land Parcel⁹ but, as a result of said subdivision,¹⁰ the Development Site in and of itself constitutes a single, unified tract of land; and

WHEREAS, the Zoning Resolution expressly provides that a zoning lot "may not"—and, in fact, the Development Site does not—"coincide" with a lot shown on the City's tax map, ZR § 12-10; and

WHEREAS, contrary to Appellant and DOB's assertions, there is no indication in the record in this appeal that the phrase "may not coincide" refers only to tax-lot boundaries traversing the interior of a zoning lot comprised of two or more complete, abutting tax lots sharing tax-lot boundaries, and there is no indication that a zoning lot's perimeter must—as opposed to "may," as stated in the text—"coincide" with tax-lot boundaries, ZR § 12-10; and

WHEREAS, there is no indication in the record in this appeal that the Zoning Resolution and the City's tax map serve the same purpose or that "not coincid[ing]" with tax-

⁹ The Board expresses no opinion as to the Combined Land Parcel, which is not before the Board in this appeal.

¹⁰ Consistent with the "zoning lot" definition, which states that zoning lots "may be subdivided into two or more *zoning* lots, provided that all resulting *zoning* lots and all buildings thereon shall comply with all of the applicable provisions of" the Zoning Resolution, nothing in the record indicates that the zoning-lot subdivision evinced by the Zoning Lot Declaration contravened any applicable zoning provision. Insofar as Appellant alleges such non-compliance with respect to applicable "open space" regulations, as discussed herein, the Board finds no merit in this contention.

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lot boundaries prevents a tract of land from complying with paragraph (d) of the “zoning lot” definition; and

C. Assemblage and Constituents

WHEREAS, with respect to ZR § 12-10, the following part of the “zoning lot” definition relates to the assemblage and constituents of the land in question:

A “zoning lot” is . . . (d) a tract of land, either unsubdivided or consisting of two or more lots of record contiguous for a minimum of ten linear feet [(underlined emphasis added)]; and

WHEREAS, because of the either–or construction the text employs, the Development Site must be one of the following: “unsubdivided” or “consisting of two or more lots of record contiguous for a minimum of ten linear feet,” ZR § 12-10; and

WHEREAS, tax lots may, in some instances, be “lots of record” under the “zoning lot” definition, 11 ZR § 12-10; and

WHEREAS, however, it does not follow that all “lots of record” are tax lots or that only tax lots are “lots of record,” ZR § 12-10; and

WHEREAS, to the contrary, the Zoning Lot Declaration declares, in satisfaction of paragraph (d) of the “zoning lot” definition, that the Development Site is treated as one zoning lot for the purposes of the Zoning Resolution; and

WHEREAS, in so doing, the Zoning Lot Declaration indicates that the Development Site in and of itself constitutes, in the aggregate, a single tract of land with multiple owners and parties in interest, which tract is ultimately described by metes and bounds as one specifically delineated, unified land parcel; and

WHEREAS, based on the record in this appeal and consistent with paragraph (d) of the “zoning lot” definition, as a single land assemblage aggregated for the purpose of developing the New Building in compliance with the Zoning Resolution, the Development Site is itself—for the purposes of the Zoning Resolution—“unsubdivided” land, ZR § 12-10; and

D. Evidence

WHEREAS, considering all of the evidence in the record, the interpretation herein is consistent with the City’s longstanding administration of zoning lots; and

WHEREAS, the discussion herein is consistent with the Board’s own prior precedent in *609 Bayside Drive, Queens*, BSA Cal. No. 229-06-A (Jan. 13, 2009), as upheld in *Golia v. Srinivasan*, 95 A.D.3d 628, 630 (N.Y. App. Div. 2012), insofar as an “unsubdivided” “tract of land” is not necessarily governed by tax-lot boundaries and may refer to

a tract of land that traverses parts of tax lots, ZR § 12-10; although said appeal does not directly speak to the zoning-lot issue presented in this appeal, the Board had considered paragraph (a) of the “zoning lot” definition and interpreted the phrase “lot of record existing on December 15, 1961,” as including a separate, individually designated plot within the Breezy Point Cooperative that was part of a single, larger tax lot; and

WHEREAS, City Planning Commission Report No. N 0760226 ZRY (July 13, 1977) (the “CPC Report”), filed in connection with the text amendment that introduced paragraph (d) of the “zoning lot” definition, states: “[W]here two or more adjacent properties have a property interest, they shall jointly declare and record their parcels as a single zoning lot for development purposes” 12; and

WHEREAS, the CPC Report continues:

[A] single zoning lot can be created from adjacent, differently held *parcels* through the filing and recording of a declaration of single zoning lot status executed by all parties having a defined interest in the *parcels in question*, such recording of a declaration of single zoning lot status executed by all parties having a defined interest in the *parcels in question*, such recording to be against each tax lot constituting a portion of the land covered by such declaration and to be in the Office of the City Register. . . . The declaration would *declare the several parcels to be one zoning lot*, and this zoning lot would remain integral, notwithstanding any party’s breach of a provision of the declaration or any agreement ancillary thereto, until such time as the zoning lot is subdivided in accordance with existing zoning lot subdivision rules. These rules preclude any subdivision’s creating-noncompliance with any applicable provisions of the zoning. The recorded declaration will put all persons on notice that the *several parcels in question* have been constituted as one zoning lot (the recording of the declaration will eliminate the current problem of not being able to determine from the public record whether a building has been built in part on the basis of development rights applicable to land on which the building is not physically located). The amendment as proposed thus protects the City’s interest in avoiding overbuilding, and provides private parties with certainty based on which they can protect their own interest. When a declared

11 The Board need not and does not consider or address the various types of tax lots in this appeal. That said, the Department of Finance has recently released a three-dimensional digital tax map that visualizes air lots: tax lots floating above the ground in air space. As a point of comparison, the “zoning lot” definition is rooted to the ground with its “tract of land” verbiage. ZR § 12-10.

12 Although many of the arguments in this appeal discuss lots of record, the Board expresses no opinion as to whether the Development Site—as a “record[ed]” “lot,” City Planning Commission Report No. N 0760226 ZRY (July 13, 1977)—is itself a single lot of record since the pertinent part of paragraph (d) of the “zoning lot” definition instead uses “unsubdivided” “tract of land,” ZR § 12-10.

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zoning lot has to be subdivided creating potential non-compliance, it is necessary to record a restrictive declaration constituting an enforceable covenant running with the land in perpetuity restricting all properties within each newly subdivided portion in accordance with the terms and agreement as originally set forth in the declared zoning lot [(emphasis added)]; and

WHEREAS, consistent with the CPC Report, the Development Site contains adjacent “parcels” that have been “jointly declare[d] and record[ed] . . . as a single zoning lot for development purposes,” *id.*; and

WHEREAS, by being recorded, the Zoning Lot Declaration “put[s] all persons on notice that the several parcels in question have been constituted as one zoning lot,” *id.*; and

WHEREAS, the Minkin Memorandum—while not conclusive insofar as the interpretation memorialized therein could conflict with the Zoning Resolution—states that “a single zoning lot . . . may consist of one or more tax lots or parts of tax lots,” and a majority of the Board credits this interpretation as being consistent with the “zoning lot” definition, as discussed herein; and

WHEREAS, in *A Survey of Transferable Development Rights Mechanisms in New York City* 5–6 (Feb. 26, 2015), the Department of City Planning states:

Zoning lot mergers . . . combine contiguous tax lots within a block, *eliminating lot lines for zoning purposes* and *allowing the free movement of floor area* within the merged zoning lot. . . .

Because ZLMs don’t otherwise allow for exceptions to bulk or other regulations, and because they don’t allow any buildings or developments that couldn’t happen as of right anyway, the city has not found it necessary to restrict or regulate ZLMs beyond the recording requirement and regulations to curb what might be considered extreme uses of the measure.

Regulation beyond that may prove problematic. *Tax lot lines reflect historic ownership patterns but typically do not relate to any land use purposes.* Restrictions on the ability to merge them into unified zoning lots would give *land use effect to tax lot lines*, often without an obvious underlying land use rationale. That may present legal and administrative difficulties [(emphasis added)]; and

WHEREAS, the interpretation herein would not “give land use effect to tax lot lines,” *id.*; and

WHEREAS, the Valletta Memorandum describes a zoning lot as “the essential building block on which the bulk calculations of the Zoning Resolution were intended to be calculated”; and

WHEREAS, according to the Plans, the zoning calculations for the New Building have been computed based on the Development Site; and

E. Minority Position

WHEREAS, a minority of the Board finds that the meaning of “lot of record” and its relationship to the Development Site is dispositive as to whether the Development Site complies with the “zoning lot” definition; and

WHEREAS, a minority of the Board notes that a “lot of record,” though undefined in the Zoning Resolution, is an entire tax lot; and

WHEREAS, a minority of the Board notes that, within the Borough of Manhattan, “of record” refers to being recorded with and maintained by the Office of the City Register; and

WHEREAS, a minority of the Board notes that the “zoning lot” definition itself uses “record” in a number of instances: “a written instrument executed by such party in recordable form and recorded at or prior to the recording of the Declaration,” “any recorded subdivision plat or deed,” “any enforceable recorded interest superior to that of the fee owner,” “any enforceable recorded interest in all or substantially all of such tract of land,” “any unrecorded interest in all or substantially all of such tract of land,” “the same, as well as each such waiver, have been duly recorded,” “their execution and recording of a Declaration,” “any enforceable recorded interest,” “the holder of any enforceable recorded interest,” any unrecorded interest,” “prior leasehold agreements shall be duly recorded” and “a complete metes and bounds of the *zoning lot*, the tax lot number, the block number and the ownership of the *zoning lot* as set forth in paragraphs (a), (b), (c) and (d) herein shall be recorded by the applicant in the Conveyances Section of the Office of the City Register (or, if applicable, the County Clerk’s Office) of the county in which the said *zoning lot* is located,” ZR § 12-10 (underlined emphasis added); and

WHEREAS, a minority of the Board notes that, in each instance, recording evinces the act of depositing an official document with the appropriate authority, which in the Borough of Manhattan is the City Register; and

WHEREAS, a minority of the Board notes, however, that “lot of record” as used in the “zoning lot” definition dates to 1961, before the “zoning lot” definition was amended to allow for the recording of declarations with respect to zoning lots; and

WHEREAS, a minority of the Board notes that there is no indication in the record in this appeal of any other instances of recording that would lead to the conclusion that “lots of record” does not refer to tax lots “as shown on the official tax map of the City of New York,” ZR § 12-10; and

WHEREAS, a minority of the Board notes that Appellant has demonstrated that, in 1961, there was no other formal record for any kind of land use and that the only form a “lot of record” could take was as a tax lot; and

WHEREAS, a minority of the Board notes that this interpretation is further evidenced by the requirement that, under paragraph (d), a zoning lot may “consist[] of two or more” tax lots and that such language contains no suggestion that a zoning lot may “consist[] of” parts of “two or more” tax lots; and

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WHEREAS, a minority of the Board notes that, if a tract of land is “unsubdivided,” it cannot include parts of tax lots; and

WHEREAS, a minority of the Board notes that there is a connection between the purposes served by zoning lots and tax lots because, for decades, the City has required that newly created tax lots comply with all applicable zoning regulations under Section 11-203 of the Administrative Code of the City of New York; and

WHEREAS, a minority of the Board notes that interpreting the “zoning lot” definition to require whole tax lots and disallowing parts of tax lots furthers the City’s interest in ensuring zoning compliance; and

WHEREAS, a minority of the Board finds that, based upon the foregoing, the Minkin Memorandum sets forth an erroneous interpretation of the “zoning lot” definition that should no longer be followed because a “lot of record” is an entire tax lot; and

WHEREAS, accordingly, a minority of the Board finds that, because the Development Site includes partial tax lots, the Development Site does not comply with the “zoning lot” definition and that this appeal should be granted on that basis alone; and

Conclusion

WHEREAS, based upon the foregoing, a majority of the Board finds that, as a single land assemblage aggregated for the purpose of developing the New Building in compliance with the Zoning Resolution, the Development Site is an “unsubdivided” “tract of land,” consistent with paragraph (d) of the “zoning lot” definition; and

WHEREAS, accordingly, a majority of the Board finds no basis to grant this appeal with respect to Appellant’s assertion that the Development Site does not comply with the Zoning Resolution’s “zoning lot” definition; and

II. OPEN SPACE

WHEREAS, the Board unanimously finds that ground-level open areas on the Development Site comply with the Zoning Resolution’s “open space” requirements under ZR §§ 12-10, 25-64 and 23-12; and

WHEREAS, ZR § 12-10 defines “open space,” in pertinent part, as follows:

“Open space” is that part of a *zoning lot*, including *courts* or *yards*, which is open and unobstructed from its lowest level to the sky and is accessible to and usable by all persons occupying a *dwelling unit* or a *rooming unit* on the *zoning lot*. . . . ; and

WHEREAS, the Plans indicate that there will be ground-level open areas on the Development Site; and

WHEREAS, there is no basis to import requirements from non-applicable provisions in strictly applying and interpreting the text of the generally applicable “open space” definition; and

WHEREAS, the evidence in the record, including the Plans, which illustrate no physical barriers to the Development Site’s occupants, and a private agreement between parties in interest on the Development Site, assures

that these ground-level open areas are “accessible to and usable by” residential occupants of the Development Site; and

WHEREAS, the Board credits DOB’s testimony that an inspection will be performed prior to the issuance of a certificate of occupancy to ensure that actual conditions continue to conform to the Plans with respect to open space; and

WHEREAS, the Plans indicate that these ground-level open areas will be “open and unobstructed from its lowest level to the sky”; and

WHEREAS, the Board finds that these ground-level open areas on the Development Site meet the “open space” definition; and

WHEREAS, ZR § 25-64 provides, in relevant part: Restrictions on the use of open space for parking and driveways are set forth in this Section, in accordance with the provisions of Section 23-12 (Permitted Obstructions in Open Space). . . .

(d) In R6, R7, R8, R9 and R10 Districts without a letter suffix, driveways, private streets, open *accessory* off-street parking spaces, unenclosed *accessory* bicycle parking spaces or open *accessory* off-street loading berths may not use more than 50 percent of the required *open space* on any *zoning lot*. The provisions of this paragraph, (c), shall not apply to *Quality Housing buildings*; and

WHEREAS, ZR § 23-12 states, in relevant part: In the districts indicated, the following obstructions shall be permitted in any *open space* required on a *zoning lot*:

(f) Driveways, private streets, open *accessory* off-street parking spaces, unenclosed *accessory* bicycle parking spaces or open *accessory* off-street loading berths, provided that the total area occupied by all these items does not exceed the percentages set forth in Section 25-64 (Restrictions on Use of Open Space for Parking); and

WHEREAS, the Development Site’s ground-level open areas contain driveways; and

WHEREAS, the Plans indicate that not “more than 50 percent of the required *open space*” on the Development Site is used by driveways; and

WHEREAS, there is no basis to import the word “accessory” into these provisions where the text describes some permitted obstructions as “accessory” but not others; and

WHEREAS, the text does not describe driveways as “accessory”; and

WHEREAS, the Board finds that the driveways

13 Insofar as the record includes discussion of parking, the Board expresses no opinion because the Plans, under which the Permit was issued, do not reflect parking in the ground-level open areas.

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located in the ground-level open areas are permitted obstructions under ZR §§ 25-64 and 23-12; and

WHEREAS, accordingly, the Board finds no basis to grant this appeal with respect to Appellant's assertion that the Development Site does not comply with the Zoning Resolution's "open space" requirements; and

CONCLUSION

WHEREAS, the Board has considered all of the arguments on appeal, but a majority of the Board finds them ultimately unpersuasive; and

WHEREAS, for the foregoing reasons, a majority of the Board finds that Appellant has failed to demonstrate that the Development Site does not comply with the Zoning Resolution's "zoning lot" definition, and the Board unanimously finds that Appellant has failed to demonstrate that ground-level open areas on the Development Site do not comply with the Zoning Resolution's "open space" requirements.

Therefore it is Resolved, that the permit issued by the Department of Buildings on September 27, 2017, under New Building Application No. 122887224, shall be and hereby is *upheld* and that this appeal shall be and hereby is *denied*.

Adopted by the Board of Standards and Appeals, July 17, 2018.

257-15-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for ESL8 Properties LLC, owner.

SUBJECT – Application November 18, 2015 – Proposed construction within the bed of a mapped street is contrary to Article 3 Section 35 of the General City Law and related bulk waivers under ZR 72-01-(g). R3-2(NA-1) zoning district.

PREMISES AFFECTED – 1221 Forest Hill Road, Block 1965, Lot 59, Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Laid over to September 27, 2018, at 10 A.M., for adjourned hearing.

2017-5-A thru 2017-7-A

APPLICANT – Eric Palatnik, P.C., for Cetka Mersimovski, owner.

SUBJECT – Application January 6, 2017 – 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.

PREMISES AFFECTED – 620A, 620B, 620C Sharrotons Road, Block 7400, Lot 40, Borough of Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Laid over to September 13, 2018, at 10 A.M., for adjourned hearing.

2017-193-A thru 2017-199-A

APPLICANT – Eric Palatnik, P.C., for Frank McErlean, owner.

SUBJECT – Application May 26, 2017 – 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.

PREMISES AFFECTED – 9, 10, 11, 12, 14, 15, and 17 Tulepo Court, Block 2260, Lot(s) 4, 10, 60, 62, 64, 66, 68, Borough of Staten Island.

COMMUNITY BOARD #2SI

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice Chair Chanda, Commissioner Ottley-Brown and Commissioner Sheta.4

Negative:.....0

Abstain: Commissioner Scibetta.....1

ACTION OF THE BOARD – Laid over to September 13, 2018, at 10 A.M., for decision, hearing closed.

2017-282-A

APPLICANT – Law Office of Steven Simicich, for Lera Property Holdings, LLC, owner.

SUBJECT – Application May 22, 2018 – Proposed construction of three, two family detached buildings where one of the houses will not be fronting on a mapped street contrary to General City Law 36. R3X Special South Richmond District.

PREMISES AFFECTED – 148 Sprague Avenue, Block 7867, Lot 52, Borough of Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Laid over to August 14, 2018, at 10 A.M., for adjourned hearing.

2017-290-A

APPLICANT – Michael Gruen, Esq., for Carnegie Hill Neighbors, owners

SUBJECT – Application November 3, 2017 – 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 zoning district.

PREMISES AFFECTED – 1558 Third Avenue, Block 01516, Lot(s) 32, 37 & 138, Borough of Manhattan.

COMMUNITY BOARD #8M

ACTION OF THE BOARD – Laid over to October 30, 2018, at 10 A.M., for continued hearing.

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ZONING CALENDAR

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 182nd Street aka 2165-75 Southern Boulevard, Block 3111, Lot 59, Borough of Bronx.

COMMUNITY BOARD #2BX

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....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; and

WHEREAS, a public hearing was held on this application on November 15, 2016, after due notice by publication in *The City Record*, with continued hearings on October 31, 2017, January 23, 2018, February 27, 2018, and May 1, 2018, and then to decision on July 17, 2018; and

WHEREAS, Commissioner Ottley-Brown performed an inspection of the site and the surrounding neighborhood; and

WHEREAS, Community Board 6, the Bronx, has no objection to the subject application; and

WHEREAS, the Board was also in receipt of two letters in opposition to the subject application, citing the incompatibility of the subject use with the surrounding area, lack of sufficient landscaping to buffer the use from the surrounding residences and excessive lighting levels at the site that shine into nearby residential windows; and

WHEREAS, the subject site is located on the southeastern corner of East 182nd Street and Southern Boulevard in an R7-1 (C1-4) zoning district, in the Bronx; and

WHEREAS, the site has approximately 82 feet of frontage along East 182nd Street, 78 feet of frontage along Southern Boulevard, 6,945 square feet of lot area and is occupied by a gasoline service station, lubritorium, facility for car washing and motor vehicle repair, office and sales room and parking and storage of more than five (5) motor vehicles; and

WHEREAS, the Board has exercised jurisdiction over the subject site since April 21, 1959, when, under BSA Cal. No. 374-37-BZ, the Board granted a variance to permit the occupation of the subject site with a gasoline service station and lawful uses accessory thereto for a term of fifteen (15) years, expiring April 21, 1974, on condition that all

buildings, structures and other uses on the site at the time be entirely removed and the plot reconstructed and arranged as indicated on the approved plans; that the accessory building be of the design, arrangement and location indicated and faced with brick on the north, east and west sides and its rear wall on the lot line may be of brick or block painted, without windows; that there be no cellar in the accessory building; that the pumps be of a low approved type erected not nearer than 15 street to the street building line at any point; the number of gasoline storage tanks not exceed twelve 550 gallon approved tanks; the premises not occupied by accessory building and pumps be paved with concrete or asphalt; along the lot lines to the south and west where walls of adjoining buildings or wall of accessory building do not occur there be a woven wire chain link fence erected on a masonry base to a total height of not less than 5’-6”;

curb cuts be restricted to two 30 feet in width each to East 182nd Street and two of similar width to Southern Boulevard; signs be restricted to permanent signs on the façade of the accessory building and to the illuminated globes of the pumps, excluding all roof signs, temporary signs and advertising devices, but permitting the erection of a post standard within the building line at the intersection for supporting a sign which may be illuminated, advertising only the brand of gasoline on sale and permitting such sign to extend not more than 4 feet beyond the building line; that at such intersection there be maintained a block of concrete not less than 12 inches in height, extending for five feet along either street line from the intersection; that the sidewalk and curbing abutting the premises be constructed or repaired to the satisfaction of the Borough President; that portable fire-fighting appliances be maintained as the Fire Commissioner directs; that parking and storage of motor vehicles, so arranged as not to interfere with the servicing of the station, is permitted for a similar term; that there may be minor repairs with hand tools only maintained solely within the accessory building; no certificate of occupancy be issued for the premises until transfer of jurisdiction as to Crotona Parkway from the Department of Parks to the Borough President has been effected; and that all required permits be obtained and all work completed pursuant to then Section 22A Zoning Resolution; and

WHEREAS, the property had previously been the subject of two applications, filed under BSA Cal. No. 374-37-BZ: (1) an application under section 21 of the building zone resolution to permit in a business use district the conversion of occupancy of an existing building to a motor vehicle repair shop, which was denied by the Board in a resolution dated May 3, 1938; and (2) an application under sections 7f, 7i and 7h of the Zoning Resolution to permit, in a business use district, the conversion of an existing premises consisting of a carpenter shop, dwelling, 10-car metal garage, tire, battery and ignition service to a gasoline service station, lubritorium, car wash, minor motor repairs, parking and storage of cars, which was withdrawn pursuant to a resolution dated July 24, 1956; and

WHEREAS, on July 26, 1960, under BSA Cal. No.

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374-37-BZ, the Board amended the 1959 variance resolution to permit a change in the size, shape and arrangement of the accessory building on the site in accordance with revised approved drawings, a change in the location of gasoline tanks, pump islands and pumps, a change in the width of the curb cuts on Southern Boulevard from 30 feet to 28 feet and to reduce the westerly curb cut on East 182nd Street to 28 feet, the eastern curb cut on East 182nd Street to remain 30 feet wide, and to extend the time to complete from the date of the amendment; and

WHEREAS, on January 14, 1964, under BSA Cal. No. 374-37-BZ, the Board further amended the resolution to amend the condition of the 1959 resolution regarding the issuance of a certificate of occupancy to the site so that, as amended, the portion reads: “that a new Certificate of Occupancy shall be issued for a term as heretofore permitted, to expire on April 21, 1974”; and

WHEREAS, on November 6, 1974, under BSA Cal. No. 374-37-BZ, the Board extended the term of the variance for ten (10) years, expiring November 6, 1984, on condition that the 1959 resolution, as amended through January 14, 1964, be complied with in all respects and a new certificate of occupancy be obtained; and

WHEREAS, on November 7, 1984, under BSA Cal. No. 374-37-BZ, the Board extended the term of the variance for a term of ten (10) years, expiring November 6, 1994, and amended the variance to legalize the elimination of one gasoline pump island fronting on East 182nd Street on condition that there be no parking of vehicles on the sidewalk or in such a manner as to obstruct pedestrian or vehicular traffic, that the 1959 resolution, as amended through November 6, 1974, be complied with in all respects and that a new certificate of occupancy be obtained within one (1) year, by November 7, 1985; and

WHEREAS, the prior term having expired, the applicant now seeks a reinstatement of the variance, first issued in 1959, pursuant to ZR § 11-411; and

WHEREAS, ZR § 11-411 states:

Where no limitation as to the duration of the *use* *l* was imposed at the time of [the variance authorized by the Board of Standards and Appeals pursuant to the 1916 Zoning Resolution], such *use* may be continued. Where such *use* was authorized subject to a term of years, such *use* may be continued until the expiration of the term, and thereafter, the agency which originally authorized such *use* may, in appropriate cases, extend the period of continuance for one or more terms or not more than 10 years each. The agency may prescribe appropriate conditions and safeguards to minimize adverse effects of such *use* on the character of the neighborhood;

WHEREAS, in addition, because this application was filed more than 10 years after the expiration of the term, the

applicant requests a waiver, pursuant to § 1-14.2 of the Board’s Rules of Practice and Procedure (the “Board’s Rules”), of § 1-07.3(b)(4)(i) to permit the filing of this application; and

WHEREAS, § 1-07.3(b)(4)(i) of the Board’s Rules requires a demonstration by the applicant that the use has been continuous since the expiration of the term, that substantial prejudice would result without such a waiver and that the use permitted by the grant does not substantially impair the appropriate use and development of adjacent properties; and

WHEREAS, accordingly, the applicant provided Official Business Certificates issued to the subject site by the New York State Department of Motor Vehicles for public inspection station licenses and repair shop registration and certification that continuously cover the entire period of April 30, 1994, prior to the expiration of the term of the prior variance, through the date of the application; and

WHEREAS, the applicant additionally states that substantial prejudice would result without a waiver of the § 1-07.3(b)(4)(i) of the Board’s Rules because it would jeopardize a viable business that provides a vital service to the community and that the use does not substantially impair the appropriate use and development of adjacent properties; and

WHEREAS, over the course of public hearings, in response to concerns raised by letters received in opposition to this application, the Board requested the removal of extraneous signage at the premises, the addition of landscaping and sufficiently robust planter boxes to provide a dense planted buffer between the subject use and adjacent residential uses, the submission of a light spread diagram to show the effect of lighting present on the site on adjacent occupancies and the installation of light shields to prevent light spillage, that a trash enclosure be provided on site and illustrated on the plans; and

WHEREAS, in response, the applicant provided signage analyses demonstrating the site’s compliance with signage regulations applicable in a C1 zoning district; a landscaping detail for a new planter box with internal measurements of 31’-6” wide and 3’-6” deep located on the site’s southern lot line—the lot line at which a multi-family residential building is located adjacent to the site—and proposed to be planted with nine (9) emerald green arborvitae and evergreen groundcover; a light spread diagram demonstrating that lighting levels from the site decrease to approximately 0.25 foot candles as one moves towards the residential building located directly to the south of the site; and added a trash enclosure along the site’s eastern lot line; and

WHEREAS, based upon its review of the record, the Board has determined that the requested waiver of the Board’s Rules and reinstatement of the variance are appropriate with certain conditions as set forth below; and

WHEREAS, with regards to the request for an extension of the term, in light of the significant number of

1 Words in *italics* are defined in Section 12-10 of the Zoning Resolution.

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public hearings held on this application, the Board finds that a term of five (5) years, expiring July 17, 2023, is appropriate so that the Board may evaluate, upon the expiration of the term, the condition of the site and any adverse effects on the surrounding area; and

Therefore it is Resolved, that the Board of Standards and Appeals does hereby *waive* § 1-07.3(b)(4)(i) of the Board's Rules of Practice and Procedure and, pursuant to ZR § 11-411, reinstates and amends a previously-granted variance to permit, on a site located within an R7-1 (C1-4) zoning district, the operation of a gasoline service station and lawful uses accessory thereto *on condition* that all work and site conditions shall conform to drawings filed with this application marked "Received July 18, 2018"-Four (4) sheets; and *on further condition*:

THAT this grant shall be limited to a term of five (5) years, to expire on July 17, 2023;

THAT landscaping, as shown on the BSA-approved plans, shall be maintained and plantings replaced as necessary to comply with those plans;

THAT there be no parking of vehicles on the sidewalk or in such a manner as to obstruct pedestrian or vehicular traffic;

THAT that the accessory building be of the design, arrangement and location indicated and faced with brick on the north, east and west sides and its rear wall on the lot line may be of brick or block painted, without windows;

THAT there be no cellar in the accessory building;

THAT the pumps be of a low approved type erected not nearer than 15 street to the street building line at any point;

THAT the number of gasoline storage tanks not exceed twelve 550 gallon approved tanks;

THAT the portions of the premises not occupied by accessory building and pumps be paved with concrete or asphalt;

THAT along the lot lines to the south and west where walls of adjoining buildings or wall of accessory building do not occur there be a woven wire chain link fence erected on a masonry base to a total height of not less than 5'-6";

THAT curb cuts shall be maintained as shown on the BSA-approved plans;

THAT signage shall comply with regulations applicable in a C1 zoning district;

THAT the parking and storage of motor vehicles on the site is permitted as long as the parked and storage does not interfere with the servicing of the station;

THAT minor repairs by hand tools only may be maintained solely within the accessory building;

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 17, 2019;

THAT all conditions from prior resolutions, including those issued under BSA Cal. No. 374-37-BZ, 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 17, 2018.

2016-4138-BZ

CEQR #16-BSA-092M

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 – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:0

THE RESOLUTION –

WHEREAS, the decision on behalf of the Borough Commissioner, dated December 11, 2017, acting on Department of Buildings Application No. 122507769 reads in pertinent part:

1. ZR 32-31: Proposed use group [8] (Theater) exceeds the 500 seats permitted by special permit in C1-5 zoning district;
2. ZR 32-421: Proposed use group 8 (theater) is limited to two stories in C1-5 zoning district;
3. ZR 33-431: Proposed use group 8 (theater) is limited to a height of 30 feet or two stories, whichever is less, in C1-5 zoning district;
4. ZR 33-283: Proposed enlargement encroaches in required rear yard equivalent of through lot portion of zoning lot;
5. ZR 32-421: Commercial use is not permitted above level of the first story ceiling in buildings occupied by Residential Use;
6. ZR 3[3]-121: Proposed commercial floor area exceeds 2.0 FAR Maximum in permitted C1-5 zoning district;
7. ZR 33-26: (C1 District) A rear yard with a depth of not less than 20 feet shall be provided at every rear lot line;
8. ZR 22-10: Propose use group 8 (theater) not permitted in R6 zoning district;
9. ZR 23-153: The proposed building exceeds

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- the maximum floor area ratio permitted in the R6 district;
10. ZR 77-22: The proposed building exceeds the adjusted maximum floor area ratio permitted in the R6 district;
 11. ZR 23-532: The proposed building encroaches in the required rear yard equivalent of the through lot portion of the zoning lot;
 12. ZR 33-662: The proposed building exceeds the maximum base height and maximum building height for Quality Housing option buildings on narrow streets in R6 zoning district; and

WHEREAS, this is an application under ZR § 72-21 to permit, on a site located partially within an R6 zoning district and partially within a R7-2 (C1-5) zoning district and in the Greenwich Village Historic District Extension II, the enlargement of an existing motion picture theater contrary to use and bulk requirements set forth in ZR §§ 32-31, 32-421, 33-431, 33-283, 32-421, 33-121, 33-26, 22-10, 23-153, 77-22, 23-532 and 33-662: and

WHEREAS, this application is filed on behalf of IFC Theatres, LLC (“IFC” or the “Applicant”), the lessee of the premises; 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 February 28, 2017, September 12, 2017, December 12, 2017, March 27, 2018, and May 15, 2018, and then to decision on July 17, 2018; 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 area; and

WHEREAS, the subject site is bound by Cornelia Street to the north and Avenue of the Americas to the south, partially within an R7-2 (C1-5) zoning district and partially within an R6 zoning district, in the Greenwich Village Historic District Extension II, in Manhattan; and

WHEREAS, the site is comprised of three interior tax lots, Lots 30 and 31, having approximately 75 feet of contiguous frontage along Avenue of the Americas and wholly located within an R7-2 (C1-5) zoning district, and Lot 19, having approximately 26 feet of frontage along Cornelia Street and partially located within an R7-2 (C1-5) zoning district and partially within an R6 zoning district; and

WHEREAS, the site has approximately 9,146 square feet of lot area; Lots 30 and 31 are occupied by a two-story plus cellar theater operated as the IFC Center and Lot 19 is currently vacant and utilized for accessory theater uses, including storage and parking; and

WHEREAS, the Board has exercised jurisdiction over this site since March 17, 2009, when, under BSA Cal. No. 319-08-BZ, the Board granted a special permit, pursuant to ZR § 73-201, to permit a 95-seat expansion of the existing Use Group 8 theater on condition that a 480 square foot

waiting area be provided in the lobby area of the ground floor, residual patron space be maintained at the cellar level, all applicable fire safety measures be complied with and all egress be as approved by Department of Buildings; and

WHEREAS, with this application, the Applicant initially proposed to enlarge the existing building from a five screen theater with 480 seats located solely on Lots 30 and 31, wholly located within an R7-2 (C1-5) zoning district, to an 11 screen theater with 948 seats, including an expansion of the use into a three-story plus cellar addition rising 60 feet to the top of the parapet on the portion of the zoning lot fronting Cornelia Street and located partially within an R7-2 (C1-5) zoning district and partially within an R6 zoning district; and

WHEREAS, by resolution dated July 26, 2016, Community Board 2, Manhattan, recommends denial of this application unless the submission is revised to reflect and respect the neighborhood context finding and does not seek to building a commercial building on a residential street; the final plan incorporates an interior staircase above the second floor of the main building; that the minimum variance be evaluated with respect the land without factoring a specific use preferred by the leaseholder; and

WHEREAS, Community Board 2 sent additional letters to the Board reiterating its preference for a residential development, rather than the enlargement of the existing theater, on the Cornelia Street frontage; and

WHEREAS, the Board received numerous letters and form objections from individuals, many of them residents of Cornelia Street, as well as organizations—including the Greenwich Village Society for Historic Preservation, the Central Village Block Association—in opposition to the proposal, citing concerns regarding the proposed addition of a commercial building on Lot 19 fronting Cornelia Street, a street they characterize as comprised of small independent businesses limited to the ground floor only with residential units above, and that, upon IFC Center vacating the site, the commercial landlord will redevelop the site with an offensive commercial use; and

WHEREAS, the Board was also in receipt of several form letters and hundreds of emails in support of the proposed expansion of the IFC Center at the subject site; and

WHEREAS, the Friends of Cornelia Street Coalition was represented by counsel that appeared with written submissions and in public hearings in opposition to the subject application to ensure that any expansion at the subject site is justified by ZR § 72-21, particularly with regards to the minimum variance; and

WHEREAS, in the course of hearings, and in response to comments and direction by the Board, the Applicant revised the proposal to enlarge the existing building to a four-story plus cellar 10 screen Use Group 8 theater with 941 seats as well as construct a four-story, four-unit residential building fronting Cornelia Street within a rear yard equivalent required for the through lot portion of the site; and

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WHEREAS, the revised proposal includes 23,805 square feet of commercial floor area (21,191 square feet of commercial floor area within the portion of the site located in an R7-2 (C1-5) zoning district and 2,614 square feet of commercial floor area within the portion of the site located in an R6 zoning district); 3,881 square feet of residential floor area (410 square feet of residential floor area within the portion of the site located in an R7-2 (C1-5) zoning district and 3,471 square feet of residential floor area in the portion of the site located in an R6 zoning district); a total of 21,601 square feet of floor area within the portion of the site located in an R7-2 (C1-5) zoning district and 6,085 square feet of floor area within the portion of the site located in an R6 zoning district; no rear yard or rear yard equivalent, a base height and building height of 60 feet, without setback, at the Cornelia Street façade, which is located in an R6 zoning district, and a street wall height of 60 feet at the Avenue of the Americas façade, which is located in an R7-2 (C1-5) zoning district; and

WHEREAS, Use Group 8 theaters are prohibited within the portion of the site located in an R6 zoning district pursuant to ZR § 22-10; a maximum of 3,181 square feet of residential floor area is permitted within the portion of the site located in an R6 zoning district pursuant to ZR § 23-153 and a maximum of 4,691 square feet of total floor area is permitted on that same portion of the site pursuant to ZR § 77-22; Use Group 8 theaters are limited to 500 seats permitted by special permit within the portion of the site located in an R7-2 (C1-5) zoning district pursuant to ZR § 32-31; the maximum permitted floor area ratio ("FAR") for the portion of the site located within a R7-2 (C1-5) zoning district is 2.0 FAR (15,400 square feet) pursuant to ZR § 33-121, theaters are limited to a height of 30 feet or two stories, whichever is less, in the portion of the site located in an R7-2 (C1-5) zoning district pursuant to ZR §§ 32-421 and 33-431; commercial uses in Use Group 8, among others, are not permitted above the level of the first story ceiling in any building or portion of a building occupied on one or more of its upper stories by residential use pursuant to ZR § 32-42; a rear yard equivalent of 40 feet is required on the through lot portion of the site located in an R7-2 (C1-5) zoning district pursuant to ZR § 33-283; a rear yard equivalent of 60 feet is required on the through lot portion of the site located in an R6 zoning district pursuant to ZR § 23-532; a rear yard of at least 20 feet is required in the portion of the site located within an R7-2 (C1-5) zoning district pursuant to ZR § 33-26; and a maximum base height of 45 feet, an initial setback of 20 feet and a maximum building height of 55 feet are mandated by ZR § 23-662; and

WHEREAS, the Applicant seeks to construct the subject proposal in order to provide additional theaters and screens and lobby space sufficient to accommodate patrons, who currently congregate outside at the theater's Avenue of the Americas frontage, waiting to be seated in theaters; and

WHEREAS, the Applicant states that, pursuant to ZR § 72-21(a), the irregular shape of the lot, its split by a zoning district boundary line and the history of the development of

the site create practical difficulties and unnecessary hardship in developing the site in conformance with the zoning regulations applicable in the underlying zoning districts; and

WHEREAS, in particular, the applicant notes, in particular, that the site is split between zoning districts in which different use regulations are applicable and although 84 percent of the lot area of the subject site is located within an R7-2 (C1-5) zoning district and only 16 percent of the lot area of the subject site is located in an R6 zoning district, the location of the zoning district boundary line 37'-3" from the street line at the southern end of the site is greater than the 25 feet maximum set forth in ZR § 77-11 that would permit, as-of-right, the application of use regulations applicable in an R7-2 (C1-5) zoning district to the entirety of the zoning lot; and

WHEREAS, the site was originally developed with a two-story house of worship for the West Reformed Dutch Church and has been occupied, at least in part, by commercial uses since approximately 1893; in 1937 the building was converted into a motion picture theater, in 1961 the theater use became non-conforming, and in 2005, the theater was renovated to accommodate the IFC Center; and

WHEREAS, the Applicant asserts that the existing building is functionally obsolete as a movie theater, the purpose for which it was converted in 1937, in that its footprint and building are too small to accommodate the wide range of film content now available, sought out by theatergoers and provided, in large part, by IFC's competitors, independent theaters located in Manhattan that have between 800 and 1200 theater seats; as a result, the Applicant seeks the proposed enlargement in the rear of the site to facilitate an increase in the number of screens available at the subject site, improve theater layout and patron circulation and enable the site to realize a reasonable return; and

WHEREAS, the Applicant represents that an as-of-right horizontal expansion of the building is limited by the irregular shape of the site and angle at which the zoning district boundary line traverses the site, rendering a Use Group 8 theater as-of-right on one site and prohibited on the other, and that a vertical expansion would require the installation of an additional platform within the building to support the additional floors or, in the alternative, the construction of a new building; 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 that assertion, submitted financial analyses of the following development scenarios from the perspective of the property owner (rather than that of the applicant, a lessee): (1) an as-of-right five-story plus

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cellar residential building with four studio apartments and 2,128 square feet of rentable residential floor area and maintenance of the existing building (“Scheme A”); (2) and as-of-right five-story plus cellar residential building with 2,128 square feet of rentable residential floor area and conversion of the existing building to retail with 11,473 square feet of rentable floor area (“Scheme 2A”); (3) a five-story plus cellar residential building with five dwelling units and 5,120 square feet of rentable residential floor area and conversion of the existing building with retail with 11,473 square feet of rentable floor area requiring waivers of ZR §§ 23-153, 23-532, 33-283, 23-662 and 23-71 (“Scheme 2B”); (4) a five-story plus cellar residential building with five dwelling units and 5,120 square feet of rentable residential floor area and conversion of the existing building to retail with 13,980 square feet of rentable floor area requiring waivers of ZR §§ 33-26, 33-283, 23-153, 23-532, 33-283, 23-662 and 23-71 (“Scheme 3A”); (5) a five-story plus cellar residential building with five dwelling units and 5,120 square feet of rentable residential floor area and conversion of the existing building to retail with 14,396 square feet of rentable floor area requiring waivers of ZR §§ 22-10, 33-26, 33-283, 23-153, 23-532, 33-283, 23-662 and 23-71 (“Scheme 3B”); (6) a five-story plus cellar residential building with five dwelling units and 5,120 square feet of rentable floor area and enlargement of the existing theater to 23,677 gross square feet, 9 theaters and 643 seats requiring waivers of ZR §§ 32-31, 32-421, 33-431, 33-26, 33-283, 23-153, 23-532, 33-283, 23-662 and 23-71 (“Scheme 4A”); (7) a five-story plus cellar residential building with five dwelling units and 5,120 square feet of rentable floor area and enlargement of the existing theater to 24,560 gross square feet, 9 theaters and 689 seats requiring waivers of ZR §§ 22-10, 32-31, 32-421, 33-431, 33-26, 33-283, 23-153, 23-532, 33-283, 23-662 and 23-71 (“Scheme 4B”); (8) a five-story plus cellar residential building with five dwelling units and 5,120 square feet of rentable floor area and enlargement of the existing theater to 33,950 gross square feet, 8 theaters and 840 seats requiring waivers of ZR §§ 32-31, 32-421, 33-431, 33-26, 33-283, 23-153, 23-532, 33-283, 23-662 and 23-71 (“Scheme 4C”); (9) a five-story plus cellar residential building with four two-bedroom dwelling units and 4,720 square feet of rentable floor area and enlargement of the existing theater to 32,148 gross square feet, 13 theaters and 838 seats requiring waivers of ZR §§ 22-10, 32-31, 32-421, 33-431, 33-26, 33-283, 23-153, 23-532, 33-283, 23-662 and 23-71 (“Scheme 5”); (10) enlargement of the existing theater to 30,052 gross square feet, 11 theaters and 927 seats requiring waivers of ZR §§ 22-10, 32-31, 32-421, 33-121, 33-431, 33-26 and 33-283 (“Scheme 6”); (11) a lesser variance residential building with 4,480 square feet of rentable residential floor area and an enlarged theater with 30,262 gross square feet, 10 theaters and 876 seats requiring waivers of ZR §§ 32-31, 32-421, 33-431, 33-283, 22-10, 23-153, 23-532, 23-662 and 77-22 (“Revised Scheme 4C”); (12) a lesser variance residential building with 1,638 square feet of rentable

residential floor area and an enlarged theater with 33,799 gross square feet, 11 theaters and 947 seats requiring waivers of ZR §§ 32-31, 32-421, 33-431, 33-283, 32-421, 22-10, 23-153, 77-22, 23-532 and 23-662 (“Revised Scheme 5” or “Scheme 4D”); (13) enlargement of the existing theater to 32,124 gross square feet, 11 theaters and 948 seats requiring waivers of ZR §§ 22-10, 32-31, 32-421, 33-121, 33-431 and 33-283 (“Revised Scheme 6”); (14) a lesser variance residential building with 4 dwelling units and an enlargement of the existing theater building to 30,197 gross square feet, 10 theaters and 898 seats requiring waivers of ZR §§ 32-31, 32-421, 33-431, 33-283, 22-10, 23-153, 23-532, 23-662 and 77-22 (“Scheme 4C.1”); (15) a lesser variance residential building with four dwelling units and an enlargement of the existing theater building to 33,339 gross square feet, 10 theaters and 941 seats (“Scheme 4D.1” or the “Subject Revised Proposal”)

WHEREAS, the analyses demonstrated that only Revised Scheme 6 and Scheme 4D.1 would provide a reasonable return; and

WHEREAS, based on the record, 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 Subject Revised Proposal will not alter the 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 residential building proposed to front Cornelia Street is compatible with that street’s mixed residential with commercial at the first floor character; and

WHEREAS, at hearing and in written testimony, members of the public, including neighbors of the subject site, expressed a preference for Scheme 4C.1 because of the larger residential units provided therein, but the Board notes both that that development scenario was deemed financially infeasible and that the comparatively smaller residential units in Scheme 4D.1 are typical of existing tenement and front-rear row houses commonly found in the area; and

WHEREAS, the Board finds that though Revised Scheme 6 also provides a reasonable return, Scheme 4D.1, with its provision of residential frontage on Cornelia Street while allowing for improved interior patron circulation in the portion of the development dedicated to theater use, is more consistent with the existing character of the neighborhood, and with Cornelia Street specifically, than Revised Scheme 6, which would provide for a commercial lobby and lounge in that location of the development; the Board further notes that, in this way Scheme 4D.1 is responsive to many of the community’s concerns regarding the development of the subject 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;

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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, and the Board finds, that the subject proposal is the minimum variance necessary to afford relief because it is the only scenario that would provide a reasonable return; and

WHEREAS, the Board has determined that the evidence in the record supports all of 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(b)(9); 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. 16BSA092M, dated July 10, 2018; 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, with regards to hazardous materials, by letter dated March 16, 2018, the New York City Department of Environmental Preservation (“DEP”) states that, upon completion of the clean fill/top soil investigation activities at the site, the Applicant’s consultant should submit a detailed clean soil report to DEP—including, at a minimum, an executive summary, narrative of the field activities, laboratory data, and comparison of soil analytical results (i.e., NYSDEC 6 NYCRR Part 375 Environmental Remediation Programs)—for review and approval prior to importation and placement on-site; and

WHEREAS, DEP additionally states that it finds the February 2018 Revised Remedial Action Plan (“RAP”) acceptable and requests that, at the completion of the project, a Professional Engineer certified Remedial Closure Report be submitted to DEP for review and approval indicating that all remedial requirements have been properly implemented (i.e., installation of vapor barrier; proper transportation/disposal manifests and certificates from impacted soils removed and properly disposed of in accordance with all NYSDEC regulations; and one foot of DEP approved certified clean fill/top soil capping requirement in any landscaped/grass covered areas not capped with concrete/asphalt, etc.); and

WHEREAS, by correspondence dated April 5, 2017 the New York City Department of Transportation (“DOT”) reviewed the draft EAS and detailed pedestrian analyses and determined that a detailed traffic analyses is not warranted; and

WHEREAS, subsequent to the DOT review the project parameters were modified to include less seats and a small residential component, not affecting DOT’s original determination; and;

WHEREAS, by correspondence dated May 29, 2018 the New York City Parks Department stated that they had no comments on the detailed shadows analysis; and

WHEREAS, by letter dated June 29, 2018, DEP states that they have reviewed the proposal for noise and determined that it would not result in any potential for significant adverse impacts in regards to noise; and

WHEREAS, the New York City Landmarks Preservation Commission (“LPC”) reviewed the proposal for archaeological and architectural significance and notes that all three tax lots are of both archaeological and architectural significance, that 323-325 and 327 Avenue of the Americans (Tax Lots 31 and 30) are individually LPC-designated landmarks and all three tax lots are within the LPC-designated and State and National Register listed South Village Historic District, therefore permits from the LPC Preservation Department are required for construction; and

WHEREAS, LPC additionally notes that its review of archaeological sensitivity models and historic maps indicate that there is potential for the recovery of remains from 19th century residential occupation of the site and the Dutch Reformed Church previously on the site and recommends that an archaeological documentary study be performed to clarify these initial findings; and

WHEREAS, the Applicant provided an Archaeological Phase IA Documentary Center and LPC recommends that, while LPC largely concurs with the conclusions, the study should be amended to consider whether remnants of a mikvah, that may have been associated with the synagogue shown in the 1895 Sanborn map, may be present either within Lot 30 or adjacent to it; and

WHEREAS the Applicant performed additional research to address the possible presence of a cemetery, the mikvah, and other archaeological features on one or more of the project lots and determined the proposed project would not result in any significant adverse effect to historic resources;

WHEREAS, LPC issued a Certificate of Appropriateness (COFA-19-25117) for work associated with the revised proposal on June 20, 2018, expiring June 12, 2024; 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 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

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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 partially within an R6 zoning district and partially within a R7-2 (C1-5) zoning district and in the Greenwich Village Historic District Extension II, the enlargement of an existing motion picture theater contrary to use and bulk requirements set forth in ZR §§ 32-31, 32-421. 33-431, 33-283, 32-421, 33-121, 33-26, 22-10, 23-153, 77-22, 23-532 and 33-662; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received June 25, 2018”-Eleven (11) sheets and “July 17, 2018”-Two (2) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the development: a maximum of 21,191 square feet of commercial floor area within the portion of the site located within an R7-2 (C1-5) zoning district; a maximum of 2,614 square feet of commercial floor area, a maximum of 3,471 square feet of residential floor area and a maximum of 6,085 square feet of total floor area within the portion of the site located within an R6 zoning district; a maximum base height of 60 feet, a maximum building height of 60 feet and a setback of at least 0 feet on the Cornelia Street frontage; a rear yard or rear yard equivalent of at least 0 feet; and a maximum of 941 theater seats; and

THAT upon completion of the clean fill/top soil investigation activities at the site, the Applicant’s consultant shall submit a detailed clean soil report to DEP—including, at a minimum, an executive summary, narrative of the field activities, laboratory data, and comparison of soil analytical results (i.e., NYSDEC 6 NYCRR Part 375 Environmental Remediation Programs)—for review and approval prior to importation and placement on-site;

THAT at the completion of the project, a Professional Engineer certified Remedial Closure Report be submitted to DEP for review and approval indicating that all remedial requirements have been properly implemented (i.e., installation of vapor barrier; proper transportation/disposal manifests and certificates from impacted soils removed and properly disposed of in accordance with all NYSDEC regulations; and one foot of DEP approved certified clean fill/top soil capping requirement in any landscaped/grass covered areas not capped with concrete/asphalt, etc.);

THAT the commercial occupancy at the site shall be maintained as a Use Group 8 theater;

THAT egress from the Use Group 8 theater onto Cornelia Street shall be for emergency purposes only;

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, July 17, 2018.

89-15-BZ

APPLICANT – Law Office of Jay Goldstein, for G & W Enterprises Inc., owner.

SUBJECT – Application April 21, 2015 – Variance (§72-21) to permit the construction of a 4-story, 4-family home contrary to §42-11. M1-1 zoning district.

PREMISES AFFECTED – 92 Walworth Street, Block 1735, Lot 16, Borough of Brooklyn.

COMMUNITY BOARD #3BK

ACTION OF THE BOARD – Laid over to September 27, 2018, at 10 A.M., for adjourned hearing.

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 October 11, 2018, at 10 A.M., for adjourned hearing.

2017-192-BZ

APPLICANT – Greenberg Traurig, LLP, for Fort Hamilton, LLC, owner.

SUBJECT – Application May 26, 2017 – 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.

PREMISES AFFECTED – 5402-5414 Fort Hamilton Parkway/1002-1006 54th Street, Block 5673, Lot(s) 42 & 50, Borough of Brooklyn.

COMMUNITY BOARD #12BK

ACTION OF THE BOARD – Laid over to September 27, 2018, at 10 A.M., for continued hearing.

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2017-214-BZ

APPLICANT – Eric Palatnik, P.C., for Mark Strimber, owner.

SUBJECT – Application June 16, 2017 – 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.

PREMISES AFFECTED – 1459 East 24th Street, Block 7678, Lot 25, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Laid over to July 17, 2018, at 10 A.M., for adjourned hearing.

2017-304-BZ

APPLICANT – Simons & Wright LLC, for 160 17th Street, LLC, owner; Brooklyn Prospect Charter School, lessee.

SUBJECT – Application November 21, 2017 – 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.

PREMISES AFFECTED – 160 17th Street, Block 630, Lot 22, Borough of Brooklyn.

COMMUNITY BOARD #7BK

ACTION OF THE BOARD – Laid over to August 21, 2018, at 10 A.M., for continued hearing.

REGULAR MEETING TUESDAY AFTERNOON, JULY 17, 2018 1:00 P.M.

Present: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.

ZONING CALENDAR

2017-300-BZ

CEQR #18-BSA-060R

APPLICANT – Mango & Iacoviello, LLP, for Woodrow Plaza LLC#2, owner; Orangetheory Fitness, lessee.

SUBJECT – Application November 14, 2017 – 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.

PREMISES AFFECTED – 1275 Woodrow Road, Block 6145, Lot 16, 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 Sheta and Commissioner Scibetta.....5

Negative:0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated November 3, 2017, acting on Alteration Application No. 520303500, reads in pertinent part:

“Proposed use as a physical culture establishment is not permitted and is contrary to ZR 32-31”; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to permit, on a site partially in an R3X (C2-2) zoning district and partially in an R3X (C1-2) zoning district, in the Special South Richmond Development District, the legalization of a physical culture establishment on a portion of the first floor of a two-story, with cellar, commercial building; and

WHEREAS, a public hearing was held on this application on July 17, 2018, after due notice by publication in *The City Record*, and then to decision on the same date; and

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

WHEREAS, the subject site is located on the northeast corner of Woodrow Road and Rossville Avenue, on a site partially in an R3X (C2-2) zoning district and partially in an R3X (C1-2) zoning district, in the Special South Richmond Development District, in Staten Island; and

WHEREAS, the subject site has approximately 246

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feet of frontage along Woodrow Road, 181 feet of frontage along Rossville Avenue, 66,033 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 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 3,204 square feet of floor space on a portion of the first floor, used for reception, a fitness studio, an office, closets, showers and restrooms; and

WHEREAS, the PCE has been in operation as Orangetheory Fitness since June 2, 2017, with the following hours of operation: 4:45 a.m. to 9:00 p.m., daily; and

WHEREAS, the applicant represents that the PCE use is consistent with the vibrant mixed-use area in which it is located, that the PCE use is fully contained within the envelope of an existing building and that the PCE use will not attract any significant additional traffic to the surrounding area; and

WHEREAS, in addition, the applicant submits that sound attenuation measures, including rubber tiling, a suspended gypsum-board ceiling and soundproof demising walls, have been provided within the space so as to not disturb other tenants in the building; and

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

WHEREAS, the applicant states that the PCE provides multiple exercise rooms with instructional fitness classes for approximately 12 members at a time; 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 exist, local audible and visual alarms and connection to an FDNY-approved central station—has been installed in the entire PCE space; and

MINUTES

WHEREAS, the Fire Department represents that it has no objection to this application; and

WHEREAS, in response to the Board's questions at hearing, the applicant represents that the entirety of the PCE use is located within the portion of the site in an R3X (C2-2) zoning district and that no portion of the PCE use is located within the portion of the site in an R3X (C1-1) zoning district, where PCE use is not permitted by special permit or as of right; 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 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. 18-BSA-060R, dated February 26, 2018; and

WHEREAS, the Board finds that the evidence in the record supports the findings required to be made under ZR §§ 73-36 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion; 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 without a special permit.

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 §§ 73-36 and 73-03 to *permit*, on a site partially in an R3X (C2-2) zoning district and partially in an R3X (C1-2) zoning district, in the Special South Richmond Development District, the legalization of a physical culture establishment on a portion of the first floor of a two-story, with cellar, commercial building, contrary to ZR § 32-31; *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked "Received November 14, 2017"-Four (4) sheets; and *on further condition*:

THAT this grant shall be limited to a term of ten (10) years, expiring June 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 minimum 3'-0" wide exit pathways shall be maintained 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 remain 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 July 17, 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, July 17, 2018.

2017-20-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for GTO Holding LLC, owner; Harbor Fitness Park Slope, Inc., lessee.

SUBJECT – Application January 20, 2017 – 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.

PREMISES AFFECTED – 550 5th Avenue, Block 1041, Lot 7501, Borough of Brooklyn.

COMMUNITY BOARD #6BK

ACTION OF THE BOARD – Laid over to September 27, 2018, at 10 A.M., for continued hearing.

2017-246-BZ

APPLICANT – Seyfarth Shaw LLP, for 6163 Crosby Street, Inc., owner.

SUBJECT – Application August 18, 2017 – 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).

PREMISES AFFECTED – 61/63 Crosby Street, Block 482, Lot 13, Borough of Manhattan.

COMMUNITY BOARD #2M

ACTION OF THE BOARD – Laid over to October 11, 2018, at 10 A.M., for continued hearing.

Carlo Costanza, Executive Director

BULLETIN

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Tuesday, July 24, 2018**

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334-78-BZ	233-20 Northern Boulevard, Queens
218-06-BZ	885 Second Avenue, aka 1 Dag Hammarskjold Plaza, Manhattan
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2017-237-BZ	134-37 35 th Avenue, Queens
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DOCKETS

New Case Filed Up to July 24, 2018

2018-120-BZ

550 West 41st Street, The premises is block -wide on 41st Street through 40th Street, and borders 11th Avenue, Block 01069, Lot(s) 0001, Borough of **Manhattan, Community Board: 4**. Special Permit (§73-36) to permit the operation of a Physical Cultural Establishment (550 West 41st Gym) to be located within a proposed building contrary to ZR §32-10. C6-4 Special Hudson Yards District. C6-4 district.

2018-121-BZ

24 Frank Court, The premises is located between Seba Avenue and Lois Avenue, Block 08900, Lot(s) 0132, 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.

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

CALENDAR

REGULAR MEETING AUGUST 21, 2018, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, August 21, 2018, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

SPECIAL ORDER CALENDAR

390-61-BZ

APPLICANT – Sahn Ward Coschignano, PLLC, for 33rd Street LLC, PJW 33rd Street, LLC, 4JS Lexington LLC, Stone Oak, LLC, owner; 148 E. 33rd Street Associates, LLC c/o Rapid Park, lessee.

SUBJECT – Application March 22, 2018 – Extension of Term (§11-411) of a previously approved variance which permitted a four (4) story public parking garage and an auto rental establishment (UG 8) which expired on March 3, 2018. R8B zoning district.

PREMISES AFFECTED – 148-150 East 33rd Street, Block 888, Lot 51, Borough of Manhattan.

COMMUNITY BOARD #6M

170-92-BZ

APPLICANT – Gerald J. Caliendo, RA, AIA, for Yeheskel Elias/Northern Boulevard Holding Corp., owner.

SUBJECT – Application August 9, 2017 – Extension of Term and amendment of a previously approved Variance (§72-21) which permitted the operation of an automotive laundry (UG 16B), expiring on December 7, 2018; Waiver of Rules. R1-2 zoning district.

PREMISES AFFECTED – 232-04 Northern Boulevard, Block 8165, Lot 23, Borough of Queens.

COMMUNITY BOARD #11Q

132-04-BZ

APPLICANT – Eric Palatnik, P.C., for Paco East Houston, LLC, owner.

SUBJECT – Application January 27, 2017 – 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. R7-2 zoning district.

PREMISES AFFECTED – 310 East Houston Street, Block 384, Lot(s) 4, 40, Borough of Manhattan.

COMMUNITY BOARD #3M

2-10-BZ

APPLICANT – Venable LLP, for The New York Eye and Ear Infirmary/Beth Israel Medical Center, owner.

SUBJECT – Application June 18, 2018 – Amendment of a previously approved Special Permit (§73-461) which permitted the enlargement of a community facility (New York Eye and Ear Infirmary) within the required rear yard equivalent, contrary to §33-283. The Amendment seeks the addition of Tax Lots 20 and 52 to the existing zoning lot currently consisting of lots 60, 1, 5, and 7. C1-6A/C1-7A zoning districts.

PREMISES AFFECTED – 315, 327 East 13th Street, 310, 300, 326 East 14th Street,

224 Second Avenue, Block 455, Lot(s) 60, 1, 5, 7, 20, 52, Borough of Manhattan.

COMMUNITY BOARD #3M

163-13-BZ

APPLICANT – Eric Palatnik, P.C., for 39th Avenue Realty Management, LLC, owner.

SUBJECT – Application August 21, 2018 – Extension of Time to Complete Construction of a previously approved Special Permit (§73-44) permitting the reduction of parking spaces for the enlargement of a building containing Use Group 6 professional offices which expired on April 29, 2018. C4-2 zoning district.

PREMISES AFFECTED – 133-10 39th Avenue, Block 4973, Lot 12, Borough of Queens.

COMMUNITY BOARD #7Q

APPEALS CALENDAR

2017-251-A & 2017-252-A

APPLICANT – Tarter Krinsky & Drogin LLP, for New York Central Line, owner; Outfront Media, LLC, lessee.

SUBJECT – Application August 28, 2017 – 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.

PREMISES AFFECTED – Brooklyn Queens Expressway at 31st Street and 32nd Avenue, Block 1137, Lot 22, Borough of Queens.

COMMUNITY BOARD #1Q

CALENDAR

REGULAR MEETING AUGUST 21, 2018, 1:00 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, August 21, 2018, 1:00 P.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

ZONING CALENDAR

2017-47-BZ

APPLICANT – Law Office of Lyra J. Altman, for Susan Nabet and Benjamin Nabet, owners.

SUBJECT – Application February 17, 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) and less than the required rear yard (ZR §23-47). R2 zoning district.

PREMISES AFFECTED – 1052 East 22nd Street, Block 7585, Lot 77, Borough of Brooklyn.

COMMUNITY BOARD #14BK

2017-207-BZ

APPLICANT – Law Offices of Marvin B. Mitzner, LLC, for Ormonde Equities, owner; CorePower Yoga LLC, lessee.

SUBJECT – Application June 9, 2017 – Special Permit (§73-36) to permit the legalization 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.

PREMISES AFFECTED – 2030 Broadway, Block 1141, Lot 51, Borough of Manhattan.

COMMUNITY BOARD #7M

2017-266-BZ

APPLICANT – Law Office of Lyra J. Altman, for Chedvah Rabinovich & Jeffrey Rabinovich, owners.

SUBJECT – Application September 12, 2017 – 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.

PREMISES AFFECTED – 2302 Avenue K aka 1093 East 23rd Street, Block 7605, Lot 8, Borough of Brooklyn.

COMMUNITY BOARD #14BK

2018-1-BZ

APPLICANT – Jesse Masyr, Esq., Fox Rothschild LLP, for 11-02 37th Avenue LLC, owner; New York Black Car Operators' Injury Compensation Fund, Inc., lessee.

SUBJECT – Application January 2, 2018 – Special Permit (§73-44) to permit the reduction of required accessory off-street parking spaces for a UG 6B office use (PRC-B1 parking category) contrary to ZR §44-21. M1-3 zoning district.

PREMISES AFFECTED – 11-02 37th Avenue, Block 361, Lot 18, Borough of Queens.

COMMUNITY BOARD #1Q

2018-37-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for ERY North Tower RHC Tenant LLC, owner.

SUBJECT – Application March 13, 2018 – Special Permit (§73-36) to permit the operation of a physical culture establishment (*Equinox Hotel Spa*) to be located on the fifth floor of a 72-story mixed-use building contrary to ZR §32-10. C6-4 Hudson Yards Special District.

PREMISES AFFECTED – 560 West 33rd Street aka 35 Hudson Yards, Block 702, Lot 150, Borough of Manhattan.

COMMUNITY BOARD #4M

2018-50-BZ

APPLICANT – Eric Palatnik, P.C., for 45 w 45 Strategic Venture LLC, owner; EPOC Fitness and Tech Inc., lessee.

SUBJECT – Application April 6, 2018 – Special Permit (§73-36) to permit the operation of Physical Cultural Establishment (*Orange Theory Fitness*) within the cellar of a commercial building contrary to ZR §32-10. C6-4.5 (Special Midtown District).

PREMISES AFFECTED – 45 West 45th Street, Block 1261, Lot 16, Borough of Manhattan.

COMMUNITY BOARD #5M

2018-130-BZ

APPLICANT – NYC Mayor's Office of Housing Recovery Operation.

SUBJECT – Application August 7, 2018 – 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 – 22 and 32 Stanton Road, Block 8800, Lot 100, 52, Borough of Brooklyn.

COMMUNITY BOARD #15BK

CALENDAR

2018-131-BZ

APPLICANT – NYC Mayor’s Office of Housing Recovery Operation.

SUBJECT – Application August 7, 2018 – 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 – 22 and 32 Stanton Road, Block 8800, Lot 100, 52, Borough of Brooklyn.

COMMUNITY BOARD #15BK

2018-134-BZ

APPLICANT – NYC Mayor’s Office of Housing Recovery Operation.

SUBJECT – Application August 10, 2018 – 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 – 24A Mesereau Court, Block 8797, Lot 101, Borough of Brooklyn.

COMMUNITY BOARD #15BK

Carlo Costanza, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, JULY 24, 2018
10:00 A.M.**

Present: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.

SPECIAL HEARINGS

551-37-BZ

APPLICANT – Eric Palatnik, P.C., for 91-23 LLC, owner.
SUBJECT – Application March 11, 2016 – Amendment (§11-413) to permit a change in use from an Automotive Repair Facility (UG 16B) to Automobile Sales (UG 16B). R1-2 zoning district.

PREMISES AFFECTED – 233-02 Northern Boulevard, Block 8166, 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, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5
Negative:0

THE RESOLUTION –

WHEREAS, this is an application for an amendment of a previously approved variance to permit a change in use from a Use Group 16B automobile repair facility to a Use Group 16B automobile sales facility; and

WHEREAS, a public hearing was held on this application on March 20, 2018, after due notice by publication in *The City Record*, with continued hearings on May 22, 2018, and July 24, 2018, and then to decision on July 24, 2018; and

WHEREAS, Community Board 11, Queens, recommends approval of this application with conditions, citing concerns that the operators of the property continue to park vehicles on the sidewalk and that a documented oil spill on the property may adversely affect adjacent parkland; and

WHEREAS, the Board was also in receipt of one letter and oral testimony in opposition to this application, citing concerns about the presence of large metal sealed barrels on the site, that a documented oil spill at the site was properly remediated; 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 south side of Northern Boulevard, between the Alley Creek Shoreline and 234th Street, in an R1-2 zoning district, in Queens; and

WHEREAS, the site has approximately 104 feet of

frontage along Northern Boulevard, 9,492 square feet of lot area and is occupied by a Use Group 16B automobile repair facility; and

WHEREAS, the Board has exercised jurisdiction over the subject site since April 12, 1938, when, under the subject calendar number, the Board granted a variance permitting a gasoline service station for a term of five (5) years, expiring April 12, 1943, on condition that the plot be leveled substantially to the grade of Northern Boulevard, that the accessory building not exceed one story in height or 12 by 16 feet in area, that the premises for a depth of at least 50 feet southerly from Northern Boulevard be surfaced with cracked bluestone, properly bound and rolled, that the gasoline pumps not be erected closer to any street building line than 20 feet, that no automobile repair be carried on or any parking or storage of cars on the premises other than those being serviced, that entrances to the premises not exceed two from Northern Boulevard or entrance exceed 25 feet in width, that all required permits be obtained and all work involved completed within one (1) year; and

WHEREAS, on October 4, 1938, under the subject calendar number, the Board amended the resolution to require that the accessory building be constructed of incombustible materials, as indicated on the revised plans, and be of the portable type not exceeding an area of 1,000 square feet of ground area, that the building be set back for a depth of approximately 40 feet and the area between the front of the building and Northern Boulevard be surfaced with cracked bluestone, properly bound and rolled, or similar impervious paving, that the gasoline pumps not be closer than 15 feet to the building line of Northern Boulevard, that no portion of the curb cut nor splay for the same be located closer than three (3) feet to the side lot line, as extended at right angles to the street building line of Northern Boulevard, that signs be restricted to the illuminated globes of the pumps and to a fixed sign attached to the front façade of the accessory building, excluding all roof signs and temporary signs, but permitting the erection of a post standard within the building line near the intersection of the building lines of Northern Boulevard and 233rd Street, supporting a sign advertising only the brand of gasoline sold and permitting such sign to extend over the street building line for a distance of not more than five (5) feet, and that all permits required be obtained and all work involved completed by April 12, 1939; and

WHEREAS, on November 29, 1938, under the subject calendar number, the resolution was further amended to clarify that the accessory building may be constructed with metal frame and fiber board and stucco on metal lath on the exterior and 16 gauge metal on the interior, that the roof may be constructed of steel plates covered with fiber board and metal and approved roof surfacing, that all construction be of fireproof materials, except that the interior and exterior doors may be of wood and that the entire building may be constructed on a reinforced concrete mat of sufficient area and thickness satisfactory to the borough superintendent; and

MINUTES

WHEREAS, on March 2, 1943, under the subject calendar number, the Board granted an extension of the term of the variance for an additional five (5) years, expiring March 2, 1948, on condition that all permits required shall be obtained and all work involved completed within three (3) months; and

WHEREAS, on April 6, 1948, under the subject calendar number, the Board granted a further extension of the term of the variance for five (5) years, expiring April 6, 1953; and

WHEREAS, on November 25, 1952, under the subject calendar number, the Board granted an additional ten (10) year extension of the term of the variance, expiring November 25, 1962; and

WHEREAS, on October 31, 1961, under the subject calendar number, the Board permitted a change in use of the site from a gasoline service station and office to a gasoline service station and office, lubrication, accessory car wash (non-automatic), minor motor vehicle repairs with hand tools only and parking of more than 5 motor vehicles for a term of twenty (20) years, expiring October 31, 1981, permitted an extension of the yard area of the station and an increase to the size of the accessory building on condition that face brick be used for the entire exterior of the accessory building, that there be no windows in the south wall of the accessory building, that the 5'-6" brick wall is extended from the easterly lot line to the building on the adjoining property, that all debris be removed from the premises and that the sidewalks and curbs be put in condition satisfactory to the Borough President; and

WHEREAS, on November 13, 1963, under the subject calendar number, the Board granted a one (1) year extension of time to obtain permits and complete work, expiring November 13, 1964; and

WHEREAS, on January 14, 1964, under the subject calendar number, the Board amended the resolution to read, "that in the event the owner desires to reduce the area of the site and to enlarge the existing accessory building instead of constructing a new building, such changes shall be permitted," on condition that the work conform to revised drawings; and

WHEREAS, on July 20, 1965, under the subject calendar number, the Board granted a one (1) year extension of time to obtain permits and complete work, expiring July 20, 1966; and

WHEREAS, on February 8, 1966, under the subject calendar number, the Board amended the resolution to read, that in the event, the owner desires to omit the fence along the easterly lot line and to use a portion of the premises in conjunction with Lot 251, which is under the same ownership, to relocate the brand sign to the intersection of

Northern Boulevard and 233rd Street, and to replace the existing gasoline storage tanks with 12 new 550-gallon approved gasoline storage tanks, such changes shall be permitted; and

WHEREAS, on March 2, 1982, under the subject calendar number, the Board amended the resolution to extend the term of the variance for ten (10) years, expiring October 31, 1991, permit the deletion of one gasoline dispensing pump and the addition of fencing on condition that the existing solid aluminum fence along the rear lot line be extended to the east to meet with the existing fence of Lot 25, that the premises be maintained clean and free of debris at all times, that the owner prevent any oil or gasoline spillage from running off into the adjacent parkland and that the station be operated at all times in such a fashion so as to minimize traffic congestion and that a new certificate of occupancy be obtained within one (1) year; and

WHEREAS, on April 16, 1991, on a motion to restore the application to the subject calendar number for possible rescission of the 1961 variance, the Board voted to withdraw the motion after finding that the owner was in compliance with the terms of the variance; and

WHEREAS, on June 12, 1992, under the subject calendar number, the Board granted a five (5) year extension of the term of the variance, expiring October 31, 1996, on condition that there be no parking on the sidewalk, that there be no mobile signs on the sidewalk, that the fences be properly maintained and repaired when needed, that the property be maintained in substantial compliance with existing and proposed conditions and that a new certificate of occupancy be obtained within one (1) year; and

WHEREAS, on January 10, 1995, under the subject calendar number, the Board waived its Rules of Practice and Procedure and granted a thirty-one (31) month extension of time to obtain a certificate of occupancy; and

WHEREAS, on July 29, 1997, under the subject calendar number, the Board granted an additional extension of the term of the variance limited to five (5) years from July 15, 1997, expiring July 15, 2002, on condition that there be no sale or storage of vehicles, except cars awaiting service, that the premises be maintained in substantial compliance with the drawings and that a new certificate of occupancy be obtained within one (1) year; and

WHEREAS, on May 6, 2003, under the subject calendar number, the Board waived its Rules and amended the variance to extend the term of the variance an additional ten (10) years, expiring July 15, 2012, and allow the elimination of gas pumps from the premises 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 conditions appear on the certificate of occupancy and that fencing be repaired within 30 days and photographic evidence of the repair provided to the Board's Executive Director within that period; and

WHEREAS, on June 4, 2013, under the subject calendar number, the Board waived its Rules and granted another ten (10) year extension of term of the variance,

1 The Board has exercised jurisdiction over Block 8166, Lot 25, in Queens (233-20 Northern Boulevard) under BSA Cal. Nos. 447-48-BZ and 334-78-BZ since September 28, 1948, and October 4, 1978, respectively.

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expiring July 15, 2022, on condition that all use and operations substantially conform to the Board-approved drawings, that the site be maintained free of debris and graffiti, that signage comply with C1 district regulations, that a new certificate of occupancy be obtained by November 21, 2013, and that all conditions from prior resolutions not specifically waived by the Board remain in effect; and

WHEREAS, the applicant now seeks an amendment of the variance to permit a change in use, within Use Group 16B, from automobile repair to automobile sales; and

WHEREAS, at hearing, the Board expressed concerns regarding the maintenance of the site, the compliance of the site with the Board's previous grants and the operation of the subject site in coordination with the adjacent lot immediately to the west, 233-20 Northern Boulevard Queens, Block 8166, Lot 25, which the Board exercises jurisdiction over under BSA Cal. Nos. 447-48-BZ and 334-78-BZ; and

WHEREAS, specifically, the Board requested assurance that gasoline tanks previously maintained on the site were disposed of legally and that a New York State Department of Environmental Conservation spill on the site was affirmatively closed and mandated that the site be cleaned of all debris, fencing replaced, the asphalt surface of the lot repaved, no cars be permitted to park on the sidewalk, tires be removed from the site and fencing be installed to separate the subject lot from the adjacent Lot 25; and

WHEREAS, the Board additionally requested that, though the adjacent site on Lot 25 is located a separate zoning lot, the shadow of that site be indicated on the plans submitted for approval for the subject site in order for future Boards to understand that they are, in fact, utilized in tandem; and

WHEREAS, in response to the Board's inquiry regarding environmental remediation at the site, the applicant provided a letter from a consultant engaged to dispose of the soil drums at the subject site indicating that such disposal was completed in accordance with all federal, state and local regulations as well as evidence that DEC Spill Number 1507917 was closed on October 16, 2017; and

WHEREAS, the applicant having expressed a willingness to complete such work in an expedited fashion, the Board finds that a one (1) year extension of the term of the variance is appropriate to enable the completion of work necessary to ensure compliance of the site with the conditions previously imposed by the Board, with certain conditions as set forth below; and

Therefore, it is Resolved, that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated April 12, 1938, as amended through June 4, 2013, so that as amended this portion of the resolution reads: "to grant an extension of the term of the variance for a term of one (1) year from the date of this amended resolution, to expire on July 24, 2019, and to approve a change in use from Use Group 16B automobile repairs to Use Group 16B

automobile sales, *on condition* that all work and site conditions shall comply with drawings filed with this application marked "Received July 25, 2018-Seven (7) sheets; and *on further condition*:

THAT fencing shall be replaced as specified on the Board-approved plans and maintained so as to remain in a first-class condition;

THAT asphalt shall be resurfaced throughout the lot and all parking spaces shall be restriped, as specified on the Board-approved plans;

THAT the building shall be repaired, painted and maintained so as to remain in a first-class condition;

THAT the refuse enclosure be installed in the location indicated on the Board-approved plans;

THAT landscaping shall be installed as specified on the Board-approved plans and be replaced and maintained as necessary so as to remain in a first-class condition;

THAT all debris shall be removed from the premises and the sidewalks and curbs shall be installed in a condition satisfactory to the Borough President;

THAT the premises be maintained clean and free of debris and graffiti at all times;

THAT there shall be no parking on the sidewalk adjacent to the site;

THAT there shall be no mobile signs on the sidewalk adjacent to the site;

THAT any graffiti located on the premises shall be removed within 48 hours;

THAT all signage at the site shall comply with C1 district regulations;

THAT the above conditions shall appear on the certificate of occupancy;

THAT all conditions from 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; and

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

Adopted by the Board of Standards and Appeals, July 24, 2018.

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545-56-BZ

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

SUBJECT – Application June 27, 2017 – Amendment of a previously approved variance which permitted the operation of an Automotive Service Station (UG 16B). The amendment seeks to convert the existing automotive service bay to an accessory convenience store; Extension of Time to Obtain a Certificate of Occupancy which expired on July 28, 2016; Waiver of the Board's rules. C2-4/R5D zoning district.

PREMISES AFFECTED – 2001 Williamsbridge Road aka 1131 Neil Avenue, Block 4306, Lot 20, 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 Sheta and Commissioner Scibetta.....5

Negative:0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Board's Rules of Practice and Procedure, amendment of a previously approved variance and an extension of time to obtain a certificate of occupancy, which expired on July 28, 2016, pursuant to a prior Board approval; and

WHEREAS, a public hearing was held on this application on May 22, 2018, after due notice by publication in *The City Record*, with a continued hearing on July 24, 2018, and then to decision on that date; and

WHEREAS, Community Board 11, the Bronx, recommended approval of this application; and

WHEREAS, the subject site is located on the northwestern corner of Williamsbridge Road and Neill Avenue, in an R5D (C2-4) zoning district, in the Bronx; and

WHEREAS, the site has approximately 100 feet of frontage along Williamsbridge Road, 100 feet of frontage along Neill Avenue, 10,000 square feet of lot area and is occupied by a gasoline service station; and

WHEREAS, the Board has exercised jurisdiction over the subject site since October 29, 1957, when, under the subject calendar number, the Board granted a variance to permit the occupation of the site as a gasoline service station and accessory uses for a term of fifteen (15) years, expiring October 29, 1972, on condition that all building and uses be removed and the premises leveled substantially to the grade of the abutting streets; the accessory building be located where shown, have no cellar and in all other respects comply with the requirements of the Building Code; the accessory building be faced with face brick on all four sides and have no windows or other openings on the lot line walls to the west or north; the toilet doors be arranged so as not to be contiguous; the gasoline service tanks be of a low approved typed erected not nearer than 15 feet to the street building lines of Williamsbridge Road and Neill Avenue; curb cuts be restricted to two on Williamsbridge Avenue and two on Neill

Avenue, each 30 feet in width; at the intersection there be erected and maintained a block of concrete not less than 12 inches in height extending for not less than 5 feet along either street building line from the intersection; from the accessory building along the northerly lot line to Williamsbridge Road there be erected a woven wire fence of the chain link type on a masonry base to a total height of not less than 5'-6" with substantial terminal posts at the building line; if there exists on such line a fence as required by the Board to be constructed by the adjoining gasoline station on lot 13, such fence if complying may serve both gasoline stations and no additional fence may be required on this lot line; on the westerly lot line from the accessory building to Neill Avenue there also be a woven wire fence on the chain link type on a masonry base to a total height of not less than 5'-6" with suitable terminating posts at the building line; portable firefighting appliances be maintained as the fire commissioner directs; the number of gasoline storage tanks not exceed ten 550 gallon approved tanks; the sidewalks and curbing abutting the site be constructed or restored to the satisfaction of the Borough President; signs be restricted to permanent signs attached to the façade of the accessory building facing Williamsbridge Road and the illuminated globes of the pumps, excluding all roof signs and temporary signs but permitting the erection at the building line at the intersection of a post standard for supporting a sign which may be illuminated, advertising only the brand of gasoline on sale and permitting such sign to extend beyond the building line where shown not more than 4 feet; where not occupied by accessory building and pumps, the unbuilt upon area be paved with concrete or asphalt paving; for a similar term repairing with hand tools only for adjustments may be maintained solely within the accessory building; parking of motor vehicles awaiting services may be provided as long as such parking is so located as not to interfere with the servicing of the station and that all permits required be obtained and all work completed and a certificate of occupancy obtained within the requirement of the Zoning Resolution; and

WHEREAS, on December 10, 1957, under the subject calendar number, the Board amended the resolution to permit the locating of the service bays nearer to Williamsbridge Road, namely 50 feet instead of 70 feet, as indicated on revised plans and so as to be not nearer the lot line than 20 feet and the side lot line to the north ten feet and to permit the space between the rear of the accessory building and the rear line fence to be used for the parking use as previously permitted, there be no windows constructed in the rear wall of the accessory building as relocated and that the prior resolution be complied with in all other respects; and

WHEREAS, on May 20, 1958, under the subject calendar number, the Board amended the resolution to allow a maximum of twelve, rather than ten, 550 gallon approved tanks at the site; and

WHEREAS, on June 17, 1958, under the subject calendar number, the Board amended the resolution to state that the accessory uses permitted at the site may include the sale of used cars, including in those areas where parking was

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permitted by prior resolutions; and

WHEREAS, on December 2, 1958, under the subject calendar number, the Board granted extensions of time to obtain required permits, obtain a certificate of occupancy and complete work from the date of the revised resolution; and

WHEREAS, on January 9, 1973, under the subject calendar number, the Board extended the term of the variance for ten (10) years, expiring October 29, 1982, on condition that the amended resolution be complied with in all respects and a new certificate of occupancy be obtained; and

WHEREAS, on March 8, 1983, under the subject calendar number, the Board granted a ten (10) year extension of the term of the variance, expiring October 29, 1992, on condition that the station be operated at all times in such a fashion so as to minimize traffic congestion, that the amended resolution be complied with in all respects and a new certificate of occupancy be obtained within one (1) year, by March 8, 1984; and

WHEREAS, on July 18, 1995, under the subject calendar number, the Board amended the resolution to permit the erection of three new pump islands and the alteration to the existing accessory building to create an attendant's booth, extended the term of the variance for ten (10) years, expiring October 29, 2002, on condition that the gates be locked after hours, screening be provided in accordance with the approved plan, the premises be maintained in substantial compliance with the submitted drawings, the amended resolution be complied with in all respects and a new certificate of occupancy be obtained within one (1) year, by July 18, 1996; and

WHEREAS, on March 9, 1999, under the subject calendar number, the Board waived its Rules of Practice and Procedure and extended the time to obtain a certificate of occupancy to within 42 months of July 18, 1996; and

WHEREAS, on August 6, 2002, under the subject calendar number, the Board extended the term of the variance for ten (10) years, expiring August 6, 2012, and approved amendments to the previously approved plans to permit the elimination of the swing gates at the southwest corner of the site and on the north side of the property, the use of a countertop rather than a partition to separate the attendant's booth from the sales area and the maintenance of a vending machine and vacuum along the north side of the site on condition that the premises be maintained in substantial compliance with the approved plans; the hours of operation for the automobile vacuums be limited to 9 a.m. to 7 p.m., there be no change in use, ownership or lessee without Board approval; the conditions appear on the certificate of occupancy; and a new certificate of occupancy be obtained within one year, by August 6, 2003; and

WHEREAS, on October 28, 2003, under the subject calendar number, the Board granted an application to amend the resolution to permit the erection of a metal canopy at the site on condition that all work substantially conform to approved drawings, the premises be maintained free of debris and graffiti, any graffiti located on the premise be removed within 48 hours and conditions from prior resolutions appear

on the certificate of occupancy; and

WHEREAS, on July 28, 2015, under the subject calendar number, the Board waived its Rules of Practice and Procedure and reinstated the variance to permit the operation of a gasoline service station (Use Group 16) for a term of ten (10) years, expiring July 28, 2025, on condition that signage, fencing and landscaping be maintained in accordance with the approved plans, all conditions from prior resolutions not specifically waived remain in effect, the site be maintained free of debris and graffiti, the conditions be noted on the certificate of occupancy and that a certificate of occupancy be obtained by July 28, 2016; and

WHEREAS, the applicant time to have obtain a new certificate of occupancy having expired, the applicant seeks the subject relief; and

WHEREAS, the applicant additionally requests an amendment to the variance to permit the conversion of the existing automotive service bay to an accessory convenience store and a waiver, pursuant to § 1-14.2 of the Board's Rules of Practice and Procedure (the "Board's Rules"), of § 1-07.3(d)(2) of the Board's Rules 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 asserts that the propose convenience store complies with Department of Buildings' Technical Policy and Procedure Notice ("TPPN") 10/99 regarding retail convenience stores accessory to automotive service stations in Use Group 16 in that it is located on the same zoning lot as the service station, is contained within a completely enclosed building and has a total of 955 square feet of retail selling floor area, which is both less than 2,500 square feet or 25 percent of the zoning lot area (2,500 square feet); in addition, the applicant submits that the plans comply with the definition of "incidental alteration" set forth in ZR § 12-10 and is permitted pursuant to ZR § 11-412, specifically, that the proposed work to convert the space consists of minor alterations to the interior partitions and does not include a proposal to increase the floor area of the existing building; 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, *waives* § 1-07.3(d)(2) of the Board's Rules of Practice and Procedure, *reopens* and *amends* the resolution, dated October 29, 1957, as amended through July 28, 2015, to permit the conversion of the existing automotive service bay to an accessory convenience store and an extension of time to obtain a certificate of occupancy, *on condition* that all work shall substantially conform to drawings, filed with this application marked "Received July 24, 2018"-Ten (10) sheets; and *on further condition*:

THAT a certificate of occupancy be obtained within one (1) year, by July 24, 2019;

THAT a trash enclosure shall be provided and maintained at the site as shown on the Board-approved plans;

THAT landscaping shall be provided at the site as indicated on the Board-approved plans and maintained and

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replaced as necessary to be maintained in a first class condition;

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

THAT any graffiti located on the premises shall be removed within 48 hours;

THAT there shall be no change in use, ownership or lessee without Board approval;

THAT this site shall be operated at all times in such a fashion as to minimize traffic congestion;

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

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

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 24, 2018.

334-78-BZ

APPLICANT – Eric Palatnik, P.C., for 9123 LLC, owner.
SUBJECT – Application March 18, 2016 – Extension of Term of a previously approved Variance (§72-21) which permitted the operation of an Automotive Repair Facility (UG 16B) which expired on October 4, 2008; Amendment to permit changes to interior partitions and signage; Waiver of the Rules. R1-2 zoning district.

PREMISES AFFECTED – 233-20 Northern Boulevard, Block 8166, Lot 25, 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, Commissioner Sheta and Commissioner Scibetta.....5

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 a variance, previously granted by the Board, which expired on October 4, 2008, and an amendment of the same; and

WHEREAS, a public hearing was held on this application on March 20, 2018, after due notice by publication in *The City Record*, with continued hearings on May 22, 2018, and July 24, 2018, and then to decision on July 24, 2018; and

WHEREAS, Community Board 11, Queens, recommends approval of this application with conditions, citing concerns that the operators of the property continue to

park vehicles on the sidewalk; and

WHEREAS, the Board was also in receipt of one letter and oral testimony in opposition to this application, citing concerns that remediation of a documented oil spill on an adjacent site was properly completed and the parking of unplatd vehicles on the public sidewalk and blocking access to the a nearby entrance Alley Pond Park; 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 southwestern corner of Northern Boulevard and 234th Street, in an R1-2 zoning district, in Queens; and

WHEREAS, the site has approximately 248 feet of frontage long Northern Boulevard and 234th Street, 16,606 square feet of lot area and is occupied by an automobile showroom and repair shop; and

WHEREAS, the Board has exercised jurisdiction over the subject site since September 28, 1948, when, under BSA Calendar No. 447-48-BZ, the Board granted a variance permitting its use for the sale and display of more than 5 used cars for a term of five (5) years, expiring September 28, 1953, on condition that during the term of the variance, the premises would be occupied for no other use; that the plot be leveled substantially to the grade of surrounding streets and be surfaced with steam cinders or crushed bluestone; that a continuous woven wire type fence with anchored steel posts not less than 5 feet in height be installed on the interior lot lines; that, along the street building line of Northern Boulevard and Alley Pond Parkway, a fence be installed or there be installed on the lot line a cement curbing not less than 1 foot in height except for openings to Northern Boulevard and Alley Pond Parkway; that lighting for general illumination be on post standards with metal reflectors; that no non-conforming signs be installed; that during the variance term, no building be installed on the premises unless approved by the Board and that all permits be obtained and all work completed within one (1) year; and

WHEREAS, on June 7, 1949, under BSA Cal. No. 447-48-BZ, the Board amended the resolution to permit the construction on the premises, near the entrance, of a building solely for the use of the attendant of the lot, and for no other use, no more than one story high and no larger than 100 square feet in area; and

WHEREAS, on November 25, 1952, under BSA Cal. No. 447-48-BZ, the Board granted an extension of the term of the variance for an addition five (5) years, expiring November 25, 1957, on condition that all wok be completed and a certificate of occupancy be obtained within six (6) months; and

WHEREAS, on September 30, 1958, under BSA Cal. No. 447-48-BZ, the Board considered an application proposing the construction of a one-story extension to an existing one-story building used for sales display, storage and installation of auto seat covers, to be used for minor vehicle repairs limited to the installation and service of

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mufflers and to use the unbuilt portion of the premises for patron parking and amended the resolution to add:

that in the event the owner desires to construct an extension of the building for similar use as the existing building, as previously permitted, and specifically for minor vehicle repairing to include also the installation of mufflers and tail pipes, that such construction and use may be permitted for a term of 10 years, and permitting the proposed parking of cars in connection with the use for a similar term; the amendment additionally extended the term of the variance permitting the sale and display of more than 5 used cars for an additional ten (10) years; and

WHEREAS, on November 12, 1958, under BSA Cal. No. 447-48-BZ, the Board amended the September 30, 1958, resolution to clarify that the term of the variance was for fifteen (15) years from the date of the amended resolution, expiring September 30, 1973; and

WHEREAS, on February 10, 1959, under BSA Cal. No. 447-48-BZ, the Board amended the resolution, only so far as it included reference to motor vehicle repair, so that it would read, "and specifically for minor motor vehicle repairing to including also the installation of mufflers and tailpipes and the use of an oxy-acetylene torch subject to a proper permit issued by the Fire Commissioner"; and

WHEREAS, on October 4, 1978, under the subject calendar number, the Board permitted, pursuant to ZR § 11-413, the enlargement of the lot area of a plot previously before the Board to include former tax lot 33 and the change in use of an existing automobile seat cover and incidental repair establishment into a tire sales establishment with installation services on condition that all repairs be done within the building, that the surface area of the signs be limited to 481 square feet maximum, that the special permit be limited to a term of ten (10) years, expiring October 4, 1988, and that substantial construction be completed within one (1) year; and

WHEREAS, on June 26, 1979, under the subject calendar number and subsequent to the receipt of a condition approval from Community Board 11, Queens, on June 19, 1979, the Board amended the resolution to permit "tire sales, installation and service Use Group 7, auto repair hand tools only limited to muffler and tail pipe installation and service with (oxy-acetylene torch), auto parts sales and accessory storage Use 6, auto radio and C.B. sales, and installation and service and that the total sign area shall be limited to 300 square feet"; and

WHEREAS, on September 18, 1979, the Board's June 26, 1979, resolution was corrected to reflect delete the words "limited to" with regards to the type of auto repair with hand tools permitted at the site; and

WHEREAS, on July 18, 1990, under the subject calendar number, the Board waived its Rules, extended the term of the variance for ten (10) years, expiring October 4, 1998, and amended the variance to legalize the additional

use of transmission installation and repair, permit the elimination of the tire sales establishment as well as changes to the interior layout, permit a change in the type of fencing to a six-foot high woven wire fence with 50 percent opaque slats and to eliminate the previously-approved landscaping at the rear on condition that any illuminated signs on the premises be off at 9 p.m., that the sidewalks be maintained and repaired where required, that striping be painted in the parking area, that steel barriers be installed at the building lines where appropriate, that the west side wall of the building be repainted to match the east side wall, that the rear fence be maintained and repaired where required, that the gate be kept locked during non-business hours, that there be no storage of parts or materials in the open area at any time, and that a new certificate of occupancy be obtained within one (1) year; and

WHEREAS, on March 2, 1993, under the subject calendar number, the Board granted a waiver of its Rules and amended the resolution to extend the time in which to obtain a new certificate of occupancy to within thirty-four (34) months from July 18, 1991; and

WHEREAS, on July 25, 2000, under the subject calendar number, the Board waived its Rules and granted an extension of the term of the variance, pursuant to ZR § 73-11, for a term of ten (10) years, expiring October 4, 2008, on condition that the premises be maintained free of debris and graffiti; that the use portable identification signs be kept indoors at night; that all signs be maintained in accordance with BSA approved plans; that all conditions appear on the certificate of occupancy and that a new certificate of occupancy be obtained within two (2) years; and

WHEREAS, the term of the variance having expired, the applicant seeks a ten (10) year extension of the term of the variance as well as an amendment to legalize changes to interior partitions and signage and the additional use of automobile sales; and

WHEREAS, additionally, 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 of this application more than two (2) years but less than ten (10) years after the expiration of the term; and

WHEREAS, at hearing, the Board expressed concerns regarding the maintenance of the site, outstanding ECB and DOB violations, the compliance of the site with the Board's previous grants and the operation of the subject site in coordination with the adjacent lot immediately to the west, 233-02 Northern Boulevard Queens, Block 8166, Lot 20, which the Board exercises jurisdiction over under BSA Cal. No. 551-37-BZ; and

WHEREAS, specifically, the Board observed that fencing at the site required replacement, asphalt required resurfacing and parking spaces required striping and requested that, though the adjacent site on Lot 20 is on a separate zoning lot, the shadow of that site be indicated on the plans approved in connection with the subject site in order for future Boards to understand that they are, in fact, utilized in tandem; and

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WHEREAS, the applicant having expressed a willingness to complete such work in an expedited fashion, the Board finds that a one (1) year extension of the term of the variance is appropriate to enable the completion of work necessary to ensure compliance of the site with conditions previously imposed by the Board, with certain conditions as set forth below; and

Therefore, it is Resolved, that the Board of Standards and Appeals *waives* its Rule of Practice and Procedure, *reopens* and *amends* the resolution, dated October 4, 1978, as amended through July 25, 2000, so that as amended this portion of the resolution reads: “to grant an extension of the term of the variance for a term of one (1) year from the date of this amended resolution, to expire on July 24, 2019, and to approve an additional use of automobile sales, changes to interior partitions and signage *on condition* that all work and site conditions shall comply with drawings filed with this application marked “Received July 25, 2018-Seven (7) sheets; and *on further condition*:

THAT fencing shall be replaced as specified on the Board-approved plans and maintained so as to remain in a first-class condition;

THAT asphalt shall be resurfaced throughout the lot and all parking spaces shall be restriped, as specified on the Board-approved plans;

THAT the building shall be repaired, painted and maintained so as to remain in a first-class condition;

THAT the refuse enclosure be installed in the location indicated on the Board-approved plans;

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

THAT any illuminated signs at the premises be off at 9 p.m.;

THAT the sidewalks shall be maintained and repaired where required;

THAT there be no storage of parts or materials in the open area at any time;

THAT all signs shall be maintained in accordance with the Board-approved plans;

THAT the above conditions shall appear on the certificate of occupancy;

THAT all conditions from 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; and

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

Adopted by the Board of Standards and Appeals, July 24, 2018.

218-06-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Plaza Tower, LLC, owner; TSI East 48 LLC dba New York Sports Club, lessee.

SUBJECT – Application May 1, 2017 – Extension of Term of a previously approved Special Permit (§73-36) which permitted the operation of a Physical Cultural Establishment (New York Sports Club) located on the sub-cellar and cellar levels with an entrance on the first floor in a 46-story commercial building which expired on February 13, 2017: Amendment to permit the a modification of the hours of operation: Waiver of the Rules. . C1-9 (TA), R8B and R10 zoning district.

PREMISES AFFECTED – 885 Second Avenue aka 1 Dag Hammarskjold Plaza, Block 1321, Lot 22, 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 Sheta and Commissioner Scibetta.....5

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 previously granted special permit for a physical culture establishment (“PCE”), which expired on February 13, 2017, and an amendment of the same to change the hours of operation; and

WHEREAS, a public hearing was held on this application on July 24, 2018, after due notice by publication in *The City Record*, and then to decision on the same date; and

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

WHEREAS, Community Board 6, Manhattan, recommends approval of this application on condition that the term be limited to five (5) years pursuant to the Community Board’s standing policy to ensure more frequent feedback regarding the PCE’s operation from the surrounding community; and

WHEREAS, the subject site is located on the west side of Second Avenue, bound by East 48th Street to the north and East 47th Street to the south, partially within a C1-9 zoning district within the Special Transit Land Use District (TA), partially within an R8B zoning district and partially within an R10 zoning district, in Manhattan; and

WHEREAS, the site has approximately 201 feet of frontage along Second Avenue, 126 feet of frontage along East 48th Street, 275 feet of frontage along East 47th Street, 40,820 square feet of lot area and is occupied 46-story plus cellar and sub-cellar commercial building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since February 13, 2007, when, under the subject calendar number, the Board granted a special permit,

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pursuant to ZR § 73-36, to permit the establishment of a physical culture establishment, operated by New York Sports Club located on portions of the cellar and sub-cellar of the existing 46-story commercial building for a term of ten (10) years, expiring February 13, 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; the hours of operation be limited to: Monday through Thursday, 6:00 a.m. to 11:00 p.m., Friday, 6:00 a.m. to 9:00 p.m., and Saturday and Sunday, 9:00 a.m. to 7:00 p.m.; and massages only be performed by New York State licensed massage therapists; and

WHEREAS, during hearings on that previous application, the Board asked the applicant to confirm that the PCE would be located within the portion of the building which is in the C1-9 (TA) zoning district since the special permit is not available in either the R8B or R10 zoning district and the applicant responded by revising the site plans to illustrate that the PCE is confined to the portion of the site located within the C1-9 (TA) zoning district; and

WHEREAS, the previous term of the special permit having expired, the applicant requests the subject relief; and

WHEREAS, additionally, the applicant requests 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 of this application less than two (2) years after the expiration of the term; and

WHEREAS, in satisfaction of Rule § 1-07.3(b)(2), the applicant represents that the PCE use has been continuous since the expiration of the term and substantial prejudice would result without the requested waiver; and

WHEREAS, the applicant represents that there has been no change in ownership or operator since the 2007 resolution, that New York Sports Club continues to operate the subject PCE and that the PCE continues to occupy 6,856 square feet of floor space in the cellar and 6,571 square feet of floor space on the sub-cellar of the subject building solely within the portion of the site located within the C1-9 (TA) zoning district; and

WHEREAS, however, the applicant represents that massage services are no longer being offered at the facility and the hours of operation of the PCE are now Monday through Thursday, 5:00 a.m. to 11:00 p.m., Friday, 5:00 a.m. to 10:00 p.m., and Saturday through Sunday, 8:00 a.m. to 8:00 p.m.; and

WHEREAS, accordingly, the applicant seeks an amendment of the subject PCE's hours of operation; and

WHEREAS, the applicant submitted affidavits from consultants contracted to conduct fire system safety inspections affirming that, at the time of inspection on/around May 16, 2018, the sprinkler and fire alarm systems in the subject PCE were operable and code-compliant; and

WHEREAS, pursuant to ZR § 73-03(f), 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 February 13, 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 February 13, 2027, *on condition* that all work and site conditions shall conform to drawings filed with this application "Received July 25, 2018" – Four (4) sheets; and *on further condition*:

THAT the term of this grant shall expire on February 13, 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., and Saturday through Sunday, 8:00 a.m. to 8:00 p.m.;

THAT a new certificate of occupancy shall be obtained within one year;

THAT the above conditions shall appear on the certificate of occupancy;

THAT an updated certificate of occupancy shall be obtained within one (1) year, by July 24, 2019;

THAT minimum three (3) foot wide exit pathways shall always be maintained unobstructed, including that from any gymnasium equipment;

THAT sprinklers and interior fire alarm system – including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms, connection of the interior fire alarm and sprinklers to a FDNY-approved central station – shall be maintained throughout the PCE space as indicated on the Board-approved plans;

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 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, July 24, 2018.

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264-13-BZ

APPLICANT – Francis R. Angelino, Esq., for David Lowenfeld, owner; BBP Fitness, LLC, d/b/a Brick Crossfit NYC, lessee.

SUBJECT – Application November 17, 2016 – Extension of Term of a previously approved Special Permit (§73-36) permitting a physical culture establishment (Brick CrossFit) on the ground floor and cellar of an existing 10-story building which expires on November 20, 2016. C6-2A zoning district.

PREMISES AFFECTED – 257 West 17th Street, Block 767, Lot 7502, Borough of Manhattan.

COMMUNITY BOARD #4M

ACTION OF THE BOARD – Application Denied.

THE VOTE TO GRANT –

Affirmative:0

Negative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

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 November 20, 2016, and an amendment of the same to change the required hours of operation; and

WHEREAS, a public hearing was held on this application on July 24, 2018, after due notice by publication in *The City Record*, and then to decision on the same date; and

WHEREAS, Community Board 4, Manhattan, deferred its recommendation with regards to the subject application in light of litigation still pending between the applicant PCE and residential tenants of the building in which it is located; and

WHEREAS, the Community Board 4 Chelsea Land Use Committee recommended disapproval of this application; and

WHEREAS, the subject site is located on the northern side of West 17th Street, between Eighth Avenue and Seventh Avenue, in a C6-2A zoning district, in Manhattan; and

WHEREAS, the site has approximately 127 feet of frontage along West 17th Street, 92 feet of depth, 11,688 square feet of lot area and is occupied by ten-story plus cellar mixed-use commercial and residential building; and

WHEREAS, the subject PCE occupies approximately 8,387 square feet of total floor space in the cellar (1,930 square feet) and ground floor (6,457 square feet) of the subject building and is operated at Brick Fitness; and

WHEREAS, the Board has exercised jurisdiction over the subject site since October 27, 2015, when, under the subject calendar number and after eleven (11) public hearings, the Board granted a special permit, pursuant to ZR §§ 73-36 and 73-03, legalizing the operation of a physical culture establishment on the ground floor and cellar levels of the existing building on condition that the term of the grant expires on November 20, 2016, there be no change in

ownership or operating control of the PCE without prior application to and approval from the Board, fire safety measures be installed and/or maintained as shown on the BSA-approved plans and that all Department of Buildings (“DOB”) and related agency application(s) filed in connection with the authorized use and/or bulk be signed off by DOB and all other relevant agencies by December 1, 2016 (the “2015 Resolution”); and

WHEREAS, in addition, the 2015 Resolution conditioned the grant on the PCE “strictly adher[ing]” to the following operational plan:

General Restrictions:

- The hours of operation of the PCE shall be Monday through Friday, from 5:15 a.m. to 9:00 p.m., and Saturday and Sunday, from 7:30 a.m. to 4:00 p.m., subject to programmatic limitations imposed as conditions herein;
- Under no circumstances are weight drops, from any height, permitted anywhere at the PCE premises outside of Classroom 1 and Classroom 3;
- The sound level from the music limiter throughout the entire PCE premises shall remain fixed to prevent the sound from the PCE from exceeding 73 dBA/83 dBC with the wall mounted volume control at the maximum level regardless of the source of the program;
- All weight lifting stations within the PCE must utilize Rogue pads placed on top of sound absorbing weight platforms, as indicated on the BSA-approved plans;

Ground Floor Restrictions:

- Under no circumstances are PCE staff or customers permitted to use barbells with a weight in excess of 115 lb. on the ground floor of the PCE premises;
- Under no circumstances are PCE staff or customers permitted to use medicine balls with a weight in excess of 20 lb. on the ground floor of the PCE premises;
- Under no circumstances are PCE staff or customers permitted to use kettlebells with a weight in excess of 45 lb. on the ground floor of the PCE premises;
- Under no circumstances are PCE staff or customers permitted to use dumbbells with a weight in excess of 45 lb. on the ground floor of the PCE premises;
- Under no circumstances may the activity of hitting a wall with a medicine ball (“Wall Ball”) be practiced on the ground floor of the PCE premises;
- All PCE activities on the ground floor of the subject building must be supervised by PCE faculty, and the PCE may not permit any open gym activities on the ground floor of the subject

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building;

Classroom 1 (“Central Park”)

- The PCE may offer the following class in Classroom 1: “Functional Fitness,” a strength and skill class that incorporates weight training as well as skill exercises (gymnastics, including pull-ups, handstands, etc.) and metabolic conditioning;
 - Classroom 1 contains (and may not exceed) 16 weight-lifting stations, all of which must utilize Rogue pads placed on top of sound absorbing weight platforms, as indicated on BSA-approved plans;
 - Barbell movements incorporated into classes held within Classroom 1 are permitted but participants may not perform, nor may the PCE permit, drops of weights or weighted objects from any point higher than “waist height”;
 - Under no circumstances are weight drops, from any height, permitted in Classroom 1 (or elsewhere on the ground floor of the PCE premises) before 7:00 a.m. or after 9:00 p.m.;
 - Weight drops of any kind, of any weight, are prohibited at all times at that portion of Classroom 1 designated “G-2” on the BSA-approved plans;
 - No more than 18 attendees are permitted to attend any class offered within Classroom 1 at one time;
- Outside of scheduled classes, Classroom 1 (“Central Park”) is to remain empty and unused;

Classroom 2 (“East Village”)

- The PCE may offer the following classes in Classroom 2 (“East Village”): “BX Class,” which utilizes bodyweight exercises and calisthenics, and which incorporates medicine balls, kettlebells, and dumbbells; “Mobility Class,” which utilizes foam rollers, resistance bands, and yoga mats (and no weights or weighted objects); and “Yoga Class,” which utilizes yoga mats (and no weights or weighted objects);
- No more than 40 attendees are permitted to attend Yoga Class at one time;
- No more than 32 attendees are permitted to attend Mobility Class at one time;
- No more than 24 attendees are permitted to attend BX Class at one time;
- Outside of scheduled classes, Classroom 2 (“East Village”) is to remain empty and unused;
- Weight drops of any kind, of any weight, are prohibited within Classroom 2;

Cellar-Level Restrictions:

- Under no circumstances are PCE staff or customers permitted to use barbells with a weight in excess of 135 lb. in the cellar-level of the PCE premises;
- Under no circumstances are PCE staff or

customers permitted to use medicine balls with a weight in excess of 20 lb. in the cellar-level of the PCE Premises;

- Under no circumstances are PCE staff or customers permitted to use kettlebells with a weight in excess of 70 lb. in the cellar-level of the PCE premises;
- Under no circumstances are PCE staff or customer permitted to use dumbbells with a weight in excess of 45 lb. in the cellar-level of the PCE premises;

Classroom 3 (“Downtown”)

- The PCE may offer the following class in Classroom 3: “B Fit Class,” which includes warm-ups, skill/strength, and workout/High Intensity Interval Training; B Fit Class incorporates barbells, medicine balls, dumbbells and kettlebells, training with no weights in excess of 135 lb. permitted;
- “Overhead Drops” of weights or weighted objects is not permitted in Classroom 3 (“Downtown”) or elsewhere within the PCE premises;
- No more than 18 attendees are permitted to attend B Fit Class at one time;
- The PCE may permit “Open Gym” in Classroom 3, which is managed by PCE staff;

WHEREAS, unit owners in the subject building (referred to in the 2015 Resolution, along with others who opposed the application, as the “Opposition”) objected to the original application for a PCE special permit on the grounds that the subject PCE constituted a nuisance in that excessive noises and vibrations emanating from the PCE space and resulting from the PCE activity therein had been a regular and significant disturbance since the PCE began operating unlawfully at the site in July 2013; and

WHEREAS, in the 2015 Resolution, the Board noted that litigation filed in the Supreme Court of New York (*The Board of Managers of the 257 West 17th Street Condominiums v. 257 Associates Borrower LLC and BBP Fitness LLC d/b/a Brick New York*, Sup Ct, New York County, Index No. 160585/13) was pending at the time of the Board’s decision and that, pursuant to the Court’s Interim Temporary Restraining Order dated November 15, 2013, the PCE was required to use its best efforts to ensure that its patrons refrain from dropping weights and/or weighted objects on the floors and/or walls of the subject premises between the hours of 7:30 a.m. and 8:30 p.m., but that, notwithstanding this Order, opponents to the application maintained that the PCE continued to be a nuisance; and

WHEREAS, the 2015 Resolution continued:

[T]he Board notes that it has held an unprecedented number of public hearing on this application, and worked with acoustical engineers representing both the applicant PCE as well as the Opposition, to determine whether and to what extent the PCE can operate at the subject site

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without constituting an unreasonable nuisance to the residential occupants of the subject building . . . ultimately, the Board directed the PCE and the Opposition to hire a third-party acoustical engineer to administer a Board-approved test of various activities within the PCE in order to determine the impact of such activities and the viability of the PCE at the site . . . based on the foregoing test and extensive review of the sound and vibration attenuation measures implemented at the subject premises, the Board has directed the PCE to adhere to a strict operational plan (the “Operational Plan”), which the Board makes a condition of its approval of the subject application . . . the Board has taken the unusual step of limiting the term of the subject approval to one year, commencing on November 20, 2015, so that the Board can evaluate, upon the expiration of the term, whether and to what extent the PCE adhered to the Operational Plan and whether and to what extent the Operational Plan adequately mitigated the noise and vibration complained of by the Opposition . . .

WHEREAS, the previous term of the special permit having expired, the applicant requests the subject relief, seeking a ten (10) year extension of the term and an amendment to the condition regarding hours of operations to reflect the subject PCE’s actual hours of operation (Monday through Friday, 5:30 a.m. to 9:00 p.m. and Saturday through Sunday, 8:30 a.m. to 4:00 p.m.); and

WHEREAS, the Board’s decisions with regards to applications for an extension of the term of the PCE special permits are guided by, *inter alia*, ZR § 73-03(f), which states:

On application for renewal of any such special permit authorized in this Chapter, the Board shall determine whether the circumstances warranting the original grant still obtain. In addition, the Board shall ascertain whether the applicant has complied with the conditions and safeguards theretofore described by the Board during the prior term. In the event that the Board shall find the applicant has been in substantial violation thereof, it shall deny the application for renewal; and

WHEREAS, Community Board 4’s Chelsea Land Use Committee, in its letter, dated July 10, 2018, informing the Board of its recommendation, noted a 2016 investigation of the PCE by residents of the subject building reporting the use of weights above the limits set forth in the 2015 Resolution (specifically, 175-, 205-, 235- and 325-pound weights), the failure to install the Rogue pads required pursuant to the 2015 Resolution and the dropping of weights from shoulder and overhead height; and

WHEREAS, by letter dated June 29, 2018, a representative for the owner of the subject building (the “Owner’s Representative”) requested denial of the

application “[b]ased on uncontroverted evidence that Brick routinely and openly violates the conditions imposed by the [2015 Resolution], and the disturbance and hardship suffered by the occupants of the Condominium as a consequence”; and

WHEREAS, the Owner’s Representative additionally submitted affidavits from two individuals engaged to investigate the subject PCE in late 2016 as well as photographic evidence purporting to show PCE patrons repeatedly lifting and dropping weights of up to 300 pounds in the subject PCE space without Rogue pads—resulting in noticeable sound and vibrations throughout the PCE space—in full view of PCE employees with no attempt by PCE employees to correct the patrons’ behavior; and

WHEREAS, an affidavit was also provided by a certified personal trainer (the “Affiant”) engaged by the owner of the subject building to review complaints by residents and compare them to video footage from the subject PCE in order to verify, if possible, the source of the complaint and whether the source was the result of a non-compliance with the 2015 Resolution and, in reviewing the surveillance videos of the facility that corresponded to the time and date of complaints made by building residents in April and May 2018, the Affiant created a log of those complaints (the “Complaint Log”), including the date, time and activities observed on the surveillance video, and submitted the Complaint Log to the Board; and

WHEREAS, the Complaint Log indicated that at the moments of particular complaints made by building residents—oftentimes, multiple complaints made over the course of a few minutes—patrons of the PCE were engaged in activities prohibited by the 2015 Resolution, including, *inter alia*, failing to drop weights onto Rogue pads, using weights in excess of 135 pounds and dropping weights from overhead heights; and

WHEREAS, at hearing, the representative of the subject PCE acknowledged that the private investigators did, indeed, observe activities at the PCE in late 2016 that did not comply with the 2015 Resolution and the owner testified that the PCE does not utilize the Rogue pads on the first floor because cross fit activities are no longer occurring and, thus, weight dropping was no longer occurring on that floor; and

WHEREAS, a trainer employed by the subject PCE also testified at hearing that the PCE allows its patrons to drop weights in classes held in the cellar because the PCE would otherwise lose a substantial number of patrons and that the business could not be maintained with a restriction that weights of 135 pounds or less cannot be dropped from waist height; and

WHEREAS, residents of the subject building provided additional oral testimony at hearing, stating that they have continuously complained about the subject PCE operating contrary to the 2015 Resolution and confirming that the time and date of complaints regarding noise and vibrations itemized in the Complaint Log do, in fact, correspond to activities in the subject PCE that do not comply with the

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conditions of the 2015 Resolution; and

WHEREAS, the Board notes that the subject application does not include a request for an amendment to any of the conditions of the 2015 Resolution relating to the operation of the subject PCE's classes, i.e. the removal of conditions prohibiting the use of weights in excess of 135 pounds or weight drops in particular areas of the PCE space; and

WHEREAS, in light of the evidence presented, uncontroverted by the subject PCE's owner, trainer-employee and representative, that the subject PCE has failed to comply with the 2015 Resolution and, in so doing, elicited numerous complaints from residents of the building regarding its adverse effects—specifically noise and vibrations in their residential units resulting from the dropping of excessive weights from significant heights in the subject PCE space—the Board finds, pursuant to ZR § 73-03(f), that the subject PCE has been in substantial violation of the conditions and safeguards described the Board in the 2015 Resolution; and

WHEREAS, accordingly, a ten (10) year extension of the term of the subject special permit is inappropriate; and

Therefore, it is Resolved, that the application for an extension of the term of a special permit previously granted by the Board, pursuant to ZR §§ 73-36 and 73-03, is *denied*.

Adopted by the Board of Standards and Appeals, July 24, 2018.

341-43-BZ

APPLICANT – Seyfarth Shaw LLP, for SP HHF Sub B LLC, owner.

SUBJECT – Application April 13, 2018 – Extension of Term (§11-411) of a previously approved variance which permitted a storage warehouse (UG 16B) which expired on June 4, 2016; Waiver of the Board's Rules. C2-4, C2-3, R7A and R5 zoning district.

PREMISES AFFECTED – 3319 Atlantic Avenue, Block 4145, Lot(s) 1, 13, 23, Borough of Brooklyn.

COMMUNITY BOARD #5BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:0

ACTION OF THE BOARD – Laid over to September 27, 2018, at 10 A.M., for decision, hearing closed.

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 47th Avenue, Block 5559, Lot 75, Borough of Queens.

COMMUNITY BOARD #11Q

ACTION OF THE BOARD – Laid over to October 23, 2018, at 10 A.M., for adjourned hearing.

138-87-BZ

APPLICANT – Carl A. Sulfaro, Esq., for Philip Cataldi Trust #2, owner.

SUBJECT – Application August 3, 2017 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of car rental facility (UG 8C) which expired on January 12, 2013; Amendment to permit changes to the interior layout and to the exterior of the building; Waiver of the Rules. C2-2/R2 zoning district.

PREMISES AFFECTED – 218-36 Hillside Avenue, Block 10678, Lot 14, Borough of Queens.

COMMUNITY BOARD #13Q

ACTION OF THE BOARD – Laid over to October 23, 2018, at 10 A.M., for adjourned hearing.

170-96-BZ

APPLICANT – Eric Palatnik, P.C., for 8501 Flatlands Avenue Realty Corp., owner.

SUBJECT – Application March 23, 2018 – Extension of Term of a previously approved Variance (§72-21) which permitted the operation of an Automotive Repair Facility (UG 16B) expiring on April 21, 2018. C2-3/R5D zoning district.

PREMISES AFFECTED – 8501 Flatlands Avenue, Block 8006, Lot 7, Borough of Brooklyn.

COMMUNITY BOARD #18BK

ACTION OF THE BOARD – Laid over to September 27, 2018, at 10 A.M., for continued hearing.

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 3rd Avenue, Block 980, Lot 1, Borough of Brooklyn.

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COMMUNITY BOARD #6BK

ACTION OF THE BOARD – Laid over to October 11, 2018, at 10 A.M., for adjourned hearing.

197-05-BZ

APPLICANT – Law Offices of Marvin B. Mitzner LLC, for Broadway Realty LLC, owner.

SUBJECT – Application April 27, 2018 – Amendment of a previously approved variance (§72-21) which permitted the construction of an 11-story mixed-use building with ground floor commercial. The amendment seeking to permit a 4’9” by 28’ bump out at the rear of the building; Extension of Time to Complete construction which expires on April 29, 2019. C6-1/R7 zoning district.

PREMISES AFFECTED – 813 Broadway, Block 563, Lot(s) 33 & 34, Borough of Manhattan.

COMMUNITY BOARD #2M

ACTION OF THE BOARD – Laid over to August 7, 2018, at 10 A.M., for postponed hearing.

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 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 September 27, 2018, at 10 A.M., for continued hearing.

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 44th Street, Block 702, Lot 57, Borough of Queens.

COMMUNITY BOARD #1Q

ACTION OF THE BOARD – Laid over to August 7, 2018, at 10 A.M., for adjourned hearing.

2017-323-A

APPLICANT – Marianne Russo, for Kadri Capri, owner.
SUBJECT – Application December 20, 2017 – Proposed development of a one-family dwelling not fronting on a mapped street contrary to General City Law §36. R1-2 zoning district.

PREMISES AFFECTED – 108 Croak Avenue, Block 692, Lot 217, Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Laid over to September 27, 2018, at 10 A.M., for continued hearing.

2018-22-A

APPLICANT – NYC Department of Buildings, for Eighteen Properties, LLC, owner.

SUBJECT – Application February 14, 2018 – Request for a revocation, by the New York City Building’s Department, of Certificate of Occupancy No. 301016898F issued for a four-story walk-up apartment building. R6B zoning district.

PREMISES AFFECTED – 255 18th Street, Block 873, Lot 69, Borough of Brooklyn.

COMMUNITY BOARD #7BK

ACTION OF THE BOARD – Laid over to October 11, 2018, at 10 A.M., for continued hearing.

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

ACTION OF THE BOARD – Laid over to October 23, 2018, at 10 A.M., for continued hearing.

2016-4265-BZ

APPLICANT – Law Office of Fredrick A. Becker, for 25 Bleecker Street, LLC, owner.

SUBJECT – Application October 6, 2016 – Variance (§72-21) to permit the development of a six-story and penthouse structure containing commercial retail (UG 6) on the first and cellar floors contrary to ZR §42-14(D)(2)(B) and residential (UG 2) in the upper floors contrary to ZR §42-10. The proposed rear yard does not comply with ZR §§43-26 & 43-27. M1-5B (NOHO Historic District) zoning

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district.

PREMISES AFFECTED – 25 Bleecker Street, Block 529, Lot 54, Borough of Manhattan.

COMMUNITY BOARD #2M

ACTION OF THE BOARD – Laid over to October 30, 2018, at 10 A.M., for continued hearing.

2016-4275-BZ

APPLICANT – Gerald J. Caliendo, R.A., AIA, for Joseph G. Ciampa/Ciampa North Co., owner; Push Fitness Club, lessee.

SUBJECT – Application October 31, 2016 – Special Permit (§73-36) to permit the legalization of a physical cultural establishment (*Push Fitness Club*) located on the first floor, basement and mezzanine levels of the existing commercial building contrary to ZR §42-10. M1-1 zoning district.

PREMISES AFFECTED – 132-15 14th Avenue, Block 4012, Lot(s) 45 & 30, Borough of Queens.

COMMUNITY BOARD #7Q

ACTION OF THE BOARD – Laid over to November 20, 2018, at 10 A.M., for continued hearing.

2017-9-BZ

APPLICANT – Law Office of Jay Goldstein, for SL Utica LLC, owner; All My Children Daycare, Lessee.

SUBJECT – Application January 12, 2017 – 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.

PREMISES AFFECTED – 561-565 Utica Avenue, Block 4604, Lot 69, Borough of Brooklyn.

COMMUNITY BOARD #17BK

ACTION OF THE BOARD – Laid over to September 27, 2018, at 10 A.M., for continued hearing.

2017-56-BZ

APPLICANT – Rampulla Associates Architects, LLP, for Block 853, LLC, owner.

SUBJECT – Application February 24, 2017 – 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. R1-2 zoning district. R1-2 Lower Density Growth Management Area.

PREMISES AFFECTED – 1321 Richmond Road, Block 853, Lot(s) 91 & 93, Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Laid over to October 11, 2018, at 10 A.M., for adjourned hearing.

2017-149-BZ

APPLICANT – Sheldon Lobel, P.C., for Willard J. Price Associates LLC, owner.

SUBJECT – Application May 15, 2017 – 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.

PREMISES AFFECTED – 510 Quincy Street & 651-671 Gates Avenue, Block 1811, Lot 19, Borough of Brooklyn.

COMMUNITY BOARD #3BK

ACTION OF THE BOARD – Laid over to October 11, 2018, at 10 A.M., for continued hearing.

2017-209-BZ

APPLICANT – Eric Palatnik, P.C., for Yoel Zagebaum, owner.

SUBJECT – Application June 9, 2017 – 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.

PREMISES AFFECTED – 1622 East 29th Street, Block 679, Block 8, Borough of Brooklyn.

COMMUNITY BOARD #15BK

THE VOTE TO CLOSE HEARING –

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

ACTION OF THE BOARD – Laid over to September 13, 2018, at 10 A.M., for decision, hearing closed.

2017-213-BZ

APPLICANT – Slater & Beckerman, P.C., for Dynamic Youth Community, Inc., owner.

SUBJECT – Application June 14, 2017 – 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).

PREMISES AFFECTED – 1808 Coney Island Avenue, Block 6592, Lot 39, Borough of Brooklyn.

COMMUNITY BOARD #12BK

ACTION OF THE BOARD – Laid over to September 13, 2018, at 10 A.M., for continued hearing.

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2017-291-BZ

APPLICANT – Law Office of Jay Goldstein for Yosef Rabinowitz, owner.

SUBJECT – Application November 2, 2017 – 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.

PREMISES AFFECTED – 1367 East 26th Street, Block 7662, Lot 17, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Laid over to August 14, 2018, at 10 A.M., for adjourned hearing.

2017-292-BZ

APPLICANT –Law Office of Jay Goldstein, for Baruch Wieder, owner.

SUBJECT – Application November 2, 2017 – 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.

PREMISES AFFECTED – 1363 East 26th Street, Block 7662, Lot 19, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Laid over to August 14, 2018, at 10 A.M., for adjourned hearing.

REGULAR MEETING TUESDAY AFTERNOON, JULY 24, 2018 1:00 P.M.

Present: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.

ZONING CALENDAR

2017-279-BZ

CEQR #18-BSA-042K

APPLICANT – Law Office of Jay Goldstein PLLC, for 87 Wythe Holdings LLC, owner; Will Bar LLC, lessee.

SUBJECT – Application October 16, 2017– 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.

PREMISES AFFECTED – 97 N 10th Street, Lot 2296, Lot 4, 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 Sheta and Commissioner Scibetta.....5

Negative:0

THE RESOLUTION –

WHEREAS, the decision of the Borough Commissioner, dated September 28, 2017, acting on Department of Buildings (“DOB”) Application No. 321647063, reads in pertinent part:

Proposed physical culture establishment in an M1-2 zoning district is contrary to Zoning Resolution section 42-10 and must be referred to the BSA; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to legalize, on a site located within an M1-2 zoning district, a physical culture establishment (“PCE”) on a portion of the second floor of an existing two-story plus mezzanine commercial building, contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on July 24, 2018, after due notice by publication in *The City Record*, and then to decision on the same date; and

WHEREAS, the Board was in receipt of two (2) form letters in support of this application; and

WHEREAS, the subject site is a corner and through lot located on the north side of North 10th Street, bound by Wythe Avenue to the east and North 11th Street to the north, within an M1-2 zoning district in Brooklyn; and

WHEREAS, the site has approximately 225 feet of

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frontage along North 10th Street, 200 feet of frontage along Wythe Avenue, 225 feet of frontage along North 11th Street, 45,000 square feet of lot area and is occupied by several buildings, including a two-story plus mezzanine commercial building in which the subject PCE is located; 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, the applicant represents that, 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 applicant submitted evidence that the subject PCE occupies 3,131 square feet of floor area on the second floor with two exercise studios, an office, a staff room, locker rooms, and a reception area; and

WHEREAS, the applicant represents that the PCE has been in operation since July 2017 as The Bar Method with the following hours of operation: Monday through Sunday, 5:30 a.m. to 9:30 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 mixed residential and commercial area and that is heavily trafficked and will draw its patrons from the immediate area who will walk to the Premises; and

WHEREAS, the applicant represents that the studios are isolated from adjacent structures, have no neighboring spaces either beside them or above them, that sound mitigation measures installed in the subject PCE space include acoustical separations with an external STC rating of 61, sound attenuating flooring with an STC rating of 57 (specifically, the studios sit on a 1/8-inch neoprene mat with a 1/2-inch carpet underlayment and a 1/2-inch carpet, all over a 4-inch slab supported by a 4-inch brick barrel vaulting) and that all penetrations at the studio floor have been sealed with mineral fiber insulation and caulked; 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 represents that the PCE contains facilities for the provision of physical fitness instruction classes that utilize ballet techniques and limited equipment, such as light free weights and small inflatable balls; and

WHEREAS, accordingly, 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 states that sprinklers and a fire alarm system—including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms and a connection of the building’s interior Class E fire alarm to an FDNY-approved central station—are installed throughout the PCE space; and

WHEREAS, the applicant submits that the PCE is equipped with an automatic wet sprinkler system; and

WHEREAS, by letter dated July 20, 2018, the Fire Department confirms that an application had been filed with DOB and the Fire Department for a fire alarm system in the subject PCE and subsequently approved; that an inspection was performed for the fire alarm system, which covers the entire building and, while a letter of defect was issued to the building owner on June 15, 2018, the Fire Alarm Inspection Unit has been informed of these open items and will re-inspect the premises and issue appropriate violations orders after the owner has had sufficient time to complete the necessary repairs; that a new sprinkler and standpipe system was also installed, inspected and signed off by a licensed fire suppression contractor and that the Fire Department is responsible for inspecting these systems every five years, with the next inspection scheduled for July 2023; and that the Bureau of Fire Prevention units have been notified of this application and will take necessary actions if the fire suppression and fire alarm systems are not maintained; 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 impact the privacy, quiet, light and air of the neighborhood on account of its location in relationship to its neighbors and its limited size; 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. 18-BSA-042K, dated October 16, 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 an M1-2 zoning district, the operation of a physical culture

establishment in portions of the second floor level of an existing two-story plus mezzanine commercial building, contrary to ZR § 42-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received April 16, 2018 – Three (3) sheets and “Received October 16, 2017 – One (1) sheet and *on further condition*:

THAT the term of the PCE grant shall expire on July 1, 2027;

THAT the following sound attenuation measures shall be maintained as indicated on the Board-approved plans: all studio flooring is 1/8-inch neoprene matt with 1/2-inch carpet underlayment and 1/2-inch carpet with the entire assembly over a 4-inch slab supported by 4-inch brick barrel vaulting and with all penetrations at studio floor sealed with mineral fiber insulation and caulked;

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

THAT accessibility compliance under Local Law 58/87 shall 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 a Certificate of Occupancy shall be obtained within one year, by July 24, 2019;

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, July 24, 2018.

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2018-36-BZ

APPLICANT – Jay Goldstein, Esq., for Moshe and Pnina Arking, owners.

SUBJECT – Application March 6, 2018 – Special Permit (§73-622) to permit the enlargement of a one family home contrary to ZR §23-141 (FAR and Open Space); ZR §23-461 (a) (side yard) and ZR §23-47 (rear yard). R2 zoning district.

PREMISES AFFECTED – 1482 East 26th Street, Block 7679, Lot 87, 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 Sheta and Commissioner Scibetta.....5

Negative:0

THE RESOLUTION –

WHEREAS, the decision on behalf of the Brooklyn Borough Commissioner, dated February 9, 2018, acting on Department of Buildings (“DOB”) Application No. 320910895 reads in pertinent part:

ZR 23-141: Proposed plans are contrary to ZR 23-141 in that the proposed floor area ratio (FAR) exceeds the permitted 50% and BSA special permit is required;

ZR 23-141: Proposed plans are contrary to ZR 23-141 in that the proposed open space ratio (OSR) is less than the required 150% and BSA special permit is required;

ZR 23-461(A): Proposed plans are contrary to ZR 23-461(A) in that the proposed side yards are less than the required 5’-0” and 13’-0”. BSA special permit is required;

ZR 23-47: Proposed plans are contrary to ZR 23-47 in that the proposed rear yard is less than 30’-0” and BSA special permit is required; and

WHEREAS, this is an application under ZR § 73-622 to permit, in an R2 zoning district, the enlargement of a semi-detached one-family dwelling 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 July 24, 2018, 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 East 26th Street, between Avenue O and N, in an R2 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 21 feet of frontage, a depth of 100 feet, 2,121 square feet of lot area and is occupied by a semi-detached two-story one-family dwelling containing 1,232 square feet of floor area, a floor area ratio (“FAR”) of 0.58 and an open space ratio of 118 and a garage located 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 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

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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 this application located within an area in which the special permit is available; and

WHEREAS, the Board notes further that the subject application seeks to enlarge the a semi-detached one-family residence, as contemplated by ZR § 73-622; and

WHEREAS, the applicant proposes to demolish the existing garage and enlarge the existing semi-detached dwelling with a two-story plus cellar extension at the rear, resulting in a dwelling with 1,978 square feet of floor area (0.93 FAR), an open space ratio of 55, 48 percent lot coverage and a 20 foot rear yard; and

WHEREAS, the proposed enlargement includes the horizontal extension of the existing non-complying zero foot southern side yard and 5'-2" side northern side yard and the applicant has submitted a 1930 Sanborn map of the immediate area, including the subject site, demonstrating that site was developed with a two-story semi-detached dwelling in approximately the same orientation as the site is occupied today and, thus, the non-complying side yards predated the 1961 Zoning Resolution and are legal non-compliances; and

WHEREAS, at the subject site, a maximum floor area ratio of 0.50 is permitted and a minimum open space ratio of 150.0 is required pursuant to ZR § 23-141; two side yards, each with a minimum required width of 5 feet and a minimum required total width of 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 provided an analysis of single- or two-family dwelling located within 400 feet of the subject premises within an R2 zoning district (the "Study Area") concluding that, of the 96 qualifying residences, 80 residences (83 percent) have an FAR of greater than 0.50, ranging from 0.57 to 1.20, and 11 residences (11 percent) have an FAR of 0.93 or greater and 19 residences (20 percent) have 48 percent lot coverage or greater; and

WHEREAS, with regards to the proposed rear yard, the applicant provided an analysis of the rear yard conditions on the subject block demonstrating that, of the 54 lots on the subject block, 26 lots (48 percent) have rear yards with a depth of less than 30 feet and 14 lots (26 percent) have rear yards with a depth of 20 feet or less, including the two lots

directly to the rear of the subject lot, which provide 20 foot rear yards that are further obstructed by accessory garages; and

WHEREAS, the Board notes that the proposed reduction in the rear yard to 20 feet at both the first and second stories is suitable at the subject site because the building typology, a semi-detached dwelling, otherwise prevents the enlargement of the existing dwelling and, further, that the proposed enlargement at the rear has a limited impact on the neighborhood character; 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; 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 the required findings under ZR § 73-622 to permit, in an R2 zoning district, the enlargement of a one-family semi-detached dwelling that does not comply with the zoning requirements with regards to 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 as they apply to the objection above-noted, filed with this application and marked "Received May 4, 2018"—Fourteen (14) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area ratio of 0.93 (1,978 square feet of floor area), an open space ratio of at least 55, at least one side yard with a width of at least 5'-2" and a rear yard at least 20 feet in depth;

THAT the removal of exterior walls and/or joists in excess of those indicated on the BSA-approved plans is prohibited and 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, July 24, 2018.

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2018-110-BZ

CEQR #19-BSA-004K

APPLICANT – NYC Mayors Office of Housing Recovery (HRO)

SUBJECT – Application July 11, 2018 – 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.R-4 zoning district.

PREMISES AFFECTED – 17 Abbey Court, Plumb Beach Channel Shoreline, Lois Avenue. Block 8845, Lot 1984. Borough of Brooklyn.

COMMUNITY BOARD #3BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....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 legalize, on a site within an R4 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, rear yards, side yards and building height, contrary to ZR §§ 23-45, 23-52, 23-461, 64-A351, 64-A353, 64-A532 and 64-A36; and

WHEREAS, a public hearing was held on this application on July 24, 2018, 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 Abbey Court, south of Lois Avenue, in an R4 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 40 feet of frontage along Abbey Court, 1,800 square feet of lot area and is occupied by a single-family detached residence; 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, the applicant now seeks a special permit, pursuant to ZR § 64-92 to legalize the elevation of the single-family residence to a height of 25’-2” from flood resistant construction elevation (“FRCE”), where Department of Buildings (“DOB”) previously approved a building height of 24 feet from FRCE, which qualifies the building as three-story rather than two-story, creates a non-compliance with regards to height regulations and results in an increase in the degree to which the existing front yard, side yards and rear yards at the subject site do not comply with underlying bulk regulations; and

WHEREAS, specifically, the subject site has a 4 foot front yard, a rear yard measuring 6’-8”, and two side yards measuring 3’-1” and 20 feet, but, at the subject site, a front yard of at least 10 feet is required pursuant to ZR §§ 23-45 and 64-A351), a rear yard of at least 10 feet is required pursuant to ZR § 23-52 and 64-A353 and two side yards, each with a width of at least 5 feet and with a combined

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minimum width of 13 feet, are required pursuant to ZR §§ 23-461 and 64-A532; and

WHEREAS, additionally, a maximum height of 25 feet from FRCE is permitted pursuant to ZR § 64-A36; and

WHEREAS, in accordance with ZR § 64-92(a), the composition of the existing residence on the lot creates practical difficulties in complying with flood-resistant construction standards without the modification of requirements for front yards, rear yards, side yards and height and that waivers of the same are the minimum necessary to allow for a building compliant with flood-resistant construction standards; and

WHEREAS, pursuant to ZR § 64-92(b), the subject proposal does request a modification of bulk regulations related to height, but such request is to permit a height that exceeds the maximum permitted by 2 inches, which is both less than 10 feet in height and less than 10 percent of the permitted height as measured from FRCE (2.5 feet); 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 residences and that the subject site is consistent with its essential character; and

WHEREAS, accordingly, the Board has reviewed the proposal and determined that the subject application 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. 19BSA004K, dated July 11, 2018; 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 legalize, on a site within an R4 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, rear yards, side yards and building height, contrary to ZR §§ 23-45, 23-52, 23-461, 64-A351, 64-A353, 64-A532 and 64-A36; *on condition* that all work shall substantially conform to the drawings filed with this application and marked "Received July 11, 2018"- Eight (8) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: a front yard with a minimum depth of 4 feet, a rear yard with a minimum depth of 6'-8", side yards with minimum widths of 3'-1" and 20 feet, and a maximum building height of 25'-2" above flood-resistant construction

elevation, 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 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 authorized use and/or bulk shall be signed off by DOB and all other relevant agencies within four (4) years;

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, July 24, 2018.

2018-111-BZ

CEQR #19-BSA-005R

APPLICANT – NYC Mayors Office of Housing Recovery (HRO)

SUBJECT – Application July 11, 2018 – 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 – 18 Neutral Avenue. Block 4093, Lot 9. Borough of Staten Island.

COMMUNITY BOARD #5SI

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....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 legalize, on a site within an R3X zoning district, the elevation of a single-family detached home in compliance with flood-resistant

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construction standards that does not comply with the zoning requirements with regards to building height, contrary to ZR § 64-A36; and

WHEREAS, a public hearing was held on this application on July 24, 2018, 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 Neutral Avenue, west of Cedar Grove Avenue, in an R3X zoning district, on Staten Island; and

WHEREAS, the site has approximately 60 feet of frontage along Neutral Avenue, 60 feet of frontage along Ebbitts Street, 3,485 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. 2016-788-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 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 resistant 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 legalize the elevation of the single-family residence to a height of 25'-10" from flood resistant construction elevation ("FRCE"), where Department of Buildings ("DOB") previously approved a building height of 25'-2" from FRCE, which qualifies the building as three-story rather than two-story and creates a non-compliance with regards to height; and

WHEREAS, specifically, at the subject site, a maximum height of 25 feet from FRCE is permitted pursuant to ZR § 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 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 inadvertent over-elevation of the existing residence on the lot creates practical difficulties in complying with flood-resistant construction standards without the modification of requirement for height and that a waiver of the same is the minimum necessary to allow for a building compliant with flood-resistant construction standards; and

WHEREAS, pursuant to ZR § 64-92(b), the subject proposal does request a modification of bulk regulations related to height, but such request is to permit a height that exceeds the maximum permitted by 10 inches, which is both less than 10 feet in height and less than 10 percent of the permitted height as measured from FRCE (2.5 feet); 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 neighborhood is characterized by single- and two-family detached residences and that the subject site is consistent with its essential character; and

WHEREAS, accordingly, the Board has reviewed the proposal and determined that the subject application 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. 19BSA005R, dated July 11, 2018; 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 legalize, on a site within an R3X 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 with regards to building height, contrary to ZR § 64-A36; *on condition* that all work shall substantially conform to the drawings filed with this application and marked "Received July 11, 2018"- Eight (8) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: a maximum building height of 25'-10" above flood-resistant construction elevation, 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 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 authorized use and/or bulk shall be signed off by DOB and all other relevant agencies within four (4) years;

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, July 24, 2018.

2018-112-BZ

CEQR #10-BSA-006R

APPLICANT – NYC Mayors Office of Housing Recovery (HRO)

SUBJECT – Application July 11, 2018 – 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 – 26 Milbank Road, Neutral Avenue, Cedar Grove Avenue. Block 4092, Lot 58. Borough of Staten Island.

COMMUNITY BOARD #5SI

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....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 legalize, on a site within an R3X 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 with regards to front yards and rear yards, contrary to ZR §§ 23-45, 23-47, 23-52, 64-A351 and 64-A353; and

WHEREAS, a public hearing was held on this application on July 24, 2018, 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 Milbank Road, west of Cedar Grove Avenue, in an R3X zoning district, on Staten Island; and

WHEREAS, the site has approximately 40 feet of frontage along Milbank Road, 2,400 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. 2016-1034-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 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 resistant 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 legalize the elevation of the single-family detached residence to a height of 16’-7” from flood-resistant construction elevation (“FRCE”), where the Department of Buildings (“DOB”) previously approved a building height of 15’-8” from FRCE, which increases the degree by which the existing 9’-4” front yard and 11’-4” rear yard do not comply with applicable bulk regulations; and

WHEREAS, at the subject site, a front yard measuring at least 10 feet deep is required pursuant to ZR §§ 23-45 and 64-A351 and a rear yard of at least 12’-6” is required pursuant to ZR §§ 23-47, 23-52 and 64-A353; 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 inadvertent over-elevation of the existing residence on the lot creates practical difficulties in complying with flood-resistant construction standards without the modification of requirements for front yards and rear yards and that waivers of the same are the minimum necessary to allow for a building compliant with flood-resistant construction standards; and

WHEREAS, 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 residences and that the subject site is consistent with its essential character; and

WHEREAS, accordingly, the Board has reviewed the proposal and determined that the subject application 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. 10BSA006R, dated July 11, 2018; 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

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makes the required findings under ZR § 64-92 to legalize, on a site within an R3X 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 with regards to front yards and rear yards, contrary to ZR §§ 23-45, 23-47, 23-52, 64-A351 and 64-A353; *on condition* that all work shall substantially conform to the drawings filed with this application and marked “Received July 11, 2018”- Eight (8) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: a front yard with a minimum depth of 9’-4” and a rear yard with a minimum depth of 11’-4”, 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 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 authorized use and/or bulk shall be signed off by DOB and all other relevant agencies within four (4) years;

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, July 24, 2018.

2018-113-BZ

CEQR #19-BSA-007Q

APPLICANT – NYC Mayors Office of Housing Recovery (HRO)

SUBJECT – Application July 11, 2018 – 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 – 27 State Road. Block 16340, Lot 50. 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 Sheta and Commissioner Scibetta.....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 legalize, on a site within an R4 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 with regards to side yards and minimum required open area between buildings containing residences, contrary to ZR § 23-461; and

WHEREAS, a public hearing was held on this application on July 24, 2018, 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 State Road, east of Bayside Avenue, in an R4 zoning district, in Queens; and

WHEREAS, the site has approximately 24 feet of frontage along State Road, 2,347 square feet of lot area and is occupied by a single-family detached residence; and

WHEREAS, the applicant seeks a special permit, pursuant to ZR § 64-92 to legalize the elevation of the single-family detached residence to a height of 29’-1” from flood-resistant construction elevation (“FRCE”), where the Department of Buildings (“DOB”) previously approved a building height of 28 feet from FRCE, which increases the degree by which the existing 2’-10” and 4 feet side yards and 6’-8” open area between the subject building and the building containing residences located adjacent and to the west of the subject building do not comply with applicable bulk regulations; and

WHEREAS, at the subject site, two side yards, each with a minimum width of 5 feet and a minimum combined

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width of 13 feet, are required pursuant to ZR § 23-461 and an open area with a minimum total width of 8 feet is required between buildings containing residents on adjacent zoning lots pursuant to 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 inadvertent over-elevation of the existing residence on the lot creates practical difficulties in complying with flood-resistant construction standards without the modification of requirements for side yards and minimum required open area between buildings containing residences and that waivers of the same are the minimum necessary to allow for a building compliant with flood-resistant construction standards; and

WHEREAS, 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 residences and that the subject site is consistent with its essential character; and

WHEREAS, accordingly, the Board has reviewed the proposal and determined that the subject application 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. 19BSA007Q, dated July 11, 2018; 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 legalize, on a site within an R4 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 with regards to side yards and minimum required open area between buildings containing residences, contrary to ZR § 23-461; *on condition* that all work shall substantially conform to the drawings filed with this application and marked "Received July 11, 2018"- Eight (8) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: side yards with minimum widths of 2'-10" and 4 feet and an open area with a minimum width of 6'-8" between the subject building and the building containing residences located immediately to the west, 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 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 authorized use and/or bulk shall be signed off by DOB and all other relevant agencies within four (4) years;

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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, July 24, 2018.

2018-114-BZ

CEQR #19-BSA-008Q

APPLICANT – NYC Mayors Office of Housing Recovery (HRO)

SUBJECT – Application July 11, 2018 – 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.R4A zoning district.

PREMISES AFFECTED – 394 Beach 25th Street. Block 15776, Lot 6. 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 Sheta and Commissioner Scibetta.....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 legalize, on a site within an R4A 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 with regards to rear yards and side yards, contrary to ZR §§ 23-47, 23-52 and 23-461; and

WHEREAS, a public hearing was held on this application on July 24, 2018, 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 Beach 25th Street, between Deerfield Road and Camp Road, in an R4A zoning district, in Queens; and

WHEREAS, the site has approximately 29 feet of frontage along Beach 25th Street, 1,971 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 March 8, 2016, when, under BSA Cal. No. 2016-1722-A, the Board granted a waiver of General City Law Section 35 to permit the elevation or reconstruction of a single-family dwelling on a portion of the site that lies within the bed of 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 resistant 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 legalize the elevation of the single-family detached residence to a height of 24’-11” from flood-resistant construction elevation (“FRCE”), where the Department of Buildings (“DOB”) previously approved a building height of 23’-11” feet from FRCE, which increases the degree by which the existing 5’-2” rear yard and 2’-5” and 4’-11” side yards do not comply with applicable bulk regulations; and

WHEREAS, at the subject site, a rear yard of at least 30 feet is required pursuant to ZR §§ 23-47 and 23-52 and two side yards, each with a minimum width of 2 feet and minimum combined width of 10 feet, are required pursuant to 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

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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 inadvertent over-elevation of the existing residence on the lot and demolition of the existing brick veneer creates practical difficulties in complying with flood-resistant construction standards without the modification of requirements for rear yards and side yards and that waivers of the same are the minimum necessary to allow for a building compliant with flood-resistant construction standards; and

WHEREAS, 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 residences and that the subject site is consistent with its essential character; and

WHEREAS, accordingly, the Board has reviewed the proposal and determined that the subject application 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. 19BSA008Q, dated July 11, 2018; 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 legalize, on a site within an R4A 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 with regards to rear yards and side yards, contrary to ZR §§ 23-47, 23-52 and 23-461; *on condition* that all work shall substantially conform to the drawings filed with this application and marked "Received July 11, 2018"- Eight (8) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: a rear yard with a minimum depth of 5'-2" and two side yards with minimum widths of 2'-5" and 4'-11", 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 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 authorized use and/or bulk shall be signed off by DOB and all other relevant agencies within four (4) years;

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, July 24, 2018.

MINUTES

2018-115-BZ

CEQR #19-BSA-009Q

APPLICANT – NYC Mayors Office of Housing Recovery (HRO)

SUBJECT – Application July 11, 2018 – 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.R3-2 zoning district.

PREMISES AFFECTED – 715 Cross Bay Boulevard, Noel Road, West 8th Road. Block 15133, Lot 23. Borough of Queens.

COMMUNITY BOARD #4M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....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 legalize, on a site within an R3A 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 with regards to front yards, rear yards and side yards, contrary to ZR §§ 23-45, 23-47, 23-461, 64-A351, 64-A353 and 64-A352; and

WHEREAS, a public hearing was held on this application on July 24, 2018, 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 Cross Bay Boulevard, north of West 8th Road, in an R3A zoning district, in Queens; and

WHEREAS, the site has approximately 30 feet of frontage along Cross Bay Boulevard, 1,691 square feet of lot area and is occupied by a single-family residence; and

WHEREAS, the applicant seeks a special permit, pursuant to ZR § 64-92 to legalize the elevation of the single-family detached residence to a height of 17’-4” from flood-resistant construction elevation (“FRCE”), where the Department of Buildings (“DOB”) previously approved a building height of 16’-3” from FRCE, which increases the degree by which the existing 5 foot front yard, 11’-7” rear yard and side yards measuring 7 inches and 2’-7” do not comply with applicable bulk regulations; and

WHEREAS, at the subject site, a front yard measuring at least 10 feet is required pursuant to ZR §§ 23-45 and 64-A351, a rear yard with a minimum depth of 18 feet is required pursuant to ZR §§ 23-47 and 64-A353 and two side yards, each with a minimum width of 5 feet and a minimum combined width of 8 feet, are required pursuant to ZR § 23-461 and 64-A352; 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 inadvertent over-elevation of the existing residence on the

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lot 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 waivers of the same are the minimum necessary to allow for a building compliant with flood-resistant construction standards; and

WHEREAS, 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 residences and that the subject site is consistent with its essential character; and

WHEREAS, accordingly, the Board has reviewed the proposal and determined that the subject application 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. 19BSA009Q, dated July 11, 2018; 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 legalize, on a site within an R3A 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 with regards to front yards, rear yards and side yards, contrary to ZR §§ 23-45, 23-47, 23-461, 64-A351, 64-A353 and 64-A352; *on condition* that all work shall substantially conform to the drawings filed with this application and marked "Received July 11, 2018"-Seven (7) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: a front yard with a minimum depth of 5 feet, a rear yard with a minimum depth of 11'-7" and side yards with minimum widths of 7 inches and 2'-7", 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 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 authorized use and/or bulk shall be signed off by DOB and all other relevant agencies within four (4) years;

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, July 24, 2018.

252-06-BZ

APPLICANT – Sheldon Lobel, P.C., for MHSP Walton Owner LLC, owner.

SUBJECT – Application October 27, 2017 – Amendment of a previously approved Variance (§72-21) which permitted the construction of a four-story Use Group 4 community center facility contrary to underlying bulk regulations. The amendment seeks to allow for a modified design of the gymnasium building approved in the original variance. R8 zoning district. (Companion Case 2017-289-BZ)

PREMISES AFFECTED – 1761 Walton Avenue, Block 2850, Lot(s) 34, 38, 63 & 160, Borough of Bronx.

COMMUNITY BOARD #5BX

ACTION OF THE BOARD – Laid over to October 11, 2018, at 10 A.M., for continued hearing.

2017-149-BZ

APPLICANT – Sheldon Lobel, P.C., for Willard J. Price Associates LLC, owner.

SUBJECT – Application May 15, 2017 – 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.

PREMISES AFFECTED – 510 Quincy Street & 651-671 Gates Avenue, Block 1811, Lot 19, Borough of Brooklyn.

COMMUNITY BOARD #3BK

ACTION OF THE BOARD – Laid over to September 27, 2018, at 10 A.M., for continued hearing.

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2017-289-BZ

APPLICANT – Sheldon Lobel, P.C., for MHSP Walton Owner LLC, owner.

SUBJECT – Application October 27, 2017 – 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 under BSA Cal. No. 252-06-BZ.

PREMISES AFFECTED – 1761 Walton Avenue, Block 2850, Lot(s) 34, 38, 63 & 160, Borough of Bronx.

COMMUNITY BOARD #5BX

ACTION OF THE BOARD – Laid over to October 11, 2018, at 10 A.M., for continued hearing.

2018-20-BZ

APPLICANT – Jay Goldstein, Esq., for Jeffrey Ackerman, owner.

SUBJECT – Application February 9, 2018 – Special Permit (§73-622) to permit the enlargement of an existing single-family home contrary to ZR §23-141 (floor area and open space) and ZR §23-461(1) (required side yard). R2 zoning district.

PREMISES AFFECTED – 2801 Avenue M, Block 7646, Lot 7, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Laid over to October 11, 2018, at 10 A.M., for continued hearing.

Carlo Costanza, Executive Director

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***CORRECTION**

This resolution adopted on March 20, 2018, under Calendar No. 2017-237-BZ and printed in Volume 103, Bulletin Nos. 12-13, is hereby corrected to read as follows:

2017-237-BZ

CEQR #18-BSA-013Q

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

SUBJECT – Application August 11, 2017 – 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.

PREMISES AFFECTED – 134-37 35th Avenue, Block 4949, Lots 30 and 31, Borough of Queens.

COMMUNITY BOARD #7Q

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

Abstain: Commissioner Scibetta.....1

THE RESOLUTION –

WHEREAS, the decision on behalf of the Queens Borough Commissioner, dated July 11, 2017, acting on Department of Buildings (“DOB”) Application No. 420892323 reads in pertinent part:

ZR. 61-21 The proposed height for subject new building includes:

154’-2” Building Height

177’-2” Building Height with Bulkhead

211’-0” Above Mean Curb Sea Level (Based on Datum of 1988, NAVD 88)

That exceeds the maximum allowable height as per Section 61-21 of the NYC Zoning Resolution and requires a special permit from the BSA, pursuant to Section 73-66; and

WHEREAS, this is an application under ZR § 73-66 to permit, on a site located in an R6 (C2-2) 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 March 6, 2018, after due notice by publication in *The City Record*, and then to decision on March 20, 2018; and

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

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

WHEREAS, the subject site is located on the

northwest corner of 35th Avenue and Farrington Street, in an R6 (C2-2) zoning district, in Queens; and

WHEREAS, the site consists of two adjacent tax lots having approximately 165 feet of frontage along 35th Avenue, 255 feet of frontage along Farrington Street, 42,050 square feet of lot area and is currently vacant; and

WHEREAS, the applicant proposes to develop the site, which is located within the LaGuardia Airport Circling Approach Area, with a fifteen-story plus cellar and two sub-cellars mixed-use residential, community facility and commercial building (the “Development”) whose height would penetrate the surface of the airport approach district of the flight obstruction area of LaGuardia Airport, contrary to ZR § 61-21 and requests a special permit pursuant to ZR § 73-66; and

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 plans of the proposed Development with elevations and indicating the maximum height limits, plane of the approach surface and the maximum height approved by the Federal Aviation Administration (“FAA”); and

WHEREAS, regarding the Board’s determination

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that such proposed building would not constitute a hazard, the Board notes that the FAA regulates the heights of buildings proximate to airports and, thus, the Board defers to the FAA's determination regarding any potential hazards posed by the subject proposed building; and

WHEREAS, the application was referred to the FAA, which issued a Determination of No Hazard to Air Navigation, issued April 2, 2015, under Aeronautical Study No. 2014-AEA-6294-OE, stating that the FAA's aeronautical study of the Development, 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 211 feet above mean sea level ("AMSL"), the Development would have no substantial adverse effect on the safe and efficient utilization of the navigable airspace by aircraft or on the operation of air navigation facilities and would not be a hazard to air navigation provided that (1) the structure is marked/lighted in accordance with FAA Advisory circular 70/7460-1 K Change 2, Obstruction Marking and Lighting, red lights – Chapters 4,5(Red),&12; (2) FAA Form 7460-2, Notice of Actual Construction or Alteration, be e-filed any time the project is abandoned or within 5 days after the construction reaches its greatest height; (3) any changes in coordinates, heights, and frequencies or use of greater power will void the determination; (4) any future construction or alteration, including increase to heights, power, or the addition of other transmitters requires separate notice to the FAA; and (5) any failure or malfunction that lasts more than thirty (30) minutes and affects a top light or flashing obstruction light, regardless of its position, be reported immediately so a Notice to Airmen ("NOTAM") can be issued and reported again as soon as normal operation is restored (the "FAA Determination"); and

WHEREAS, accordingly, the maximum height of the Development approved by the FAA is 211 feet AMSL or 178 feet above ground level ("AGL"); and

WHEREAS, the Board notes that the elevations, as represented on the Development plans, demonstrate that the tallest point of the Development—the machine room roof—is located at 209.20 AMSL, less than 211 feet AMSL; and

WHEREAS, the Board notes that the obstruction standards referenced in the FAA Determination are similar, but not identical, to those found in the Zoning Resolution and that the maximum building height of 211 feet AMSL includes temporary construction equipment such as cranes, derricks, etc., which may be used during actual construction of the Development, but notes that such equipment shall not exceed 211 feet AMSL or 178 feet AGL and equipment that has a height greater than that would require separate notice to the FAA; and

WHEREAS, the FAA Determination states that it expires on October 2, 2016 unless, *inter alia*, construction is started (not necessarily completed) and FAA Form 7460-2, Notice of Actual Construction or Alteration, is received by the FAA's Southwest Regional Office Obstruction Evaluation Group; and

WHEREAS, construction of the Development began on October 15, 2015, and FAA Form 7460-2 was, Notice of Actual Construction, was filed with the FAA; and

WHEREAS, all conditions contained in the FAA Determinations 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 July 31, 2017, the Port Authority of New York and New Jersey, which operates LaGuardia Airport, states that it agrees with the FAA Determination, requests that all conditions stated in the determination be followed and reiterates that separate studies must be submitted to the FAA for any equipment (i.e. cranes) that exceed 211 feet AMSL or 178 AGL and such studies should be filed at least 90-120 days prior to the start of operations; 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, 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. 18BSA013Q dated August 15, 2017; and

WHEREAS, the Board has determined that the evidence in the record supports the requisite findings pursuant to ZR §§ 73-66 and 73-03; 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 the required findings under under ZR §§ 73-66 and 73-03, to permit, on a site located in an R6 (C2-2) zoning district, the construction of a building that exceeds the maximum height permitted in the vicinity of major airports, contrary to ZR § 61-21; *on condition* that all work shall substantially conform to the drawings filed with this application and marked "Received March 9, 2018"-Ten (10) sheets; and *on further condition*:

THAT the maximum height of the building, including all appurtenances, shall be as follows: 211 feet above mean seal level ("AMSL") or 178 above

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ground level (“AGL”);

THAT the structure is marked/lighted in accordance with FAA Advisory circular 70/7460-1 K Change 2, Obstruction Marking and Lighting, red lights – Chapters 4,5(Red),&12;

THAT FAA Form 7460-2, Notice of Actual Construction or Alteration, be e-filed any time the project is abandoned or within 5 days after the construction reaches its greatest height;

THAT any changes in coordinates, heights, and frequencies or use of greater power will void this special permit;

THAT any future construction or alteration, including increase to heights, power, or the addition of other transmitters requires separate notice to the FAA;

THAT any failure or malfunction that lasts more than thirty (30) minutes and affects a top light or flashing obstruction light, regardless of its position, be reported immediately so a Notice to Airmen (“NOTAM”) can be issued and reported again as soon as normal operation is restored;

THAT temporary construction equipment shall not exceed the overall maximum permitted height of 211 feet AMSL or 178 AGL;

THAT any temporary construction equipment greater than 211 feet AMSL or 178 AGL shall require separate notice to the FAA;

THAT separate studies must be submitted to the FAA for any equipment (i.e. cranes) that exceed 211 feet AMSL or 178 AGL and such studies should be filed at least 90-120 days prior to the start of operations;

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, March 20, 2018.

square feet... Corrected in Bulletin No. 31, Vol. 103, dated August 3, 2018.

***The resolution has been amended to correct the PREMISES AFFECTED Adding Lot 30. In the 7th WHEREAS ... site has approximately 165 feet of frontage along 35th Avenue, 235 feet of frontage along Farrington Street, 38,775 square feet ... Now reads: ... site consists of two adjacent tax lots having approximately 165 feet of frontage along 35th Avenue, 255 feet of frontage along Farrington Street, 42,050**

BULLETIN

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DOCKETS

New Case Filed Up to August 7, 2018

2018-122-BZ

2409 Richmond Avenue, The property is located on Richmond Avenue between Richmond Hill Road and Nome Avenue, Block 02380, Lot(s) 0001, Borough of **Staten Island, Community Board: 2**. Special Permit (§73-36) to permit the operation of a Physical Cultural Establishment (ORANGETHEORY FITNESS) to be located on the first floor of an existing building ZR §32-10. C2-1/R3-2 zoning district. R3-2 / C2-1 district.

2018-123-BZ

2381 Broadway, The premises are located at the corner of Broadway and W. 87th Street, Block 01235, Lot(s) 0010, Borough of **Manhattan, Community Board: 7**. Special Permit (§73-36) to permit the operation of a Physical Cultural Establishment (Bar Method) to be in a portion of the cellar and first floor of an existing building Contrary to ZR §32-10. C4-6A Special Enhanced Commercial District. C4-6A district.

2018-124-BZ

2130 Broadway, The premises are located at the corner of Broadway, W.75th Street and Amsterdam Avenue, Block 01166, Lot(s) 35, 135, Borough of **Manhattan, Community Board: 7**. Special Permit (§73-36) to permit the operation of a Physical Cultural Establishment (Flywheel Sports) to be in a portion of the cellar of an existing building Contrary to ZR §32-10. C4-6A Special Enhanced Commercial District, NYC Designated Interior Landmark Building. C4-6A district.

2018-125-A

495 Wild Avenue, The property is located on the east side of Wild Avenue, 422.82 feet south of Victory Boulevard., Block 02705, Lot(s) 49. 50, Borough of **Staten Island, Community Board: 5**. Proposed construction of a two-story commercial building for vehicle storage on the ground floor and accessory offices on the second floor not fronting a legally mapped street contrary to General City Law 36. M3-1 zoning district. M3-1 district.

2018-126-A

373-375 Grove Street, The property is located on the west side of Grove Street between Wyckoff Avenue and Irving Avenue, Block 03319, Lot(s) 0044, Borough of **Brooklyn, Community Board: 4**. Appeal seeks a determination that the New York City Department of Buildings improperly and erroneously approved plans and issued a building permit for NB #320627087 permitting the construction of a new six (6) story building in railroad or transit air space without first having obtained a Special Permit pursuant to §74-681 of the New York City Zoning Resolution. R6 zoning district. R6 district.

2018-127-A

20-08 Demerest Road, located on Demerest Road off of Channel Road, Block 11550, Lot(s) 104, Borough of **Queens, Community Board: 14**. Request for a Waiver of General City Law §35 for a property destroyed or substantially damaged by Hurricane Sandy. R3-2 district.

2018-128-BZ

103 North 10th Street, Premise is located north of intersection of 10th Street and Berry Street, Block 02296, Lot(s) 7501, Borough of **Brooklyn, Community Board: 1**. Special Permit (§73-36) to permit the operation of a physical culture establishment (The Bathhouse Spa) on a portion of the cellar and first floor of an existing mixed use commercial and residential building contrary to ZR §42-10. M1-2/R6A (MX-8) zoning district. M1-2/R6A district.

2018-129-A

484F Sharrots Road, Located on the south side of Sharrots Road, 50' west of the corner formed by the intersection of Marjorie Street., Block 07328, Lot(s) 0363, Borough of **Staten Island, Community Board: 3**. Proposed construction of a new building not fronting on a legally mapped street contrary to General City Law Section §36. M1-1 Special South Richmond District (Special Area "M"). M1-1 district.

2018-130-BZ

22 and 32 Stanton Road, Build it Back, Block 08800, Lot(s) 0100, 0052, 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.

DOCKETS

2018-131-BZ

22 and 32 Stanton Road, Build it Back, Block 08800, Lot(s) 0100, 0052, 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.

2018-132-BZ

100 Church Street, Located on a block bounded by Church Street to the east, Barclay Street to the south, West Broadway to the west and Park Place to the north., Block 00125, Lot(s) 0020, Borough of **Manhattan, Community Board: 1.** Special Permit (§73-36) to permit the operation of a physical culture establishment (Club) within an existing building contrary to ZR §32-10. C5-3 Special Lower Manhattan District. C5-3 district.

2018-133-BZ

450 West 33rd Street, Located on a full block bounded by West 31st Street, 10th Avenue, West 33rd Street and Dyer Avenue., Block 00729, Lot(s) 9001, Borough of **Manhattan, Community Board: 4.** Special Permit (§73-36) to permit the operation of a physical culture establishment (fitness facility) on a portion of the first and second floor of an existing building contrary to ZR §32-10. C6-4 Special Hudson Yards District. C6-4 district.

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

CALENDAR

**REGULAR MEETING
SEPTEMBER 13, 2018, 10:00 A.M.**

NOTICE IS HEREBY GIVEN of a public hearing, Thursday morning, September 13, 2018, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

SPECIAL ORDER CALENDAR

933-28-BZ

APPLICANT – Gerard J. Caliendo, R.A., AIA, for RB Auto Repair/Roger Budhu, owner.

SUBJECT – Application October 16, 2015 – Extension of Term, Amendment & Waiver (11-413) for an extension of the term of a variance which permitted the operation of an automotive repair facility and gasoline service station (UG 16) and an Amendment for the legalization of the enlargement with an insulated corrugated metal enclosure. R5 zoning district.

PREMISES AFFECTED –125-24 Metropolitan Avenue, Block 9271, Lot 4, Borough of Queens.

COMMUNITY BOARD #9Q

309-09-BZ

APPLICANT – Eric Palatnik, P.C., for Yong Lin, owner.

SUBJECT – Application April 20, 2018 – Extension of Time to Complete Construction of a previously approved Variance (§72- 21) to permit construction of a four-story (three levels and a basement) eight-unit multiple dwelling that does not provide a required side yard, contrary to ZR § 23-51 which expired on May 3, 2015; Amendment to permit a height increase from an approved 34' -8" to 37' -8"; Waiver of the Rules. C2-3/R5 and R6A zoning districts.

PREMISES AFFECTED – 2173 65th Street, Block 5550, Lot 40, Borough of Brooklyn.

COMMUNITY BOARD #11BK

67-13-A

APPLICANT – NYC Department of Buildings, for ESS PRISA II LLC, owner; OTR Media, lessee.

SUBJECT – Application June 8, 2018 – Request for a Rehearing to provide new evidence to demonstrate that the advertising sign never existed at the premises as of November 1, 1979, and therefore was never granted legal non-conforming status pursuant to ZR §42-55.

PREMISES AFFECTED – 945 Zerega Avenue, Block 3700, Lot 31, Borough of Bronx.

COMMUNITY BOARD #9X

67-13-AIV

APPLICANT – Goldman Harris LLC, for ESS Prisa II LLC, owner; OTR Media Group, Inc. & OTR 945 Zerega LLC, lessee.

SUBJECT – Application June 12, 2018 – Appeal of Department of Building's determinations *a) denying the registration for an advertising sign located at 945 Zerega Avenue, Bronx, NY; and (b) revoking permit numbers 201143253 and 210039224 for the aforementioned sign. This is a remand from New York State Supreme Court limited to review of the BSA's prior resolution in light of its decision in BSA Calendar Numbers 24-12-A and 147-12-A.

PREMISES AFFECTED – 945 Zerega Avenue, Block 3700, Lot 31, Borough of Bronx.

COMMUNITY BOARD #9BX

APPEALS CALENDAR

2017-248-A

APPLICANT – Tarter Krinsky & Drogin LLP, for New York Central Line, owner; Outfront Media, LLC, lessee.

SUBJECT – Application August 28, 2017 – 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.

PREMISES AFFECTED – Long Island Expressway and 74th Street, Block 2814, Lot 4, Borough of Queens.

COMMUNITY BOARD #5Q

2017-253-A

APPLICANT – Tarter Krinsky & Drogin LLP, for New York Central Line, owner; Outfront Media, LLC, lessee.

SUBJECT – Application August 28, 2017 – 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.

PREMISES AFFECTED – Brooklyn Queens Expressway at 34th Avenue, Block 125, Lot 1, Borough of Queens.

COMMUNITY BOARD #2Q

CALENDAR

**REGULAR MEETING
SEPTEMBER 13, 2018, 1:00 P.M.**

NOTICE IS HEREBY GIVEN of a public hearing, Thursday afternoon, September 13, 2018, 1:00 P.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

ZONING CALENDAR

2016-4239-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Atlantis Marina and Yacht Club, owner.
SUBJECT – Application August 11, 2016 – Special Permit (§73-242) to allow an existing building to be operated as an eating and drinking establishments (Use Group 6), contrary to use regulations (§32-15). C3A (SRD) zoning district.
PREMISES AFFECTED – 180 Mansion Avenue, Block 5207, Lot 28, Borough of Staten Island.
COMMUNITY BOARD #3SI

2016-4335-BZ

APPLICANT – Gerald J. Caliendo, RA, AIA, for 193 Street LLC, Joseph Atarion, President, owner.
SUBJECT – Application November 21, 2016 – Variance (§72-21) proposed construction of a two story, two family dwelling contrary to Floor Area Ratio and Maximum Lot Coverage (ZR 23-141), Number of Dwelling Units (ZR 23-22) and Front Yard (ZR 23-45). R3X zoning district.
PREMISES AFFECTED – 220-21 137th Avenue, Block 13112, Lot 1, Borough of Queens.
COMMUNITY BOARD #13Q

2017-22-BZ

APPLICANT – Eric Palatnik, P.C., for Crossfit Bridge and Tunnel, owner.
SUBJECT – Application January 24, 2017 – Special Permit (§73-36) to operate a physical culture establishment (*CrossFit*) within an existing one-story building. M1-4D zoning district.
PREMISES AFFECTED – 16-45 Decatur Street, Block 3555, Lot 74, Borough of Queens.
COMMUNITY BOARD #5Q

2017-288-BZ

APPLICANT – Lisa M. Orrantia, for JMDH Real Estate Offices, LLC, owner.
SUBJECT – Application October 30, 2017 – 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.
PREMISES AFFECTED – 17-10 Whitestone Expressway, Block 4127 & 4148, Lot(s) 20 & 78, Borough of Queens.
COMMUNITY BOARD #19Q

2018-3-BZ

APPLICANT – Trout Sanders LLP, for Harlem Park Associates, LLC, owner.
SUBJECT – Application January 11, 2018 – Variance (§72-21) to permit the development of an integrated educational and medical facility in conjunction with the Ichan School of Medicine at Mount Sinai contrary to ZR §33-432(a) (height and setback); ZR §33-26 (rear yard) and ZR §33-292 (required depth of yard along district boundaries). C4-4 zoning district.
PREMISES AFFECTED – 154-160 West 124th Street, Block 1908, Lot(s) 60 & 4, Borough of Manhattan.
COMMUNITY BOARD #10M

2018-61-BZ

APPLICANT – Jay Goldstein, Esq., for A Shamosh Realty, owner.
SUBJECT – Application April 27, 2018 – Special Permit (§73-36) to permit the operation of a Physical Cultural Establishment (*Goldfish Swim School*) within a portion of the first floor of an existing building contrary to ZR §42-10. M1-2 zoning district.
PREMISES AFFECTED – 620 Degraw Street, Block 427, Lot 21, Borough of Brooklyn.
COMMUNITY BOARD #6BK

Carlo Costanza, Executive Director

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**REGULAR MEETING
TUESDAY MORNING, AUGUST 7, 2018
10:00 A.M.**

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

Absent: Commissioner Sheta.

2018-121-BZ

CEQR #19-BSA-015K

APPLICANT – NYC Mayor’s Office of Housing Recovery
SUBJECT – Application July 24, 2018 – 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 – 24 Frank Court, Block 08900,
Lot 132, 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 Sheta and
Commissioner Scibetta.....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, in an R4 zoning
district, the development of a detached three-story single-
family 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, 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 Frank Court, between Seba Avenue and Lois Avenue, in

an R4 zoning district, in Brooklyn; and

WHEREAS, the subject site has approximately 40 feet
of frontage along Frank Court, 45 feet of depth, 1,800
square feet of lot area and is occupied by a detached three-
story single-family residence; 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, the applicant now seeks a special permit,
pursuant to ZR § 64-92, to allow the development of a
detached three-story single-family residence with a front
yard with a depth of 9.53 feet; and

WHEREAS, at the subject site, a front yard of at least
10 feet is required pursuant to ZR § 23-45; and

WHEREAS, in accordance with ZR § 64-92(a), the
need to reconstruct the existing residence creates practical
difficulties in complying with flood-resistant construction
standards without the modification of the front yard
requirements and that waiving the same is the minimum
necessary to allow for a building compliant with flood-
resistant construction standards; and

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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 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. 19BSA015K, dated July 24, 2018; and

WHEREAS, the Board finds that the evidence in the record supports the findings required to be made under ZR § 64-92 and that the applicant has substantiated a basis to warrant exercise of discretion.

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 § 64-92 to *permit*, in an R4 zoning district, the development of a detached three-story single-family 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 and site conditions shall conform to drawings filed with this application marked "Received July 24, 2018"-Three (3) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: the front yard shall have a minimum depth of 9.53 feet, as illustrated on the Board-approved plans;

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

THAT DOB and related agency application(s) filed in connection with the authorized use or bulk shall be signed off by DOB and all other relevant agencies within four (4) years, by August 7, 2022;

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 plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, August 7, 2018.

SPECIAL ORDER CALENDARS

441-31-BZ

APPLICANT – Eric Palatnik, P.C., for Spartan Petroleum Corp., owner.

SUBJECT – Application October 27, 2017 – Extension of Term (§11-411) for the continued use of a Gasoline Service Station (*BP Amoco*) with accessory convenience store which expired on April 26, 2017. C2-2/R5 zoning district.

PREMISES AFFECTED – 7702 Flatlands Avenue, Block 8014, Lot 1, 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 Scibetta....4

Negative:0

Absent: Commissioner Sheta.....1

THE RESOLUTION –

WHEREAS, this is an application for an extension of term of a variance, previously granted by the Board; and

WHEREAS, a public hearing was held on this application on June 5, 2019, after due notice by publication in *The City Record*, and then to decision on August 7, 2018; 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 southeast corner of Flatlands Avenue and East 77th Street, in an R5 (C2-3) zoning district, in Brooklyn; and

WHEREAS, the Board has exercised jurisdiction over the subject site since February 27, 1951, when, under the subject calendar number, the Board granted a variance to permit the erection and maintenance of a gasoline service station, lubricatorium, auto washing, sale of accessories and office for a term of fifteen (15) years, expiring February 27, 1966, on condition that the subject site be leveled substantially to the grade of Flatlands Avenue and East 77th Street, that the subject site be arranged with accessory building, tanks, pumps and planting as indicated on the Board-approved plans, that the portion to the south and north may be sloped from the street grade to the existing grade, that there be erected on the interior lot lines to the south and east a woven wire fence of the chain link type with anchored steel posts on a masonry foundation to a total height of not less than 5'-6", that along the street line of East 77th Street there be a similar fence erected for a distance of approximately 50 feet from the rear lot line, that the accessory building be arranged and designed substantially as indicated and in all other respects meet the requirements of the Building Code, that the balance of the subject site where proposed to be made level with the Flatlands Avenue grade, except where planting and pumps are shown, be surfaced

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with concrete or bituminous paving, that the sidewalks and curbing around the subject site be constructed and maintained to the satisfaction of the Borough President, that the curb cuts not exceed three to Flatlands Avenue of a width, as shown on the Board-approved plans, and one curb cut to East 77th Street of the width shown, no portion of any curb cut to be nearer than 5 feet to any street or lot line as prolonged, that there be erected at the intersection within the building line a block of concrete, extending for 5 feet along either building line, not less than 12 inches in height, and which may be segmental in shape as shown on the Board-approved plans, that the number of gasoline storage tanks not exceed eight 550-gallon tanks, that pumps not be nearer than 10 feet from the base of the pumps to the street building line, that such portable fire-fighting appliances be maintained as the Fire Commissioner directs, that the planting area be protected with concrete curbing as shown and the plantings be of a suitable type, that the lift for greasing be of a hydraulic type, 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 and temporary signs, but permitting the erection within the plot at the intersection of a post standard for supporting a sign, which may be illuminated, that such sign not extend more than 4 feet beyond the building line and that all permits required be obtained and all work completed within one (1) year, by February 27, 1952; and

WHEREAS, on February 26, 1952, 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 within six (6) months, by August 26, 1952; and

WHEREAS, on April 28, 1953, under the subject calendar number, the Board granted an extension of time to obtain permits and complete the work on condition that all work be completed within three (3) months, by July 28, 1953, to obtain a new certificate of occupancy; and

WHEREAS, on May 3, 1966, under the subject calendar number, the Board granted an extension of term of ten (10) years, expiring May 3, 1976, on condition that a certificate of occupancy be obtained; and

WHEREAS, on January 22, 1974, under the subject calendar number, the Board amended the variance so that the accessory building may be altered as shown on the Board-approved plans; and

WHEREAS, on April 26, 1977, under the subject calendar number, the Board amended the variance and granted an extension of term on condition that this variance continue for a term of ten (10) years to April 26, 1987, on condition that the seeded area at the rear be clean and properly maintained at all times and that a new certificate of occupancy be obtained within one (1) year, by April 26, 1978; and

WHEREAS, on March 30, 1982, under the subject calendar number, the Board amended the variance so that this automotive service station may be changed to a "self-serve" station for the sale of gasoline and the continuation of

one service bay for a term of five (5) years, expiring April 26, 1987, to erect a new 24'-0" x 52'-0" canopy over the two existing gasoline pump islands, to install a new self-serve approved electronic pumps on existing islands and to alter the accessory building on condition that this station be operated at all times in such a fashion so as to minimize traffic congestion and that all work shall be completed within one (1) year, by March 30, 1983, and

WHEREAS, on March 30, 1982, under BSA Calendar Number 1012-81-A, the Board granted an administrative appeal to permit self-service pumps on condition that a trained attendant who possesses a certificate of fitness be on duty at all times when the station is open for business, that it be the attendant's duty to require the engine of any vehicle to be shut off before the start of the fuel operation, that it be the attendant's duty to prevent the dispensing of fuel into portable containers, that signs indicating "No Smoking," "Stop Your Engine," "It is Unlawful to Dispense Gasoline into Portable Containers" and "The Dispensing of Gasoline Shall Be Done by a Person Holding a Valid Drivers License or a Person 18 Years of Age or Older" be conspicuously posted in clear view of the customer at the dispensing island, that portable fire extinguishers be provided and in type, quantity and location acceptable to the fire Commissioner, that all dispensing devices and fire suppression systems be approved by the Board of Standards and Appeals and be installed in accordance with the requirements of the laboratory upon which the Board approval is based, that the suppression system be arranged in a manner so as to cover an area around each pump encompassed by a circle having a radius equal to the maximum extendable length of the hose and nozzle of said pump, that the installation and use of coin-operated dispensing devices for fuel be prohibited, that there be constant contact between the attendant in the control booth and the dispensing devices for fuel be prohibited, that there be constant contact between the attendant in the control booth and the dispensing island by means of a voice intercommunication system which shall be maintained in a proper operating condition at all times, that all controls, devices, fire suppression systems and fire fighting equipment be maintained in good operating order at all times, that a maintenance log be kept on the subject site as directed by the Fire Commissioner, that all dispensing nozzles be the automatic closing type without hold open latches, that a list of emergency procedures and instructions be conspicuously posted in the immediate vicinity of the attendant's principal control location, said instructions be at the direction of the Fire Commissioner, that the dispensing areas shall, at all times, be well lit for complete visual control, that the permit to operate this station be for a term of five (5) years, expiring March 30, 1987, that all of the conditions set forth in said resolution be conspicuously posted in the attendant's booth, that there be no servicing or repair of motor vehicles on the subject site, that mirrors be provided which insure that the person with the certificate of fitness in the control booth can readily see the people operating any of the self-service devices and that all repairs

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be performed within the repair bay or in the interior; and

WHEREAS, on July 5, 1990, under the subject calendar number, the Board amended the variance to change the design and arrangement of the existing automotive service station, to permit the erection of a new steel canopy over three (3) new gasoline pump islands with new “MPD” self-serve pumps, to erect a new 8’ x 18’ kiosk, to demolish the existing accessory building and canopy and to erect a new 30’ x 60’ accessory building for accessory sales (Use Group 6) and storage, to add six (6) accessory parking spaces and to decrease the planting area along the southerly lot line and granted an extension of term of ten (10) years, expiring April 26, 1997, on condition that the landscaping shall be maintained and replaced when necessary as shown on the Board-approved plans, 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 July 5, 1991; and

WHEREAS, on November 24, 1998, under the subject calendar number, the Board amended the variance to permit a retail convenience store and granted an extension of term of ten (1) years, expiring April 26, 2007, on condition that the sales area of the store shall be limited to 900 square feet, that all signs shall be maintained in accordance with the Board-approved plans, that the subject site remain graffiti free at all times, that no automotive repair or body work take place at the subject site, that other than as herein amended the resolutions above cited be complied with in all respects and that a new certificate of occupancy be obtained within one (1) year, by November 24, 1999; and

WHEREAS, on September 15, 2009, under the subject calendar number, the Board granted an extension of term of ten (10) years, expiring April 26, 2017, on condition that a new certificate of occupancy be obtained by March 15, 2010; and

WHEREAS, the term having expired, the applicant now seeks an extension; and

WHEREAS, the applicant states that no physical changes to the subject site are sought herein; and

WHEREAS, in response to questions from the Board at hearing, the applicant revised the drawings to reflect signage, to reflect a refuse enclosure, to show flowering annuals in the planter along the southerly lot line, to show that there is 8 feet from the subject building to the easterly lot line, to show 6-foot-high chain link fence gates with opaque slats at the northeast corner of the subject site for the storage of refuse; and

WHEREAS, the applicant submitted evidence that extraneous temporary signage had been removed, that landscaping has been planted and that a refuse enclosure has been installed; and

WHEREAS, by letter dated April 10, 2018, the New York State Department of Environmental Conservation (“DEC”) states that the applicant’s Monitoring Well Installation Work Plan dated November 28, 2017, and the Tank Excavation Assessment Report, dated June 23, 2017,

have been approved on condition that one more monitoring well be installed at the subject site in between the tank field and the subject building for a total of five (5) monitoring wells to be installed, that, during installation of the soil borings and monitoring wells, soil shall be sampled continuously with a PID, that soil samples to be collected at the groundwater interface and the interval exhibiting the highest PID reading and that, if no PID reading is found, then soil samples shall be collected at the groundwater interface; and

WHEREAS, by correspondence dated August 6, 2018, DEC represents that it has no objection to this application; and

WHEREAS, by letter dated July 27, 2018, the Fire Department states that it has no objection to this application; and

WHEREAS, based upon its review of the record, the Board has determined 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 27, 1951, as amended through September 15, 2009, so that as amended this portion of the resolution shall read: “to *permit* an extension of term of ten (10) years, expiring April 26, 2027; *on condition* that all work and site conditions shall conform to drawings filed with this application marked “Received August 8, 2018”-Six (6) sheets; and *on further condition*:

THAT the term of this grant shall be limited to ten (10) years, expiring April 26, 2027;

THAT the sales area of the store shall be limited to 988 square feet, as illustrated on the Board-approved plans;

THAT all signs shall be maintained in accordance with the Board-approved plans;

THAT the subject site shall remain graffiti free at all times;

THAT no automotive repair or body work shall take place at the subject site;

THAT the landscaping shall be maintained and replaced when necessary, as shown on the Board-approved plans;

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 seeded area at the rear be clean and properly maintained at all times;

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 7, 2022;

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

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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 7, 2018.

182-95-BZ

APPLICANT – Rothkrug & Spector LLP, for 2465 Broadway Associates LLC., owner.

SUBJECT – Application October 14, 2014 – Extension of Term of a previously granted Special Permit (§73-36) for the continued operation of a PCE (*Equinox Fitness Club*) which expires on November 1, 2015; Amendment to expand the PCE into the cellar and the full third floor; Waiver of the Rules. C4-6A/R8 zoning district.

PREMISES AFFECTED – 2465 Broadway, West side of Broadway, 50' south of southwest corner of intersection of Broadway and West 92nd Street, Block 01239, Lot 52, 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 Scibetta....4

Negative:0

Absent: Commissioner Sheta.....1

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated October 10, 2014, acting on Alteration Application No. 100795917, reads in pertinent part:

“The proposed enlargement and extension of term of the physical culture establishment . . . is contrary to . . . Section [32]-10 of the NYC Zoning Resolution and must be referred back to the Board of Standards and Appeals”; 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 for a physical culture establishment (“PCE”), previously granted by the Board, and an amendment to allow the extension and relocation of the PCE use within the cellar and the third floor of a three-story, with cellar, commercial building; and

WHEREAS, a public hearing was held on this application on August 25, 2015, after due notice by publication in *The City Record*, with continued hearings on January 22, 2016, February 6, 2018, and, and then to decision on August 7, 2018; and

WHEREAS, Vice-Chair Chanda and Commissioner Ottley-Brown performed inspections 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 Broadway and West 92nd Street, partially in a C4-6A zoning district and partially in an R8 zoning district, in Manhattan; and

WHEREAS, the Board has exercised jurisdiction over the subject site since March 18, 1997, when, under BSA Calendar Numbers 182-95-BZ and 183-95-BZ, the Board granted a special permit within portions of the cellars of two contiguous three- and two-story, with cellars, commercial buildings for a term of eight (8) years, expiring November 1, 2005, 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 PCE comply with the provisions of the New York City Noise Code and the enclosures surrounding the roof-mounted HVAC and mechanical equipment be and be maintained in accordance with the Board-approved plans, that all individuals practicing massage at the subject site possess valid New York State Licenses for such practice which licenses shall be prominently displayed at the subject site, that the above conditions appear on the certificate of occupancy and that a certificate of occupancy be obtained within one (1) year, by March 18, 1998; and

WHEREAS, on September 26, 2000, under BSA Calendar Number 182-95-BZ, the Board amended the special permit to allow an expansion to the second floor of the subject building; and

WHEREAS, on September 26, 2006, under BSA Calendar Numbers 182-95-BZ and 183-95-BZ, the Board granted an extension of term of ten (10) years, expiring November 1, 2015, 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 having expired, the applicant now seeks a waiver of the Board’s Rules of Practice and Procedure to allow the early filing of this application, an amendment and an extension of term; and

WHEREAS, the applicant proposes an extension and relocation of the PCE use within the cellar and the third floor of the subject building; and

WHEREAS, the subject PCE occupies 24,038 square feet of floor space as follows: 9,790 of floor space in the cellar, 4,480 square feet of floor area on the first-floor mezzanine, 9,779 square feet of floor area on the second floor and the addition of 9,779 square feet of floor area on the third floor, including a group fitness studio, a spinning room, storage, an employee lounge and a strength- and cardiovascular-training area; and

WHEREAS, the applicant represents that there have been no changes to the operator of the facility, Equinox, as previously approved by the Board; and

WHEREAS, in response to questions from the Board at hearing, the applicant states that extension of the PCE use 25 feet into the R8 portion of the subject site is permitted pursuant to ZR § 73-52 and revised the drawings to reflect a

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wall to keep vacant the portion of the cellar in the R8 zoning district beyond 25 feet; 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, based upon its review of the record, the Board has determined that the requested waiver of the Board's Rules of Practice and Procedure, amendment and 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* the Rules of Practice and Procedure and *reopen* and *amend* the resolution, dated March 18, 1997, as amended through September 26, 2006, so that as amended this portion of the resolution shall read: "to *permit* the extension and relocation of the PCE use within the cellar and the third floor of the subject building and to *grant* an extension of term of ten (10) years, expiring November 1, 2025; *on condition* that all work, operations and site conditions shall conform to drawings filed with this application marked "Received July 20, 2018"-Six (6) sheets; and *on further condition*:

THAT the term of this grant shall be limited to ten (10) years, expiring November 1, 2025;

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

THAT the PCE shall comply with the provisions of the New York City Noise Code and the enclosures surrounding the roof-mounted HVAC and mechanical equipment shall be and shall be maintained in accordance with the Board-approved plans;

THAT all individuals practicing massage at the subject site possess valid New York State Licenses for such practice which licenses shall be prominently displayed at the subject site;

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 7, 2022;

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 7, 2018.

183-95-BZ

APPLICANT – Rothkrug & Spector LLP, for Haymes Broadway LLC, owner.

SUBJECT – Application October 14, 2014 – Extension of Term of a previously granted Special Permit (§73-36) for the continued operation of a PCE (*Equinox Fitness Club*) which expires on November 1, 2015; Amendment to expand the PCE into the cellar and the full third floor; Waiver of the Rules. C4-6A/R8 zoning district.

PREMISES AFFECTED – 2473 Broadway, southwest corner of intersection of Broadway and West 92nd Street, Block 01239, Lot 55, 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 Scibetta...4

Negative:0

Absent: Commissioner Sheta.....1

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 a certificate of occupancy and an extension of term of a special permit for a physical culture establishment ("PCE"), previously granted by the Board; and

WHEREAS, a public hearing was held on this application on August 25, 2015, after due notice by publication in *The City Record*, with continued hearings on January 22, 2016, February 6, 2018, and, and then to decision on August 7, 2018; and

WHEREAS, Vice-Chair Chanda and Commissioner Ottley-Brown performed inspections 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 Broadway and West 92nd Street, partially in a C4-6A zoning district and partially in an R8 zoning district, in Manhattan; and

WHEREAS, the Board has exercised jurisdiction over the subject site since March 18, 1997, when, under the subject calendar numbers, the Board granted a special permit within portions of the cellars of two contiguous two- and three-story, with cellars, commercial buildings for a term of eight (8) years, expiring November 1, 2005, 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 PCE comply with the provisions of the New York City Noise Code and the enclosures surrounding the roof-mounted HVAC and mechanical equipment be and be maintained in accordance with the Board-approved plans, that all individuals practicing massage at the subject site possess valid New York State Licenses for such practice which licenses shall be prominently displayed at the subject site, that the above conditions appear on the certificate of occupancy and that a

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certificate of occupancy be obtained within one (1) year, by March 18, 1998; and

WHEREAS, on September 26, 2000, under BSA Calendar Number 182-95-BZ, the Board amended the special permit to allow an expansion to the second floor of the subject building; and

WHEREAS, on September 26, 2006, under the subject calendar numbers, the Board granted an extension of term of ten (10) years, expiring November 1, 2015, 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 having expired, the applicant now seeks a waiver of the Board's Rules of Practice and Procedure to allow the early filing of this application, an amendment and an extension of term; and

WHEREAS, the applicant represents that there have been no changes to the floor plan or operator of the facility, Equinox, as previously approved by the Board; and

WHEREAS, the subject PCE occupies 5,392 square feet of floor space in the cellar; 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, based upon its review of the record, the Board has determined that the requested waiver of the Board's Rules of Practice and Procedure, extension of time to obtain a certificate of occupancy and 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* the Rules of Practice and Procedure and *reopen* and *amend* the resolution, dated March 18, 1997, as amended through September 26, 2006, so that as amended this portion of the resolution shall read: "to *permit* an extension of term of ten (10) years, expiring November 1, 2025, and to *permit* an extension of time to obtain a certificate of occupancy; *on condition* that all work, operations and site conditions shall conform to drawings filed with this application marked "Received July 20, 2018"-Six (6) sheets and "August 8, 2018"-One (1) sheet; and *on further condition*:

THAT the term of this grant shall be limited to ten (10) years, expiring November 1, 2025;

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

THAT the PCE shall comply with the provisions of the New York City Noise Code and the enclosures surrounding the roof-mounted HVAC and mechanical equipment shall be and shall be maintained in accordance with the Board-approved plans;

THAT all individuals practicing massage at the subject site possess valid New York State Licenses for such practice which licenses shall be prominently displayed at the subject site;

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 7, 2022;

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 7, 2018.

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 149th Street, Block 2623, Lot 140, Borough of Bronx.

COMMUNITY BOARD #1BX

ACTION OF THE BOARD – Laid over to September 27, 2018, at 10 A.M., for continued hearing.

103-79-BZ

APPLICANT – Akerman, LLP, for The 1989 Anthony Denicker Trust, owner.

SUBJECT – Application March 27, 2018 – Amendment of a previously approved Variance (§72-21) which permitted the development of a two-family residence contrary to side yard requirements. The amendment seeks to modify the Board's prior approval to allow a conversion of the building from a two-family residence to a three-family residence contrary to ZR §23-49 and to request a termination of a Board condition that required a recorded declaration describing the use of the site as a two-family residence. R5 zoning district.

PREMISES AFFECTED – 25-30 44th Street, Block 702, Lot 56, Borough of Queens.

COMMUNITY BOARD #1Q

ACTION OF THE BOARD – Laid over to October 23, 2018, at 10 A.M., for continued hearing.

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24-96-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Legaga LLC, owner.

SUBJECT – Application January 23, 2018 – Extension of Term (11-411) of a previously approved variance permitting the operation of an Eating and Drinking Establishment (*McDonald's*) which expired on October 7, 2017; Extension of Time to obtain a Certificate of Occupancy which expired on July 15, 2015; Waiver of the Rules. R7-2 zoning district.

PREMISES AFFECTED – 213 Madison Street, Block 271, Lot 40, Borough of Manhattan.

COMMUNITY BOARD #3M

ACTION OF THE BOARD – Laid over to October 23, 2018, at 10 A.M., for continued hearing.

280-01-BZ

APPLICANT – Akerman LLP, for S & M Enterprises, owner.

SUBJECT – Application June 7, 2018 – Extension of Time to complete construction for a previously approved variance (§72-21) to permit a mixed-use building which expired on May 7, 2018. C1-9 zoning district.

PREMISES AFFECTED – 663-673 Second Avenue & 241-249 East 36th Street, Block 917, Lot(s) 21, 24-30, 32, 34, Borough of Manhattan.

COMMUNITY BOARD #6M

ACTION OF THE BOARD – Laid over to November 20, 2018, at 10 A.M., for continued hearing.

193-05-BZ

APPLICANT – Patrick W. Jones, P.C., for 32 East 31st Street Corp., owner; Tone House, lessee.

SUBJECT – Application May 24, 2016 – Extension of Term of a previously granted Special Permit (§73-36) for the continued operation of Physical Culture Establishment (*Tone House*) which expired on April 25, 2016. C5-2 zoning district.

PREMISES AFFECTED – 32 East 31st Street, Block 860, Lot 55, Borough of Manhattan.

COMMUNITY BOARD #5M

ACTION OF THE BOARD – Laid over to October 23, 2018, at 10 A.M., for postponed hearing.

197-05-BZ

APPLICANT – Law Offices of Marvin B. Mitzner LLC, for Broadway Realty LLC, owner.

SUBJECT – Application April 27, 2018 – Amendment of a previously approved variance (§72-21) which permitted the construction of an 11-story mixed-use building with ground floor commercial. The amendment seeking to permit a 4'9" by 28' bump out at the rear of the building; Extension of Time to Complete construction which expires on April 29,

2019. C6-1/R7 zoning district.

PREMISES AFFECTED – 813 Broadway, Block 563, Lot(s) 33 & 34, Borough of Manhattan.

COMMUNITY BOARD #2M

ACTION OF THE BOARD – Laid over to September 27, 2018, at 10 A.M., for continued hearing.

141-06-BZ

APPLICANT – Eric Palatnik, P.C., for Congregation Tefilah Ledovid, owner.

SUBJECT – Application April 20, 2018 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) permitting the construction of a House of Worship (*Congregation Tefilah Ledovid*) UG 3) contrary to underlying bulk requirements which expired on March 12, 2017; Waiver of the Board's Rules. R5 zoning district.

PREMISES AFFECTED – 2084 60th Street, Block 5521, Lot 42, Borough of Brooklyn.

COMMUNITY BOARD #12BK

ACTION OF THE BOARD – Laid over to October 23, 2018, at 10 A.M., for continued hearing.

18-09-BZ

APPLICANT – Klein Slowik PLLC, for West 54th Street LLC c/o ZAR Property, owner; Crunch LLC, lessee.

SUBJECT – Application August 28, 2017 – Extension of Term of a special permit (§73-36) for the continued operation of a physical culture establishment (*Crunch Fitness*) which expires on November 21, 2021; Amendment to permit the change in operator; Waiver of the Rules. C6-5 and C6-7 zoning district.

PREMISES AFFECTED – 250 West 54th Street, Block 1025, Lot 54, Borough of Manhattan.

COMMUNITY BOARD #5M

ACTION OF THE BOARD – Laid over to October 11, 2018, at 10 A.M., for adjourned hearing.

APPEALS CALENDAR

2017-68-A thru 2017-96-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Joline Estates, LLC, owner.

SUBJECT – Applications March 27, 2017 – Proposed construction of twenty-nine (29) two-family residences, not fronting on a legally mapped street, contrary to General City Law 36. R3-X (SRD) zoning district.

PREMISES AFFECTED – 7 to 49 Torrice Loop and 11 to 16 Frosinone Lane, Block 7577, Various Lots, Borough of Staten Island.

COMMUNITY BOARD #3SI

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda,

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Commissioner Ottley-Brown, and Commissioner Scibetta...4
Absent: Commissioner Sheta.....1
Negative:0

ACTION OF THE BOARD – Laid over to August 7, 2018, at 10 A.M., for decision, hearing closed.

2017-59-A

APPLICANT – Eric Palatnik, P.C., for Yuriy Prakhin, owner.

SUBJECT – Application March 3, 2017 – 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.

PREMISES AFFECTED – 3857 Oceanview Avenue, Block 6955, Lot 5, Borough of Brooklyn.

COMMUNITY BOARD #13BK

ACTION OF THE BOARD – Laid over to November 20, 2018, at 10 A.M., for continued hearing.

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 44th Street, Block 702, Lot 57, Borough of Queens.

COMMUNITY BOARD #1Q

ACTION OF THE BOARD – Laid over to October 23, 2018, at 10 A.M., for continued hearing.

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 44th Street, Block 702, Lot 56, Borough of Queens.

COMMUNITY BOARD #1Q

ACTION OF THE BOARD – Laid over to October 23, 2018, at 10 A.M., for continued hearing.

2018-63-A

APPLICANT – Fried Frank, LLP, for 25-30 Columbia Heights (Brooklyn), LLC, owner.

SUBJECT – Application May 1, 2018 – Interpretative Appeal of a final determination of the New York City Department of Buildings, set forth in the ZRD1 denial dated April 2, 2018 (Control No. 46921), denying a request for confirmation that existing signs are non-conforming and may be continued as accessory signs, with changes to subject matter, structural alterations, reconstruction, and replacement permitted pursuant to Article V, Chapter 2 of the New York City Zoning Resolution. M2-1 zoning district.

PREMISES AFFECTED – 30 Columbia Heights, Block 208, Lot 2, Borough of Brooklyn.

COMMUNITY BOARD #2BK

ACTION OF THE BOARD – Laid over to October 23, 2018, at 10 A.M., for continued hearing.

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 – Application dismissed for lack of prosecution.

THE VOTE TO DISMISS –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Scibetta...4

Negative.....0

Absent: Commissioner Sheta.....1

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated March 13, 2017,¹ acting on Alteration Application No. 320870214, reads in pertinent part:

1. Proposed Floor Area Ratio (FAR) exceeds the maximum permitted pursuant to ZR Section 113-11, 23-141, 24-11.
2. Proposed Open Space Ratio (OSR) is less than minimum required pursuant to ZR Sections

1 The original DOB decision filed with this application is dated January 26, 2015, and has been superseded by the above decision.

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113-11, 23-141, 24-11.

3. Proposed Lot Coverage exceeds the maximum permitted pursuant to ZR Sections 113-11, 23-141, 24-11.
4. Proposed front yard is less than front yard required pursuant to ZR Sections 113-12, 23-45.
5. Proposed side yards are less than side yards required pursuant to ZR Sections 113-11, 23-462(a).
6. Proposed rear yard is less than rear yard required pursuant to ZR Sections 113-11, 23-47.
7. Proposed height of perimeter wall exceeds maximum permitted 25' pursuant to ZR Sections 113-11/23-631(b);
8. Proposed sky exposure plane is exceeds required sloping planes to ridge lines on building elevations and sections per ZR 23-631(b)(1) through (5);
9. Proposed development provides less than required parking spaces as per ZR Sections 25-35 and 25-15; and

WHEREAS, this is an application under ZR §§ 72-21 for a variance to permit, in an R4 zoning district and the Special Ocean Parkway District, the construction of a community-facility building that does not comply with zoning regulations for floor area, open space, lot coverage, front yards, side yards, rear yards, wall height, sky exposure plane and parking, contrary to ZR §§ 113-11, 23-141, 24-11, 113-12, 23-45, 23-462(a), 23-47, 23-631(b), 25-35 and 25-15; 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, a continued hearing on July 25, 2017, an administrative adjournment on October 3, 2017, and a continued hearing on December 12, 2017; and

WHEREAS, by correspondence dated February 8, 2018, the applicant was notified that the continued hearing scheduled for February 27, 2018, was adjourned because no submission had been made; and

WHEREAS, the continued hearing on May 1, 2018, was administratively adjourned due to the applicant's failure to make any submission; and

WHEREAS, by letter dated May 1, 2018, the applicant was notified that, at the Board's review session on April 30, 2018, the Board expressed frustration regarding the lack of progress on the prosecution of this application, that the next scheduled hearing was set for August 7, 2018, with a submission date on July 18, 2018, and that failure to make a full submission with responses to all comments and questions posed by the Board may result in dismissal for failure to prosecute; and

WHEREAS, no submissions were made prior to the hearing on August 7, 2018, and no one appeared at the hearing on the applicant's behalf; and

WHEREAS, accordingly, due to the repeated failure of the application and its representatives to submit materials in support of this application, it must be dismissed in its entirety.

Therefore it is Resolved, that the application filed under BSA Calendar Number 20-15-BZ shall be and it hereby is *dismissed* for failure to prosecute.

Adopted by the Board of Standards and Appeals, August 7, 2018.

2016-4467-BZ
CEQR #17-BSA-053Q

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 – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, and Commissioner Scibetta...4

Absent: Commissioner Sheta.....1

Negative:0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated May 2, 2017, acting on Sign Application No. 421342844, reads in pertinent part:

“Zoning Resolution Section 22-30: Advertising Signs Not Permitted in Residential District”

“Zoning Resolution Section 52-731: A non-conforming advertising sign in residential district shall be terminated after 10 years from Dec. 15, 1961”; and

WHEREAS, this is an application under ZR § 72-21 to permit, in an R4 zoning district, an indirectly illuminated advertising sign, contrary to ZR §§ 22-30 and 52-731; and

WHEREAS, a public hearing was held on this application on October 31, 2017, after due notice by publication in *The City Record*, with continued hearings on January 23, 2018, April 10, 2018, June 5, 2018, and then to decision on August 7, 2018; and

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

WHEREAS, Community Board 1, Queens, recommends approval of this application on condition that advertising remain in print form and not be digitized or electronic in any manner, that billboard lighting be

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minimized and focused away from the residential area so as not to impact adjacent residences and that the east-facing billboard be reduced in overall size from 14'-00" x 48'-00" to 10'-6" x 36'-00"; and

WHEREAS, the subject site is located on the north side of Astoria Boulevard, between Hazen Street and 70th Street, in an R4 zoning district, in Queens; and

WHEREAS, the subject site has approximately 27 feet of frontage along Astoria Boulevard, between 35 and 45 feet of depth, 790 square feet of lot area and is occupied by a freestanding sign structure with a height of 38'-00" that supports one eastward, indirectly illuminated sign face displayed back to back with one westward, non-illuminated sign face; and

WHEREAS, the applicant originally proposed to maintain the subject sign structure with two advertising sign faces with the eastward, indirectly illuminated sign face measuring 10'-6" in height by 36'-00" in width and with the westward, non-illuminated sign face measuring 12'-00" in height by 25'-00" in width; and

WHEREAS, in response to community concerns and questions from the Board at hearing, the applicant revised this application by eliminating the westward sign face, by reducing the number of proposed light fixtures from six to three, by proposing the installation of light shields and by turning off all lighting by 1:00 a.m.; and

WHEREAS, the applicant now proposes to maintain the subject sign structure with one eastward advertising sign face measuring 10'-6" in height by 36'-00" in width to be indirectly illuminated by three light fixtures with light shields; and

WHEREAS, the applicant states that the subject site is beleaguered by unique physical conditions, including its small lot area, its irregular dimensions and its shallow depth, that create practical difficulties or unnecessary hardship in complying strictly with applicable zoning regulations; and

WHEREAS, in support of this contention, the applicant studied the surrounding area, determining that the subject site is the smallest and shallowest lot in the vicinity; and

WHEREAS, the applicant states that the above unique physical conditions limit the size and layout of any permitted residential development; and

WHEREAS, the applicant represents that an as-of-right development would consist of a three-story, one-family residence with 582 square feet of floor area (0.74 FAR); and

WHEREAS, the applicant represents that the lot has been in its current configuration since prior to December 15, 1961, and resulted from the construction of the Triborough Bridge and expansion of the Grand Central Parkway; and

WHEREAS, the Board finds that the above unique physical conditions create practical difficulties or unnecessary hardship in complying strictly with applicable zoning regulations that are not created by general circumstances in the neighborhood or district; and

WHEREAS, the applicant states that development in strict conformity with the Zoning Resolution would not

bring a reasonable return; and

WHEREAS, in support of this contention, the applicant supplied a financial feasibility study demonstrating that an as-of-right development—a three-story one-family residence with 582 square feet of floor area (0.74 FAR)—would not result in a reasonable return but that the proposed sign structure with one eastward advertising sign face would yield a modest return; and

WHEREAS, the Board finds that, because of the above unique physical conditions, there is no reasonable possibility that development in strict conformity with applicable zoning regulations would bring a reasonable return; and

WHEREAS, the applicant states that the proposed sign structure would not alter the essential character of the surrounding area; and

WHEREAS, in support of this contention, the applicant studied the surrounding area, finding that the subject site is surrounded by non-conforming commercial uses clustered along the five-block stretch of Astoria Boulevard between 49th Street and 73rd Street, that Astoria Boulevard is itself a well-traveled commercial thoroughfare, that to the west are a garden center and gasoline service station, that to the east are a restaurant, gasoline service station, a car wash, a florist and a transient motel; and

WHEREAS, the applicant states that there are residences to the rear of the subject site but notes that the westward advertising sign face, which would have faced said residences, is no longer proposed; and

WHEREAS, the applicant further states that illumination associated with the proposed sign structure has been reduced from the original proposal by reducing the number of proposed light fixtures from six to three, that light shields are proposed to be installed, that illumination of the proposed sign structure will cease by 1:00 a.m. and that no illumination will be directed towards residential areas; and

WHEREAS, the Board finds that the proposed variance will not alter the essential character of the neighborhood or district in which the subject site is located; 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 above practical difficulties or unnecessary hardship do not constitute a self-created hardship; and

WHEREAS, the Board finds that the above practical difficulties or unnecessary hardship have not been created by the owner or by a predecessor in title; and

WHEREAS, the applicant states that the proposed variance is the minimum necessary to permit a productive use of the site, as reflected in the financial feasibility study; and

WHEREAS, in support of this contention, the financial feasibility study demonstrates that none of the following development scenarios would result in a reasonable return: a three-story, two-family residential building with 1,890 square feet of floor area (2.39 FAR) with two interior accessory parking spaces, an entry stair and mechanical

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space on the first floor, with a one-bedroom apartment on the second floor and with a one-bedroom apartment on the third floor that would result in a substantial loss on investment; a two-story community-facility building with 1,580 square feet of floor area (2.0 FAR) with non-complying front, side and rear yards, with three enclosed parking spaces on the first floor and with approximately 790 square feet of office space that would result in a substantial loss on investment; a one-story commercial building for use as retail with 790 square feet of floor area (1.0 FAR) that would result in a substantial loss on investment; a four-story one-family residence with approximately 786 square feet of floor area (0.99 FAR) with one bedroom, one bathroom and a living area spread over two stories that would result in a substantial loss on investment; a two-story commercial building used for professional offices with 1,580 square feet of floor area (2.0 FAR) with two enclosed parking spaces on the first floor and two floors of office space above that would result in a substantial loss on investment; a two-story commercial building used for commercial retail on the first floor and professional offices on the second floor with 1,580 square feet of floor area (2.0 FAR) that would result in a substantial loss on investment; and a telecommunications installation that would not result in a reasonable return; and

WHEREAS, in response to questions from the Board, the applicant revised the proposed sign structure by eliminating the westward sign face, which results in a proposed sign structure that reflects the minimum variance necessary to afford relief; and

WHEREAS, the Board finds that the proposed variance is the minimum necessary to afford relief within the intent and purposes of the Zoning 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 Final Environmental Assessment Statement CEQR No. 17BSA053Q, dated June 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; 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, 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 of discretion.

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 zoning district, an indirectly illuminated advertising sign, contrary to ZR §§ 22-30 and 52-731; *on condition* that all work, operations and site conditions shall conform to drawings filed with this application marked “Received May 16, 2018”-Three (3) sheets; and *on further condition*:

THAT all illumination of the advertising sign shall cease by 1:00 a.m.;

THAT the number of light fixtures indirectly illuminating the advertising sign shall be reduced from six to three with light shields installed to direct illumination away from residences;

THAT the sign structure shall support one advertising sign face measuring 10’-6” in height by 36’-00” in width, as illustrated on the Board-approved drawings;

THAT the above conditions shall appear on the permit;

THAT all work shall be completed and signed off within one (1) year, by October 31, 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, August 7, 2018.

2017-308-BZ
CEQR #18-BSA-067M

APPLICANT – Greenberg Traurig by Jay A. Segal, for East Side Homestead LLC, owner.

SUBJECT – Application November 29, 2017 – 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.

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PREMISES AFFECTED – 50 East 69th Street, an interior lot located on the south side of East 69th Street, on the block bounded by East 69th Street, Park Avenue, East 68th Street and Madison Avenue. Block 1383, Lot 40. Borough of Manhattan.

COMMUNITY BOARD #8M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Scibetta....4

Negative:0

Absent: Commissioner Sheta.....1

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated July 17, 2018, acting on Alteration Application No. 123254691, reads in pertinent part:

Residential use not within 100 feet of a corner requires 30 foot rear yard pursuant to ZR 23-47. R8B portion of property (westernmost 25 feet) has a 25.2 to 28.8 foot rear yard with the following unpermitted obstructions pursuant to ZR 23-44: wall exceeding 8 feet in height, stairs to second story, balcony contrary to ZR 23-13. BSA approval is required.

Residential use requires 30 foot open space between rear windows of living rooms and property’s rear lot line, to provide for legal light and air pursuant to ZR 23-861. Westernmost 25 feet of building has rear-facing living room windows less than 30 feet from property’s rear lot line. BSA approval is required.

Maximum lot coverage in R8B district is 70 percent pursuant to ZR 23-153. R8B portion of building exceeds 70 percent of lot coverage. BSA approval is required.

R8B portion of property is within LH-1A district. Maximum base height and building height is 60 feet, pursuant to ZR 23-691. R8B portion of building exceeds 60 feet (no setbacks). BSA approval is required.

Building does not meet the requirements of ZR 23-692. BSA approval is required; and

WHEREAS, this is an application under ZR § 72-21 to permit, partially in an R10 zoning district in the Special Park Improvement District and partially in an R8B zoning district in the LH-1A Limited Height District, the conversion of the subject building to a single-family residence that does not comply with rear-yard, window-to-lot-line, lot-coverage and height-and-setback regulations, contrary to ZR §§ 23-47, 23-44, 23-861, 23-153, 23-691 and 23-692; and

WHEREAS, a public hearing was held on this application on April 10, 2018, after due notice by publication in *The City Record*, with a continued hearing on June 5, 2018, and then to decision on August 7, 2018; 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 this application; and

WHEREAS, the subject site is located on East 69th Street, between Park Avenue and Madison Avenue, partially in an R10 zoning district in the Special Park Improvement District and partially in an R8B zoning district in the LH-1A Limited Height District, in Manhattan; and

WHEREAS, the subject site has approximately 44 feet of frontage along East 69th Street, 104 feet of depth, 4,494 square feet of lot area and is occupied by a five-story, with cellar, mezzanine and penthouse, mixed-use commercial and residential building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since September 15, 1981, when, under BSA Calendar Number 307-81-BZ, the Board granted a variance to permit the conversion of the subject building from a school into a medical office building with an owner-occupied penthouse apartment for a term of ten (10) years, expiring September 5, 1991, on condition that the hours of operation be restricted to Monday to Friday, 9:00 a.m. to 5:00 p.m., and closed Saturday and Sunday, that there be no overnight accommodations for patients, that the penthouse be only owner-occupied and that an approved smoke detector, hardwired with a continuously charged battery, emergency light and self-contained alarm be installed in the residential apartment and in the public halls; and

WHEREAS, on April 19, 1983, under BSA Calendar Number 307-81-BZ, the Board amended the variance to decrease the floor area of the owner-occupied penthouse by approximately 700 square feet, eliminating one elevator and changing the interior layout; and

WHEREAS, on May 30, 1984, under BSA Calendar Number 307-81-BZ, the Board granted an extension of time to complete construction; and

WHEREAS, on May 21, 1985, under BSA Calendar Number 307-81-BZ, the Board granted an extension of time to complete construction; and

WHEREAS, on February 25, 1992, under BSA Calendar Number 307-81-BZ, the Board granted an extension of term of ten (10) years, expiring September 15, 2001, on condition that the hours of operation be changed to Monday to Friday, 8:00 a.m. to 6:00 p.m., and closed Saturday and Sunday, that the uses be limited to Use Group 6 uses and that a new certificate of occupancy be obtained within one (1) year, by February 25, 1993; and

WHEREAS, on April 9, 2002, under BSA Calendar Number 307-81-BZ, the Board granted an extension of term of ten (10) years, expiring September 15, 2011, on condition that a new certificate of occupancy be obtained within one (1) year, by April 9, 2003; and

WHEREAS, on June 7, 2011, the Board granted an extension of term of ten (10) years, expiring September 15, 2021; and

WHEREAS, the applicant proposes to convert the subject building to a single-family residence (Use Group 2)

MINUTES

by removing 25 feet of a one-story extension covering the entirety of the rear yard within the R8B zoning district, leaving the existing outer walls for privacy and constructing a stair and terrace connecting the remaining portion of the extension so that its roof can be used as outdoor space; and

WHEREAS, the applicant states that, as a result, the rear wall of the subject building will remain less than 30 feet from the rear lot line of the subject site and the remaining exterior walls and stair and terrace will not constitute permitted obstructions; and

WHEREAS, the applicant states that, at the subject site, there must be a minimum 30-foot rear yard, except for the portion of the subject site within 100 feet of a corner under ZR § 23-541, meaning that a 30-foot rear yard is required on the portion of the site in the R8B zoning district and on the .84-foot portion of the subject site in the R10 zoning district; however, the applicant proposes a rear yard with a depth of 29 feet at the first floor and depths of 25.2 to 28.8-feet on the upper floors with 14'-7" walls exceeding the 8-foot height permitted and the stair and terrace not constituting permitted obstructions under ZR § 23-44; and

WHEREAS, the applicant states that the rear-facing windows of the subject building must be 30 feet from the rear lot line under ZR § 23-861; however, the applicant proposes windows in the R8B zoning district between 25.2 and 28.8 feet from the rear lot line; and

WHEREAS, the applicant states that, in an R8B zoning district, under ZR § 23-153, the maximum permitted lot coverage is 70 percent; however, the applicant proposes lot coverage of 100 percent; and

WHEREAS, the applicant states that, under ZR § 23-691, in an R8B zoning district in the LH-1A Limited Height District, a building may rise 60 feet without setback; however, the street wall of the proposed building rises 69.59 feet without setback and the portion of the penthouse rises to a height of 86.43 feet; and

WHEREAS, the applicant states that, under ZR § 23-692, above a height equal to the width of the street on which the street wall fronts, a building cannot have a street wall less than 45 feet in width; however, East 69th Street has a width of 60 feet, and the proposed building has a street wall less than 45 feet in width above this 60-foot height limit; and

WHEREAS, the applicant states that there are unique physical conditions peculiar to and inherent in the subject site, namely that the subject building was constructed as a single-family residence in 1918, that in 1914 the subject building was converted to a school and the one-story extension was added, that, pursuant to a variance granted by the Board in 1981, the subject building has been used as medical offices with a residential penthouse for 35 years, that, because of the unique history of development, the subject building is unable to convert back to its original use as a single-family residence because the conversion would create non-compliances at the subject site; and

WHEREAS, the applicant states that, because of said unique physical conditions, complying with the rear-yard, window-to-lot-line and lot-coverage would require moving

the rear wall of the subject building, which would require sheering off the rear 1'-3" of the subject building at each of its floors and its rear-facing projecting bay windows and construction a new wall along the building's rear at a cost of approximately \$629,000 to reclaim less than 5, and in most areas less than 2, feet of rear-yard depth; and

WHEREAS, the applicant states that, to comply with rear-yard and lot-coverage requirements, it would be necessary to remove the 14'-7" walls along the western 25 feet of the rear lot line and along approximately 29 feet of the western lot line, which do not constitute rear-yard obstructions and cause the enclosed space to count as lot coverage, at a cost of approximately \$24,000; and

WHEREAS, the applicant states that, to comply with height-and-setback requirements, it would be necessary to remove the portion of the subject building above a height of 60 feet by removing a portion of the historic façade and almost 10 feet of the top of the subject building and its penthouse at a cost of approximately \$1.2 million; and

WHEREAS, the applicant states that the construction required to bring the subject building into strict compliance with the Zoning Resolution would cost more than \$1.8 million and would take approximately eight months; and

WHEREAS, the Board finds that the above unique physical conditions create practical difficulties or unnecessary hardship in complying strictly with applicable zoning regulations that are not created by general circumstances in the neighborhood or district; and

WHEREAS, the applicant states that, because the applicant proposes a single-family, owner-occupied residence, the Board need not find that, because of the above unique physical conditions, there is no reasonable possibility that strict conformity with applicable zoning regulations would bring a reasonable return; and

WHEREAS, the applicant states that the variance, if granted, would allow the preservation of a historic row house in its original form and would allow the subject building to be converted back to its original use as a single-family residence, which comports with the residential character of the neighborhood; and

WHEREAS, the applicant states that the subject building's current and proposed rear-yard and window-to-lot-line measurements are typical of the historic character of the surrounding area, noting that the subject building is one of eight residences with rear open space less than that required and that there are an additional seven residences on the subject block that also have smaller rear open space than required; and

WHEREAS, as to height, the applicant states that the subject building is proportionate to other buildings along the midblock of East 69th Street, many of which rise to 60 or 70 feet in height; and

WHEREAS, the Board finds that the proposed variance will not alter the essential character of the neighborhood or district in which the subject site is located; will not substantially impair the appropriate use or development of adjacent property; and will not be

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detrimental to the public welfare; and

WHEREAS, the applicant states that the above practical difficulties or unnecessary hardship do not constitute a self-created hardship; and

WHEREAS, the Board finds that the above practical difficulties or unnecessary hardship have not been created by the owner or by a predecessor in title; and

WHEREAS, the applicant states that the proposed variance is the minimum necessary to permit the subject building to be converted back to use as a single-family residence; and

WHEREAS, the Board finds that the proposed variance is the minimum necessary to afford relief within the intent and purposes of the Zoning Resolution; 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. 18BSA067M, received on November 27, 2017; and

WHEREAS, on August 1, 2018, the New York City Landmarks Preservation Commission issued a Certificate of Appropriateness for proposed work consisting of removing HVAC equipment and constructing a glazed and gray painted metal framed one-story addition (solarium) at the north side of the main roof of the subject building connected to an existing rooftop addition as well as raising the height of existing flues adjacent to the addition and installing a gray finished metal screen and mechanical equipment at the roof of the existing rooftop addition; and

WHEREAS, 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 of discretion.

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*, partially in an R10 zoning district in the Special Park Improvement District and partially in an R8B zoning district in the LH-1A Limited Height District, the conversion of the subject building to a single-family residence that does not comply with rear-yard, window-to-lot-line, lot-coverage and height-and-setback regulations, contrary to ZR §§ 23-47, 23-44, 23-861, 23-153, 23-691 and 23-692; *on condition* that all work and site conditions shall conform to drawings filed with this application marked "Received July 16, 2018"-Twenty-Two (22) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: the rear yard shall have a minimum depth of 25.2 feet, windows shall be at least 25.2 feet to the rear lot line, lot coverage shall be a maximum of 100 percent, wall height shall not exceed 69.59 feet and total height shall not exceed 93.13 feet, as illustrated on the Board-approved plans;

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 7, 2022;

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 7, 2018.

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 3rd and 4th 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 November 8, 2018, at 10 A.M., for continued hearing.

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 November 8, 2018, at 10 A.M., for continued hearing.

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 5th Street, Block 15609, Lot Tentative 40, Borough of Queens.

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COMMUNITY BOARD #14Q

ACTION OF THE BOARD – Laid over to January 29, 2019, at 10 A.M., for continued hearing.

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 October 23, 2018, at 10 A.M., for continued hearing.

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 19th Avenue, Block 5457, Lot 166, Borough of Brooklyn.

COMMUNITY BOARD #12BK

ACTION OF THE BOARD – Laid over to October 23, 2018, at 10 A.M., for continued hearing.

2016-4273-BZ

APPLICANT – Akerman LLP, for S & M Enterprises, owner.

SUBJECT – Application October 25, 2016 – Variance (§72-21) to permit the legalization of an existing non-conforming replacement advertising sign based upon good-faith reliance. C1-9 zoning district.

PREMISES AFFECTED – 669 Second Avenue, Block 917, Lot(s) 21, 24, 30, 32, 34, Borough of Manhattan.

COMMUNITY BOARD #6M

ACTION OF THE BOARD – Laid over to November 20, 2018, at 10 A.M., for continued hearing.

2017-191-BZ

APPLICANT – Sheldon Lobel, P.C., for EMPSRGGREENE, LLC, owner.

SUBJECT – Application May 25, 2017 – 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).

PREMISES AFFECTED – 47 Greene Street, Block 475, Lot 50, Borough of Manhattan.

COMMUNITY BOARD #2M

ACTION OF THE BOARD – Laid over to October 23, 2018, at 10 A.M., for adjourned hearing.

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**REGULAR MEETING
TUESDAY AFTERNOON, AUGUST 7, 2018
1:00 P.M.**

Present: Chair Perlmutter, Vice-Chair Chanda,
Commissioner Ottley-Brown and Commissioner Scibetta.
Absent: Commissioner Sheta.

ZONING CALENDAR

263-15-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Seshadri and Prema Das (Lot 29) & Premast Management (Lot 32), owners.

SUBJECT – Application December 4, 2015 – Special Permit (§73-126) to allow a medical office, contrary to bulk regulations (§22-14). R3X zoning district.

PREMISES AFFECTED – 45/47 Little Clove Road, Block 662, Lot(s) 29 & 32, Borough of Staten Island.

COMMUNITY BOARD #1SI

ACTION OF THE BOARD – Laid over to October 30, 2018, at 10 A.M., for continued hearing.

2017-224-BZ

APPLICANT – Tuttle Yick LLP, for Two Spring Associates LLC, owner.

SUBJECT – Application July 6, 2017– 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.

PREMISES AFFECTED – 2-4 Spring Street, Block 478, Lot 22, Borough of Manhattan.

COMMUNITY BOARD #2M

ACTION OF THE BOARD – Laid over to November 20, 2018, at 10 A.M., for continued hearing.

2017-260-BZ

APPLICANT – Law Office of Lyra J. Altman, for BIF Realty LLC by Jak Farhi, owner.

SUBJECT – Application September 1, 2017 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area, open space and lot coverage (ZR §23-142); less than the required rear yard (ZR §23-47); and less than the required side yards (ZR §23-461). R4 zoning district.

PREMISES AFFECTED – 2672 East 12th Street, Block 7455, Lot 87, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to October 11, 2018, at 10 A.M., for continued hearing.

2017-277-BZ

APPLICANT – Law Office of Lyra J. Altman, for Freddi Baranoff & Edward Baranoff, owners.

SUBJECT – Application October 12, 2017 – 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.

PREMISES AFFECTED – 1022 East 23rd Street, Block 7604, Lot 52, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Laid over to October 11, 2018, at 10 A.M., for continued hearing.

2017-314-BZ

APPLICANT – Eric Palatnik, P.C., for 1571 Holding LLC, owner; 1571 Development LLC, lessee.

SUBJECT – Application December 12, 2017 – 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).

PREMISES AFFECTED – 1571 McDonald Avenue, Block 6564, Lot 60, Borough of Brooklyn.

COMMUNITY BOARD #12BK

ACTION OF THE BOARD – Laid over to October 30, 2018, at 10 A.M., for continued hearing.

Carlo Costanza, Executive Director

BULLETIN

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231-15-BZ	5278 Post Road, Bronx
2017-321-BZ	560 West 33 rd Street, Manhattan
2018-4-BZ	2213 East 13 th Street, Brooklyn
2018-7-BZ	291 Avenue W, Brooklyn
2018-29-BZ	1637 Madison Place, Brooklyn
2018-62-BZ	73-77 Sands Street, Brooklyn

DOCKETS

New Case Filed Up to August 14, 2018

2018-134-BZ

24A Mesereau Court, Located on a detached house north of Dunne Place, Block 08797, Lot(s) 0101, 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.

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

CALENDAR

REGULAR MEETING SEPTEMBER 27, 2018, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, September 27, 2018, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

SPECIAL ORDER CALENDAR

177-06-BZ

APPLICANT – Law Office of Steven Simicich, for 1840 EMAB, LLC, owner.

SUBJECT – Application September 27, 2018 – Extension of Term (§11-411) to permit the continued operation of an Automotive Repair Facility (UG 16B) with the sale of cars which expired on April 10, 2017; Amendment to permit the conversion of accessory storage area into an additional automotive service bay and changes to on-site planting; Waiver of the Board's Rules. C2-2R3-2 zoning district.

PREMISES AFFECTED – 1840 Richmond Terrace, Block 201, Lot 32, Borough of Staten Island.

COMMUNITY BOARD #1SI

272-07-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Amsterdam & 76th Associates LLC, owner; Equinox 76th Street, Inc., lessee.

SUBJECT – Application September 27, 2018 – 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 second floors and (Pure Yoga Facility) on the cellar level of a mixed-use building which expires on May 13, 2018. C2-7A (EC-2) and C4-6A (EC-3) zoning districts.

PREMISES AFFECTED – 344 Amsterdam Avenue, Block 1168, Lot 7501, Borough of Manhattan.

COMMUNITY BOARD #7M

247-09-BZ

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for Central Synagogue, owner.

SUBJECT – Application July 11, 2018 – Extension of Time to complete construction of a previously approved variance (§72-21) for the expansion of a UG4 community use facility (Central Synagogue), which expired on June 10, 2018. C5-2 & C5-2.5 (MiD) zoning district.

PREMISES AFFECTED – 123 East 55th Street, Block 1310, Lot 10, Borough of Manhattan.

COMMUNITY BOARD #5M

231-14-BZ

APPLICANT – Bryan Cave Leighton Paisner, for Orangetheory Fitness, owner; OTF Man One LLC c/o dba Orange Theory Fitness, lessee.

SUBJECT – Application May 11, 2018 – Extension of Term of a previously approved Special Permit (§73-36) which permitted the operation of a physical culture establishment (Orangetheory Fitness) within a portion of an existing commercial building which expired on April 12, 2018. C6-3X zoning district.

PREMISES AFFECTED – 124 West 23rd Street, Block 798, Lot 7507, Borough of Manhattan.

COMMUNITY BOARD #4M

APPEALS CALENDAR

2016-4142-A thru 2016-4146-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Cunard/SI Associates LLC, owners.

SUBJECT – Application March 17, 2016 – To permit the proposed development consisting of five one family homes contrary Article 3 Section 36 of the General City Law. R3A (HS) zoning district.

PREMISES AFFECTED – 70/72/74/76/78 Cunard Avenue, Block 623, Lot(s) 10, 9, 8, 95, 93, Borough of Staten Island.

COMMUNITY BOARD #1SI

2017-16-A thru 2017-19-A

APPLICANT – Gerald J. Caliendo, RA, AIA, for Mario Ferazzoli, owner.

SUBJECT – Application January 18, 2017 – 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.

PREMISES AFFECTED – 15-58/62 Clintonville Street, 150-93/95 Clintonville Court, Block 4699, Lot(s) 20, 21, 23 & 24, Borough of Queens.

COMMUNITY BOARD #7Q

2018-105-A

APPLICANT – Gerald J. Caliendo, RA, AIA, for Mario Ferazzoli, owner.

SUBJECT – Application July 3, 2018 – 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.

PREMISES AFFECTED – 150-87 Clintonville Court, Block 4699, Lot(s) 22, Borough of Queens.

COMMUNITY BOARD #7Q

CALENDAR

**REGULAR MEETING
SEPTEMBER 27, 2018, 1:00 P.M.**

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, September 27, 2018, 1:00 P.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

ZONING CALENDAR

2016-4465-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Anderson Bay LLC, owner.

SUBJECT – Application December 13, 2016 – Variance (§72-21) to permit the construction of a two-story, two-family detached dwelling contrary to ZR (§23-142) required lot coverage and open space; ZR (§23-142(b)) floor area ratio; ZR (§23-32) required lot width; ZR (§23-45) required front yard; ZR (§23-461(a)) required side yard and ZR (§25-22) required parking space. R3A zoning district.

PREMISES AFFECTED – 129 Anderson Street, Block 2848, Lot 79, Borough of Staten Island.

COMMUNITY BOARD #1SI

2017-306-BZ

APPLICANT – Law Office of Lyra J. Altman, for Stella Alfaks and Devi Alfaks, owners.

SUBJECT – Application November 27, 2017 – Special Permit (§73-622) to permit the enlargement of the existing single family home contrary to ZR §23-47 (rear yard) and §23-461(a) (side yard). R5 zoning district.

PREMISES AFFECTED – 1977 East 14th Street, Block 7293, Lot 56, Borough of Brooklyn.

COMMUNITY BOARD #15BK

2018-46-BZ

APPLICANT – Law Office of Lyra J. Altman, for Jack Saideh, owner.

SUBJECT – Application March 27, 2018 – Special Permit (§73-622) to permit the enlargement of an existing single-family home, contrary to side yard requirements (§§23-461(c)) and creates non-compliance with respect to the wall height (§23-631(b)). R4 (Special Ocean Parkway Sub-District).

PREMISES AFFECTED – 2205 East 2nd Street, Block 7129, Lot 52, Borough of Brooklyn.

COMMUNITY BOARD #15BK

2018-49-BZ

APPLICANT – Law Office of Lyra J. Altman, for Solomon S. Salem, owner.

SUBJECT – Application April 2, 2018 – Special Permit (§73-622) to permit the enlargement of an existing single-family home, contrary to floor area, lot coverage and open space (ZR §23-142) and wall height (ZR §23-631-(b)) R2X (Special Ocean Parkway) zoning district.

PREMISES AFFECTED – 1919 East 5th Street, Block 6681, Lot 492, Borough of Brooklyn.

COMMUNITY BOARD #15BK

Carlo Costanza, Executive Director

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**REGULAR MEETING
TUESDAY MORNING, AUGUST 14, 2018
10:00 A.M.**

Present: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.

SPECIAL ORDER CALENDARS

210-13-BZ

APPLICANT – Sheldon Lobel, P.C., for MDL & S, LLC, owner; Physique LLC, lessee.

SUBJECT – Application February 1, 2018 – Extension of Time to Obtain a Certificate of Occupancy of a previously approved Variance (§72-21) the operation of a physical culture establishment (*The Physique*) which expired on January 22, 2015; Waiver of the Rules. C1-4/R7A zoning district.

PREMISES AFFECTED – 43-12 50th Street, Block 138, Lot 25, Borough of Queens.

COMMUNITY BOARD #2Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Scibetta....4

Negative:0

Absent: Commissioner Sheta.....1

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Board’s Rules of Practice and Procedure, an extension of time to complete construction and an extension of time to obtain a certificate of occupancy; and

WHEREAS, a public hearing was held on this application on July 17, 2018, after due notice by publication in *The City Record*, and then to decision on August 14, 2018; and

WHEREAS, Commissioner Ottley-Brown performed an inspection of the site and surrounding neighborhood; and

WHEREAS, the subject site is located on the west side of 50th Street, between Roosevelt Avenue and 43rd Avenue and Queens Boulevard, in an R7A (C1-4) zoning district, in Queens; and

WHEREAS, the Board has exercised jurisdiction over the subject site since July 22, 2014, when, under the subject calendar number, the Board granted a variance to permit a physical culture establishment (“PCE”) for a term of ten (10) years, expiring July 22, 2024, 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 the physical culture establishment be limited to Monday through Friday, 5:30 a.m. to 12:00 a.m., Saturday, 7:00 a.m. to 9:00 p.m., and Sunday, 7:00 a.m. to 6:00 p.m.,

that all signage at the site comply with C1 zoning district regulations, that the above conditions appear on the certificate of occupancy and that a new certificate of occupancy be obtained within six (6) months, by January 22, 2015; and

WHEREAS, the time to complete construction and obtain a certificate of occupancy having expired, the applicant now seeks a waiver of the Board’s Rules of Practice and Procedure to allow the late filing of this application, an extension of time to complete construction and an extension of time to obtain a certificate of occupancy; and

WHEREAS, in response to questions from the Board, the applicant revised the drawings to reflect existing, extraneous signage and to note which signage will be removed after obtaining necessary permits from the Department of Buildings; and

WHEREAS, the applicant states that there is an operational fire alarm system installed at the subject site and that the PCE is fully sprinklered; and

WHEREAS, based upon its review of the record, the Board has determined that the requested waiver of the Board’s Rules of Practice and Procedure, extension of time to complete construction 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 *waive* the Rules of Practice and Procedure and *reopen* and *amend* the resolution, dated July 22, 2014, so that as amended this portion of the resolution shall read: “to *permit* an extension of time to complete construction and to obtain a certificate of occupancy of two (2) years, expiring August 14, 2020; *on condition* that all work and site conditions shall conform to drawings filed with this application marked “Received August 3, 2018”- Four (4) sheets; and *on further condition*:

THAT the applicant shall return to the Board of Standards and Appeals in one (1) year, by August 14, 2019, for a compliance hearing to demonstrate that all of the Board’s conditions and safeguards have been complied with, including the removal of illegal signage;

THAT the term of this grant shall be limited to ten (10) years, expiring July 22, 2024;

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 the physical culture establishment shall be limited to Monday through Friday, 5:30 a.m. to 12:00 a.m., Saturday, 7:00 a.m. to 9:00 p.m., and Sunday, 7:00 a.m. to 6:00 p.m.;

THAT all signage at the site shall comply with C1 zoning district regulations;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy shall be obtained within two (2) years, by August 14, 2020;

THAT all conditions from prior resolutions not

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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 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 14, 2018.

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 23, 2018, at 10 A.M., for adjourned hearing.

30-58-BZ

APPLICANT – Vassalotti Associates Architects, LLP, for Maximum Properties, Inc., owner.

SUBJECT – Application April 26, 2018 – Extension of Term (§11-411) of a variance permitting the operation of an automotive service station (UG 16B) which expired on March 12, 2017; Waiver of the Rules. C2-1/R3-1 zoning district.

PREMISES AFFECTED – 184-17 Horace Harding Expressway, Block 7067, Lot 50, Borough of Queens.

COMMUNITY BOARD #11Q

ACTION OF THE BOARD – Laid over to October 23, 2018, at 10 A.M., for continued hearing.

624-68-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for MMT Realty Associates LLC, owner.

SUBJECT – Application February 27, 2018 – Extension of Term of a Variance (§72-21) which permitted the operation of wholesale plumbing supply establishment (UG16) and stores and office (UG6) which expired on February 7, 2017; Extension of Time to obtain a Certificate of Occupancy which expired on February 7, 2013; Waiver of the rules. R3-2 zoning district.

PREMISES AFFECTED – 188-07/15 Northern Boulevard, Block 5364, Lot(s) 1, 5, 7, Borough of Queens.

COMMUNITY BOARD #11Q

ACTION OF THE BOARD – Laid over to November 8, 2018, at 10 A.M., for adjourned hearing.

340-04-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for WG Staten Island Realty LLC, owner.

SUBJECT – Application February 9, 2018 – Amendment of a previously approved Variance (§72-21) which requested bulk variance to allow the construction of a drug store without the required parking contrary to Z.R. §§33-23(B) and 36-21. The amendment seeks to change the use from a drug store (UG6) PRC-B to a food store (UG 6) PRC-A. C4-1 zoning district.

PREMISES AFFECTED – 1579 Forest Avenue, Block 1053, Lot 149, Borough of Staten Island.

COMMUNITY BOARD #1SI

ACTION OF THE BOARD – Laid over to October 23, 2018, at 10 A.M., for continued hearing.

163-14-A thru 165-14-A

APPLICANT – Ponte Equities Inc.

SUBJECT – Application July 13, 2018 – Compliance Hearing.

PREMISES AFFECTED – 502, 504 and 506 Canal Street, Block 595, Lot(s) 40, 39, 38, Borough of Manhattan.

COMMUNITY BOARD #1M

ACTION OF THE BOARD – Laid over to October 30, 2018, at 10 A.M., for continued hearing.

2016-4150-BZ

APPLICANT – Sheldon Lobel, P.C., for Courtwood Capital LLC, owner; Grandave Fitness Inc. (d/b/a L Train CrossFit), lessee.

SUBJECT – Application March 24, 2016 – Special Permit (§73-36) to permit a physical culture establishment (*CrossFit*) on the cellar, first floor and mezzanine of an existing building commercial building. C6-4A zoning district.

PREMISES AFFECTED – 667 Grand Street, Block 2781, Lot 29, Borough of Brooklyn.

COMMUNITY BOARD #1BK

ACTION OF THE BOARD – Laid over to October 30, 2018, at 10 A.M., for adjourned hearing.

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APPEALS CALENDAR

2017-58-A

APPLICANT – SBP 69 Street, LLC/Favor J. Smith, Esq., for SBP 69th Street, LLC, owner.

SUBJECT – Application March 2, 2017 – 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.

PREMISES AFFECTED – 7 E 69th Street, Block 1384, Lot 11, Borough of Manhattan.

COMMUNITY BOARD #8M

ACTION OF THE BOARD – Appeal Denied.

THE VOTE TO GRANT –

Affirmative:0

Negative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Scibetta....4

Absent: Commissioner Sheta.....1

THE RESOLUTION –

WHEREAS, this is an appeal of a final determination from the New York City Fire Department’s Chief of Fire Prevention dated January 31, 2017 (the “Final Determination”), which reads in pertinent part:

The Fire Department is in receipt of your appeal, on behalf of SBP 69th Street LLC (“SBP”), of the above-referenced Violation Order (copy attached), issued on or about July 11, 2013, by an inspector with the Fire Alarm Inspection Unit of the Fire Department’s Bureau of Fire Prevention. For the reasons set forth below, the appeal is denied, except as to the direction to schedule a Fire Department inspection, which is granted.

The Violation Order was marked “TB-60” to indicate that the Fire Department received a notification (Fire Department TB-60 form) that the central station connection for the private fire alarm company monitoring of the sprinkler system at the above-referenced premises (“subject premises”) had been terminated.

The Violation Order directed the owner to remedy the violation by: (1) connecting the sprinkler system to an approved central station; (2) placing the fire alarm system in proper working order and maintaining it at all times; (3) submitting copy of monitoring contract; (4) provide documentation of action TB-60 assignment (a central station filing with the Fire Department registering the monitoring of the fire alarm system on the premises); . . .

SBP appeals from the Violation Order on the grounds that the subject premises is a single-family dwelling (as documented by Certificate of Occupancy No. 108778, dated February 5, 1996) and that there is no commercial activity at the premises. The Certificate of Occupancy attached to the appeal indicates (on its reverse) that a smoke detector and an automatic sprinkler system have been installed at the premises. SBP represents that

the smoke detector on the premises are [*sic*] fully functional. No representation is made with respect to the functionality of the sprinkler system.

The appeal attaches a New York City Department of Buildings (DOB) Building Information System (BIS) printout that references a 1986 “fire alarm” filing (#2908-86). The appeal attaches a second BIS printout indicating that the work associated with that filing relates to the installation of a sprinkler system at the subject premises. The appeal states that there have been no other relevant alterations to the subject premises.

The appeal does not clearly state why SBP believes the Violation Order was issued in error based on this set of facts. The Fire Department infers that SBP is asserting that no fire alarm system is required at the subject premises and accordingly SBP has not failed to maintain it by discontinuing the central station connection.

The record is unclear why a sprinkler system was installed in a single-family dwelling and why a central station connection was established instead of (or in addition to) installing a gong or other audible device at the premises in accordance with the Building Code. However, regardless of whether such a system and connection were installed voluntarily or required as part of some other work being done in the building, both the New York City Fire Code (FC) and New York City Building Code (BC) require that fire protection systems (which includes sprinkler systems and fire alarm systems) be maintained in good working order at all times. FC901.6 further provides that any fire protection system not in good working order must be repaired or replaced, or *where authorized by the Building Code*, removed from the premises. Section 901.3 of the Building Code provides that no person shall remove or modify any fire protection system installed or maintained under any provision of the Building Code or Fire Code without the approval of the New York City Department of Buildings (DOB). DOB consults the Fire Department with respect to such applications.

[. . .]

Upon a review of this record, the Fire Department concludes that the Violation Order was properly issued. SBP’s termination of the central station monitoring of its sprinkler system effectively disabled the transmitter, constituting an alteration of an approved sprinkler [*sic*] sprinkler/fire alarm system that rendered it not fully functional as originally approved. Such an alteration required DOB and Fire Department approval.

If SBP wishes to discontinue central station monitoring of its sprinkler/fire alarm system, it can file the appropriate applications requesting authorization to discontinue its central station

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connection and addressing the issue of local activation notification in lieu of the central station connection. Alternatively, it can restore the central station connection and comply with the Violation Order. . . .; and

WHEREAS, a public hearing was held on this appeal on June 19, 2018, after due notice by publication in *The City Record*, with a continued hearing on August 14, 2018, 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, the Fire Department submitted materials and testimony in opposition to this application; and

WHEREAS, the subject site is located on the north side of East 69th Street, between Fifth Avenue and Madison Avenue, in an R8B zoning district, in the Upper East Side Historic District, in Manhattan; and

WHEREAS, the site has approximately 21 feet of frontage along East 69th Street, 100 feet of depth, 2,084 square feet of lot area and is occupied by a five-story plus cellar single-family dwelling; and

WHEREAS, this application is filed on behalf of the owner of the property (the "Appellant"); and

WHEREAS, on June 11, 2013, the Fire Department issued a violation order for the subject premises directing the Appellant to (1) connect the sprinkler system to an approved central station; (2) place the fire alarm system in proper working order and maintain such system at all time; (3) submit copies of monitoring contract; (4) provide documentation indicating active TB-60 assignment; and (5) schedule an inspection of the premises (the "Violation Order"); and

WHEREAS, the Fire Department filed a criminal information, dated March 11, 2014, alleging an offense at the premises under New York City Administrative Code § 15-223.1(a) and (b) predicated upon violations of Fire Code § 901.5 (Fire Code Fire Alarm Approval & Maintenance and Building Code Fire Alarm Systems) and referring to the 2013 violation order; and

WHEREAS, Section 901.5 of the Fire Code reads as follows:

901.5 Installation acceptance testing. Fire detection and alarm systems, fire extinguishing systems, private fire hydrant systems, yard hydrant systems, standpipe systems, fire pump systems, private fire service mains and all other fire protection systems and appurtenances thereto shall be subject to acceptance tests as set forth in the installation standards specified in this code. Where required by the construction codes, including the Building Code, this code or the rules, such tests shall be conducted, at the owner's risk, by his or her representative before a representative of the department; and

WHEREAS, the Appellant represents that they were served with the criminal information on May 21, 2015, and appealed the determination pursuant to Section 104-1 of the

Rules of the Fire Department of the City of New York by submission dated June 27, 2017 (the "FDNY Appeal"); and

WHEREAS, in the FDNY Appeal, the Appellant argued that the issuance of Certificate of Occupancy No. 108778 to the property, dated February 5, 1996, represented a tacit acknowledgement that the building, its uses and the systems contained therein, including the fire protection systems, met all applicable legal requirements, including Fire Code § 901.5; accordingly, the violation should be dismissed; and

WHEREAS, the Fire Department issued its decision on the FDNY Appeal by letter dated January 23, 2017; the letter was subsequently amended and reissued on January 31, 2017, and this appeal of that Final Determination followed; and

THE APPELLANT'S POSITION

WHEREAS, the Appellant argues that they acquired the premises on or around August 31, 2012; have made no changes to any systems at the subject premises, with the exception of a furnace, which was replaced and inspected; that the building maintains smoke detectors and an automatic sprinkler system in compliance with its certificate of occupancy, issued February 5, 1996; and that there is no legal requirement for a "fire alarm system" at the premises, as referenced in the Violation Order and the Final Determination; and

WHEREAS, regarding the history of the fire protection systems installed at the premises, the Appellant asserts that the Department of Buildings ("DOB") approved plans to install a sprinkler system at the subject premises on February 8, 1991; that an alarm lease for the premises, which included monitoring of the sprinkler system and a central office transmitter, was executed with a private central station alarm company on May 18, 1991 (the "Alarm Lease"); the Fire Department approved the installation of a sprinkler booster pump motor and controller and a central office connection to the sprinkler alarm-pump on January 3, 1992; the certificate of occupancy, indicating that a smoke detector and automatic sprinkler system were required and installed at the premises in compliance with applicable laws, was issued on February 5, 1996; and on or around September 4, 2012, the prior owner of the premises requested cancellation of the Alarm Lease; and

WHEREAS, the Appellant represents that the 1968 New York City Building Code (the "1968 BC"), the edition of the Building Code applicable to the existing building at the premises, does not require a sprinkler or fire alarm system in a single-family dwelling and that the 1996 certificate of occupancy does not indicate that a "fire alarm system and signal system" was required at the premises; and

WHEREAS, the Appellant submits that Section 902.1 of the Fire Code defines "fire alarm system" as "any system, including any interconnected fire alarm sub-system, of components and circuits arranged to monitor and annunciate the status of fire alarm or supervisory signal-initiating devices"; and

WHEREAS, the Appellant acknowledges that, pursuant to Section 1703.4(b) of the 1968 BC, a sprinkler alarm system is required when more than 36 sprinkler heads are located in any fire area or section and concedes that, according to the

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plans, the existing building, which constitutes a single fire area, has 85 sprinkler heads “and was required to have a sprinkler alarm system, which would be connected to an approved central station,” but maintains that this requirement is contrary to Section 901.6.1 of the 2014 New York City Building Code, which “exempts single-family dwellings unconditionally, whether the system has 20, or 36, or 85 sprinkler heads”; and

WHEREAS, in addition, the Appellant asserts that the offense complained of—failure to maintain a connection between the sprinkler system and an approved central station—does not fit the Fire Code section cited in the Violation Order because the fire protection systems installed at the premises were approved, and thus passed installation acceptance tests, as evidenced by Fire Department’s January 3, 1992, Letter of Approval and DOB’s issuance of the certificate of occupancy in 1996; and

WHEREAS, finally, the Appellant represents that if the Final Determination is upheld and the installation of a new fire alarm system at the premises is required, the cost of installing such system, retaining relevant professionals and applying to DOB for a modification of the certificate of occupancy would cost in excess of \$20,000 and prove a significant hardship; and

FIRE DEPARTMENT’S POSITION

WHEREAS, the Fire Department clarifies that the Final Determination does not require the installation of a new “fire alarm system” at the subject premises, but, rather, the reconnection of the existing sprinkler system to a central monitoring system and that, in the alternative, the Appellant may make an application to DOB, in consultation with the Fire Department, to modify the sprinkler system to provide an alternative alarm notification device or system as a substitute for the central station connection; and

WHEREAS, the Fire Department further clarifies that a “fire alarm system,” as referenced in the Violation Order and the Final Determination, is a component of the “automatic sprinkler system” referenced on the building’s certificate of occupancy that enables central station monitoring of the sprinkler system by detecting water flow in the sprinkler system and sending a signal to a transmitter that transmits an alarm to a private fire alarm company’s central station, which then communicates the alarm to the Fire Department dispatcher; that a sprinkler system with more than 36 heads was installed at the premises and, thus, pursuant to Section 1703.4(b) of the 1968 BC, a “sprinkler alarm” system was additionally required at the premises; that the central monitoring component of the sprinkler system was discontinued contrary to the 1968 BC and the Section 901.6 of the Fire Code; that the central station notified the Fire Department of this discontinuance and the Violation Order followed, seeking the restoration of the connection; and

WHEREAS, the Fire Department asserts that the sprinkler system at the premises was designed and installed with central station monitoring as a necessary component and that the Fire Department’s 1992 Letter of Approval was conditioned on central station monitoring; and

WHEREAS, the Fire Department represents that the failure of the building’s certificate of occupancy to indicate that a “fire alarm system” was required and installed at the subject premises, in addition to an automatic sprinkler system, is not dispositive of such a requirement; that the Appellant does not dispute that the sprinkler system was installed at the premises with central station monitoring connection and, per records provided by the Appellant in the FDNY Appeal and submitted into the record for the subject application, application “FA 2908-86” was filed with DOB for a “fire alarm” at the subject premises on or around November 14, 1986, in addition to a permit for the installation of a “sprinkler system from basement to penthouse” at the subject premises, which was filed under DOB Job No. 100139495 on November 13, 1990; and

WHEREAS, the Fire Department concedes that DOB records do not indicate whether the sprinkler system and central station connection were installed on a voluntary basis or were required as a condition of DOB’s approval of another aspect of proposed work at the subject site, but notes that, the connection having been established, it may not be altered except in compliance with Section 901.6 of the Fire Code, which states:

901.6 Maintenance. Fire protection systems shall be maintained in good working order at all times. Any fire protection system that is not in good working order shall be repaired or replaced as necessary to restore such system to good working order, or, where authorized by the Building Code, removed from the premises; and

WHEREAS, the Fire Department represents that the subject offense raises significant public safety concerns, specifically, if the sprinkler system at the premises activates in response to a fire, the Fire Department may not be notified or such notification may be delayed because of absence of the connection to a central station and, even in the absence of a fire emergency, the discontinuance of the central station monitoring means that a malfunction of the sprinkler system could result in the continuous and surreptitious discharge of water at the premises for hours or even days without being noticed and cause significant damage to the property; and

DISCUSSION

WHEREAS, the Board notes that a “fire alarm system,” as referenced in the Final Determination, is more aptly described as a “sprinkler alarm,” which both parties concede was required to be installed at the subject premises pursuant to Section 1703.4(b) of the 1968 BC due to the provision of more than 36 sprinkler heads in a single fire area, because (1) the Fire Department’s clarification of the term “fire alarm system” (as referring to a device that detects water flow in the sprinkler system and transmits an alarm that is ultimately communicated to the Fire Department dispatcher) is consistent with the definition of “sprinkler alarm” set forth in Section 201.0 of the 1968 BC (“an apparatus constructed and installed so that a flow of water through the sprinkler system equal to, or greater than, that required for a single automatic sprinkler head will cause an alarm to be given”) and (2) Section 1703.4

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of the 1968 BC explicitly requires the provision of a “sprinkler alarm system,” rather than a “fire alarm system,” when more than 36 heads are installed in any fire area or section; and

WHEREAS, the Board notes that Section 1703.11(b) of the 1968 BC additionally provides that, where the pressure from the city water main is insufficient, sprinkler booster pumps may be accepted provided that, among other things, such pumps:

[S]hall be maintained under approved automatic control with closed circuit supervisory attachment. The supervisory attachments shall be directly connected to an office where maintenance personnel are in attendance twenty-four hours a day; or, in lieu thereof, the supervisory attachment may be directly connected to the central station of an approved operating fire alarm company . . . ; and

WHEREAS, the Board finds that a sprinkler alarm system, as require pursuant to Section 1703.4(b) of the 1968 BC was, in fact, installed at the premises with a connection to a central station for monitoring, as evidenced by (1) the Fire Department’s January 3, 1992, Letter of Approval, covering a sprinkler booster pump motor and controller and central office connection to sprinkler alarm-pump; (2) the 1991 Alarm Lease for central station monitoring; and (3) the building’s 1996 certificate of occupancy, which indicates that an automatic sprinkler system was required and installed in compliance with applicable laws, such applicable laws including Section 1703.4(b) of the 1968 BC; and

WHEREAS, the Board additionally finds that such system, particularly the connection to a central office monitor, was required to be maintained pursuant to Section 1703.11(b) of the 1968 BC and Section 901.6 of the Fire Code, but that the system’s connection to a central station was discontinued on or around September 4, 2012, and the Appellant has not provided any evidence demonstrating that the disconnection and removal of the central station monitoring feature of the sprinkler alarm system was authorized by either of the applicable Codes; and

WHEREAS, the Board finds the Appellant’s argument that a sprinkler alarm system monitored by a central supervising station would not be required under the 2014 BC unavailing because the 1968 BC, not the 2014 BC, applied to the subject premises at the time a certificate of occupancy was issued on February 5, 1996, more than a decade prior to the 2014 BC, and that, regardless of whether a sprinkler alarm system was required for occupancy of the subject building as a single-family dwelling under the 1968 BC, once more than 36 sprinkler heads were installed within a fire area at the premises, a sprinkler alarm was required pursuant to Section 1703.11(b) of the 1968 BC and maintenance of the system was required pursuant to Section 901.6 of the Fire Code; and

Therefore, it is Resolved, that the instant appeal, seeking a reversal of the Fire Department decision dated January 31, 2017, is hereby denied.

Adopted by the Board of Standards and Appeals,

August 14, 2018.

2018-127-A

APPLICANT – NYC Mayor’s Office of Housing Recovery
SUBJECT – Application August 1, 2018 – Proposed reconstruction of a storm damaged home that is located within the bed of a mapped street, contrary to General City Law § 35. The property is within a street widening line where there is no interference with a City Capital improvement project. C3A/Special Coastal Risk District. PREMISES AFFECTED – 20-08 Demerest Road, Block 11550, Lot 104, 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 Scibetta.....4

Negative:0

Absent: Commissioner Sheta.....1

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 August 14, 2018, 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 Demerest Road, south of East 20th Road, within a C3A zoning district, in the Special Coastal Risk District, in Queens; and

WHEREAS, by letter dated July 26, 2018, the Department of Environmental Protection (“DEP”) states it has no objection to this application; and

WHEREAS, by letter dated February 14, 2018, the

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Department of Transportation (“DOT”) states it has no objection to this application on condition that the proposal comply with the Department of Buildings’ requirements, including the Builders Pavement Plan; and

WHEREAS, by letter dated January 22, 2018, the Fire Department states that it has no objection to this application on condition that, where the curb-to-curb width of the street is less than 34 feet or where the building is set back 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 does hereby *wave* the 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 the proposal shall comply with the Department of Buildings’ requirements, including the Builders Pavement Plan;

THAT if the curb-to-curb width of the street is less than 34 feet or if the building is set back 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, August 14, 2018.

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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 November 8, 2018, at 10 A.M., for continued hearing.

2017-276-A

APPLICANT – Eric Palatnik, P.C., for Frank McErlean, owner.

SUBJECT – Application October 4, 2017 – Proposed construction of a commercial building not fronting on a legally mapped street, contrary to General City Law 36. M3-1 zoning district.

PREMISES AFFECTED – 96 Industrial Loop, Block 7206, Lot 176, Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Laid over to August 21, 2018, at 10 A.M., for continued hearing.

2017-282-A

APPLICANT – Law Office of Steven Simicich, for Lera Property Holdings, LLC, owner.

SUBJECT – Application May 22, 2018 – Proposed construction of three, two family detached buildings where one of the houses will not be fronting on a mapped street contrary to General City Law 36. R3X Special South Richmond District.

PREMISES AFFECTED – 148 Sprague Avenue, Block 7867, Lot 52, Borough of Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Laid over to October 30, 2018, at 10 A.M., for continued hearing.

ZONING CALENDAR

2017-322-BZ

CEQR #18-BSA-077R

APPLICANT – Philip L. Rampulla, for MUY Brands, LLC, owner.

SUBJECT – Application December 20, 2017 – Special Permit (§73-243) to permit an accessory drive-through to a proposed eating and drinking establishment (UG 6) (*Taco Bell*) contrary to ZR §32-15. C1-2 Lower Density Growth Management Area.

PREMISES AFFECTED – 2259 Richmond Avenue, Block 2380, Lot 80, 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 Scibetta...4

Negative:0

Absent: Commissioner Sheta.....1

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated November 27, 2017, acting on New Building Application No. 520317639, reads in pertinent part:

“Proposed Eating and Drinking Establishment (Use Group 6) with an accessory drive through facility . . . is contrary to section 32-15 and requires a special permit”; and

WHEREAS, this is an application under ZR §§ 73-243 and 73-03 to permit, in an R3-2 (C1-2) zoning district, the operation of an eating or drinking place with accessory drive-through facilities, contrary to ZR § 32-15; and

WHEREAS, a public hearing was held on this application on June 19, 2018, after due notice by publication in *The City Record*, and then to decision on August 14, 2018; and

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

WHEREAS, area residents submitted testimony in opposition to this application, citing concerns with traffic, garbage, noise, lighting and safety; and

WHEREAS, the subject site is located on the south side of Richmond Avenue, between Nome Avenue and Draper Place, in an R3-2 (C1-2) zoning district, on Staten Island; and

WHEREAS, the subject site has approximately 118 feet of frontage along Richmond Avenue, between 128 feet and 148 feet of depth, 16,032 square feet of lot area and is occupied by a one-story commercial building; and

WHEREAS, ZR § 73-243 provides:

In C1-1, C1-2 and C1-3 Districts, (except in Special Purpose Districts) the Board of Standards and Appeals may permit eating or drinking places (including those which provide musical entertainment but not dancing, with a capacity of

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200 persons or less, and those which provide outdoor table service) with *accessory* drive-through facilities for a term not to exceed five years, provided that the following findings are made:

- (a) the drive-through facility contains reservoir space for not less than 10 automobiles;
- (b) the drive-through facility will cause minimal interference with traffic flow in the immediate vicinity;
- (c) the eating or drinking place with *accessory* drive-through facility fully complies with the *accessory* off-street parking regulations for the indicated zoning district, including provision of the required number of *accessory* off-street parking spaces for the indicated zoning district (for the purpose of this finding, the waiver provisions of Sections 36-231 and 36-232 shall be inapplicable);
- (d) the character of the commercially zoned *street* frontage within 500 feet of the subject premises reflects substantial orientation toward the motor vehicle, based upon the level of motor vehicle generation attributable to the existing *commercial uses* contained within such area and to the subject eating or drinking place (excluding the *accessory* drive-through facility portion);
- (e) the drive-through facility shall not have an undue adverse impact on *residences* within the immediate vicinity of the subject premises; and
- (f) there will be adequate buffering between the drive-through facility and adjacent *residential uses*.

In connection therewith, the Board may modify the requirement of Section 32-411 insofar as it relates to the *accessory* drive-through facility. 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 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 applicant states that the proposed eating or drinking place will have an ample parking lot designed for safe maneuvering and that the drive-through lane provides space for the queueing of a minimum of 10 vehicles without interfering with parking; and

WHEREAS, accordingly, the Board finds that the subject drive-through facility contains reservoir space for not less than 10 automobiles; and

WHEREAS, the applicant states that the subject site fronts on a section of Richmond Avenue with seven lanes of traffic and that the traffic lane closest the subject site is designated deceleration lane, ensuring that the drive-through facility will cause minimal interference with the flow of traffic; and

WHEREAS, accordingly, the Board finds that the subject drive-through facility will cause minimal interference with traffic flow in the immediate vicinity; and

WHEREAS, the applicant states that the proposed commercial building contains approximately 2,053 square feet of floor area, which requires seven off-street parking spaces, and that 16 off-street parking spaces are proposed (seven required parking spaces and nine permitted parking spaces); and

WHEREAS, the applicant states that the proposed parking lot has less than 18 parking spaces and less than 6,000 square feet of parking lot area, thereby rendering ZR §§ 37-91 and 37-922 inapplicable; and

WHEREAS, accordingly, the Board finds that the subject eating or drinking place with accessory drive-through facility fully complies with the accessory off-street parking regulations for the indicated zoning district, including provision of the required number of accessory off-street parking spaces for the indicated zoning district; and

WHEREAS, the applicant states that the subject site is surrounded by existing retail uses with parking lots and that there are bus routes along Richmond Avenue but no subway stations or trains in the vicinity; and

WHEREAS, accordingly, the Board finds that the character of the commercially zoned street frontage within 500 feet of the subject site reflects substantial orientation toward the motor vehicle, based upon the level of motor vehicle generation attributable to the existing commercial uses contained within such area and to the subject eating or drinking place (excluding the accessory drive-through facility portion); and

WHEREAS, the applicant states that the subject site is entirely surrounded by existing retail uses and that residences in the vicinity are separated from the subject site by other commercial uses; and

WHEREAS, the applicant states that there is no direct access from the subject site to streets that serve the residential area to the southeast; and

WHEREAS, accordingly, the Board finds that the

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subject drive-through facility shall not have an undue adverse impact on residences within the immediate vicinity of the subject site; and

WHEREAS, the applicant states that the nearest residential use is approximately 130 feet from the rear lot line of the subject site and that safeguards are proposed to minimize any adverse effects on the character of the surrounding area; and

WHEREAS, the applicant proposes to provide a 7'-0" wide setback along the Richmond Avenue frontage of the subject site with planting consisting of 4'-0" high evergreen shrubs, that a planting strip is proposed along the entire length of the northeast lot line with planting of 3'-0" high evergreen shrubs, that a 6'-0" high opaque fence of a residential style and a planting strip will be provided along the rear lot line and that an ample planting area will be provided in the southeastern corner of the subject site with planting consisting of ground cover, evergreen bushes and deciduous trees; and

WHEREAS, in response to community concerns and questions from the Board at hearing, the applicant conducted a sound study with respect to the drive-through facility's menu board, finding that a decibel level of 54 decibels extends partly into an adjoining commercial parking lot's first row of vehicles, though the study did not account for any sound attenuation to be provided by the proposed fencing along the rear lot line; and

WHEREAS, the applicant represents that, because of the distance, any sound or light transmission from the drive-through facility's menu board or the lighting of the subject site will not be heard by or impact any residential use; and

WHEREAS, accordingly, the Board finds that there will be adequate buffering between the drive-through facility and adjacent residential uses; and

WHEREAS, in response to community concerns and the Board's questions at hearing, the applicant notes that, rather than being a retail destination, the subject eating or drinking establishment is a standalone establishment that relies upon "pass-by" traffic (rather than additional traffic) for business and will accordingly not generate any adverse traffic impacts; and

WHEREAS, the applicant states that the subject site will be further limited to vehicles in the righthand lane and that all vehicles entering and exiting the site will comport with the established flow of traffic, thereby having less of an impact on the existing street network; and

WHEREAS, the applicant states that, because of the number of parking space proposed, visitors to the site will be able to select between the drive-through facility and parking, which will ensure that the drive-through lane and associated queueing will be entirely accommodated within the bounds of the subject site; and

WHEREAS, the applicant states that the proposed hours of operation are as follows: Sunday to Thursday, 6:00 a.m. to 11:00 p.m., and Friday and Saturday, 6:00 a.m. to 11:00 p.m. with the drive-through facility open until 2:00 a.m.; and

WHEREAS, the applicant represents that the subject site will provide adequate lighting to ensure security of the subject site and that the proposed hours of operation will minimize the opportunity for loitering by closing the eating or drinking place overnight; 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 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. 18-BSA-077R, dated December 22, 2017; and

WHEREAS, the Board finds that the evidence in the record supports the findings required to be made under ZR §§ 73-243 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion.

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 §§ 73-243 and 73-03 to *permit*, in an R3-2 (C1-2) zoning district, the operation of an eating or drinking place with accessory drive-through facilities, contrary to ZR § 32-15; *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked "Received June 28, 2018"-Seven(7) sheets; and *on further condition*:

THAT this grant shall be limited to a term of ten (10) years, expiring August 14, 2028;

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 14, 2022;

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 14, 2018.

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2018-41-BZ

CEQR #18-BSA-112K

APPLICANT – Jay Goldstein, Esq., for David Janklowicz, owner.

SUBJECT – Application March 16, 2018 – Special Permit (§73-622) to permit the enlargement of a one family home contrary to ZR §23-141 (FAR and Open Space); ZR §23-461 (a) (side yard) and ZR §23-47 (rear yard). R2 zoning district.

PREMISES AFFECTED – 1238 East 29th Street, Block 7646, 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, Commissioner Ottley-Brown and Commissioner Scibetta...4

Negative:0

Absent: Commissioner Sheta.....1

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated February 15, 2018, acting on Alteration Application No. 320910948, reads in pertinent part:

1. Proposed plans are contrary to ZR 23-141 in that the proposed floor area ratio (FAR) exceeds the permitted
2. Proposed plans are contrary to ZR 23-141 in that the proposed open space ratio (OSR) is less than the required
3. Proposed plans are contrary to ZR 23-461(A) in that the proposed side yards are less than the required
4. Proposed plans are contrary to ZR 23-47 in that the proposed rear yard is less than [required]; 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 zoning regulations for floor area, 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 June 26, 2018, after due notice by publication in *The City Record*, with continued hearing on August 14, 2018, 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; and

WHEREAS, the subject site is located on the west side of East 29th Street, between Avenue L and Avenue M, in an R2 zoning district, in Brooklyn; and

WHEREAS, the subject site has approximately 30 feet of frontage along East 29th Street, 100 feet of depth, 3,000 square feet of lot area and is occupied by an existing 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 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 detached single-family residence, as contemplated in ZR § 73-622; and

WHEREAS, the applicant proposes to enlarge the existing residence from 2,117 square feet of floor area (0.71 FAR) to 2,776 square feet of floor area (0.93 FAR), decrease the open space ratio from 0.90 to 0.59, maintain side yards with a depth of 3'-8" to the south and with a depth of 6'-4" to the north and decrease the depth of the rear yard from 30 feet to 20 feet at the first and second floor; and

WHEREAS, the applicant states that, at the subject site, floor area may not exceed 1,500 square feet under ZR § 23-141, the open space ratio must be at least 1.50, side yards must have minimum depths of 8 feet and 5 feet under ZR § 23-461 and the rear yard must have a minimum depth of 30 feet under ZR § 23-47; and

WHEREAS, the applicant represents that the proposed building as enlarged is consistent with the built character of the neighborhood; and

WHEREAS, in support of this contention, the applicant surveyed single- and two-family residences in the surrounding area, finding that there are 17 residences with 0.90 FAR or greater and that 14 residences have rear yards with depths of 25 feet or less; and

WHEREAS, the applicant also submits that, on the subject block, an adjacent residence also has a rear yard with a depth of 20 feet at the first and second floor; and

WHEREAS, the applicant also submitted a rear yard study, lot coverage diagram, photographic streetscape montage and a photographic neighborhood study demonstrating that the proposed building will fit in with the building conditions of the surrounding area; and

WHEREAS, based upon its review of the record and inspections of the subject site and surrounding neighborhood, the Board finds that the proposed building as enlarged will not alter the essential character of the neighborhood or district in which the subject building is located, nor impair the future use or development of the

surrounding area; and

WHEREAS, in response to questions from the Board at hearing about the effect of the enlarged building on residences nearby, the applicant removed the proposed enlargement of the attic and revised the slope of the proposed building's roof; 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 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. 18BSA112K, dated March 19, 2018; and

WHEREAS, the Board finds that the evidence in the record supports the findings required to be made under ZR §§ 73-622 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion.

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 §§ 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 zoning regulations for floor area, open space ratio, side yards and rear yards, contrary to ZR §§ 23-141, 23-461 and 23-47; *on condition* that all work and site conditions shall conform to drawings filed with this application marked "Received July 24, 2018"-thirteen (13) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: floor area shall be limited to 2,776 square feet (0.93 FAR), the open space ratio shall be at least 0.59, side yards shall have a minimum depth of 3'-8" to the south and a minimum depth of 6'-4" to the north and the rear yard shall have a minimum depth of 20 feet at the first and second floor, as illustrated on the Board-approved drawings;

THAT removal of existing joists or perimeter walls in excess of that shown on the Board-approved drawings shall void the special permit;

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 14, 2022;

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

MINUTES

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 14, 2018.

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 45th Avenue. Block 5538, Lot 30. Borough of Queens.

COMMUNITY BOARD #11Q

ACTION OF THE BOARD – Laid over to August 21, 2018, at 10 A.M., for continued hearing.

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 December 4, 2018, at 10 A.M., for adjourned hearing.

190-15-BZ

APPLICANT – Francis R. Angelino, Esq., for Carmine Limited, owner.

SUBJECT – Application August 19, 2015 – Variance (§72-21) to propose a new six-story and bulkhead mixed building with ground floor commercial use and residential use on the upper floors located partially within a R6 zoning district and a C2-6 zoning district.

PREMISES AFFECTED – 51-57 Carmine Street, Block 582, Lot 35, Borough of Manhattan.

COMMUNITY BOARD #2M

ACTION OF THE BOARD – Laid over to November 20, 2018, at 10 A.M., for adjourned hearing.

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

ACTION OF THE BOARD – Laid over to October 23, 2018, at 10 A.M., for continued hearing.

2017-201-BZ

APPLICANT – Law Office of Jay Goldstein, for The Cheder, owner.

SUBJECT – Application May 30, 2017 – 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) and 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), ZR §11-561 and ZR §25-31 (accessory off-street parking) 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)).

PREMISES AFFECTED – 323 Elmwood Avenue, Block 6503, Lot 103, Borough of Brooklyn.

COMMUNITY BOARD #12BK

ACTION OF THE BOARD – Laid over to November 8, 2018, at 10 A.M., for continued hearing.

2017-217-BZ

APPLICANT – Akerman, LLP, for Hylan Properties, LLC, owner.

SUBJECT – Application June 20, 2017 – 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).

PREMISES AFFECTED – 4855 Hylan Boulevard, Block 6401, Lot(s) 1, 3, 5 & 6, Borough of Staten Island.

COMMUNITY BOARD #3 S1

ACTION OF THE BOARD – Laid over to November 8, 2018, at 10 A.M., for continued hearing.

MINUTES

2017-267-BZ

APPLICANT – Law Offices of Vincent L. Petraro, PLLC, for Harbor Lights Enterprises, Inc., owner.

SUBJECT – Application September 13, 2017– 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.

PREMISES AFFECTED – 129-18 Newport Avenue, Block 16211, Lot 47 Borough of Queens.

COMMUNITY BOARD #14Q

ACTION OF THE BOARD – Laid over to September 27, 2018, at 10 A.M., for continued hearing.

2017-291-BZ

APPLICANT – Law Office of Jay Goldstein for Yosef Rabinowitz, owner.

SUBJECT – Application November 2, 2017 – 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.

PREMISES AFFECTED – 1367 East 26th Street, Block 7662, Lot 17, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Laid over to November 8, 2018, at 10 A.M., for adjourned hearing.

2017-292-BZ

APPLICANT – Law Office of Jay Goldstein, for Baruch Wieder, owner.

SUBJECT – Application November 2, 2017 – 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.

PREMISES AFFECTED – 1363 East 26th Street, Block 7662, Lot 19, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Laid over to November 8, 2018, at 10 A.M., for continued hearing.

REGULAR MEETING AUGUST 14, 2018, 1:00 P.M.

Present: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.

ZONING CALENDAR

268-14-BZ

APPLICANT – Akerman LLP, for Kenfa Madison, LLC; Two Deer Group, LLC, owner.

SUBJECT – Application October 31, 2014 – Variance (§72-21) proposed enlargement of the existing Use Group 6, eating and drinking establishment at the subject site. R1-2 zoning district.

PREMISES AFFECTED – 231-06/10 Northern Boulevard, Block 8164, Lot(s) 22,122, 30, 130, 43 15, 230, Borough of Queens.

COMMUNITY BOARD #11Q

ACTION OF THE BOARD – Laid over to August 21, 2018, at 10 A.M. for postponed hearing.

231-15-BZ

APPLICANT – Vincent L. Petraro, PLLC, for Destem Realty and Petra Broadway, LLCs, owner.

SUBJECT – Application September 25, 2015 – Variance (§72-21) Propose nine story, mixed use (residential, community facility and retail building) 120 unit multiple dwelling with UG 4 doctor's office, and UG 6 retail pharmacy, contrary to ZR 22-10 (UG 6 in a Res ZD), ZR 23-145 (Residential Floor Area), ZR 23-22 (Permitted Dwelling Units), and ZR 23-633 (wall height and total height). R6 zoning district.

PREMISES AFFECTED – 5278 Post Road, Block 5835, Lot(s) 3055/3060, Borough of Bronx.

COMMUNITY BOARD #8BX

ACTION OF THE BOARD – Laid over to November 20, 2018, at 10 A.M. for postponed hearing.

2017-321-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for ERY North Tower RHC Tenant LLC, owner; Equinox Hudson Yards, Inc., lessee.

SUBJECT – Application December 19, 2017 – Special Permit (§73-36) to permit the operation of a Physical Cultural Establishment (*Equinox*) located on the first, fourth, fifth and sixth floors of a proposed 72-story mixed-use building contrary to ZR §32-10. C6-4 Special Hudson Yards District.

PREMISES AFFECTED – 560 W. 33rd Street, Block 702, Lot 150, Borough of Manhattan.

COMMUNITY BOARD #4M

MINUTES

ACTION OF THE BOARD – Laid over to November 8, 2018, at 10 A.M. for continued hearing.

2018-4-BZ

APPLICANT – Law Office of Lyra J. Altman, for Laura Betesh and Isaac A. Cabasso, owners.

SUBJECT – Application January 16, 2018 – Special Permit (§73-622) for the enlargement of an existing single-family home contrary ZR §23-142 (floor area, open space and lot coverage); ZR §23-48 (side yards) and ZR §23-47 (rear yard). R4 zoning district.

PREMISES AFFECTED – 2213 East 13th Street, Block 7374, Lot 79, Borough of Brooklyn.

COMMUNITY BOARD #15BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:0

ACTION OF THE BOARD – Laid over to August 21, 2018, at 10 A.M., for decision, hearing closed.

2018-7-BZ

APPLICANT – Law Office of Lyra J. Altman, for Eli Halabi, owner.

SUBJECT – Application January 18, 2018 – Special Permit (§73-622) for the enlargement of an existing single-family home contrary ZR §23-142 (floor area, open space and lot coverage); ZR §23-461 (side yards) and ZR §23-47 (rear yard). R4 zoning district.

PREMISES AFFECTED – 291 Avenue W, Block 7151, Lot 30, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to November 8, 2018, at 10 A.M. for continued hearing.

2018-29-BZ

APPLICANT – Law Office of Lyra J. Altman, for Brenda Zanziper and Yerachmiel Zanziper, owners.

SUBJECT – Application February 27, 2018 – Special Permit (§73-621) to permit the enlargement of an existing single-family home contrary to ZR §23-142 (floor area ratio, lot coverage and open space). R3-2 zoning district.

PREMISES AFFECTED – 1637 Madison Place, Block 7702, Lot 28, Borough of Brooklyn.

COMMUNITY BOARD #18BK

ACTION OF THE BOARD – Laid over to November 8, 2018, at 10 A.M. for continued hearing.

2018-62-BZ

APPLICANT – Sheldon Lobel, P.C., for RFK/K 77 Sands Owner, LLC; Brooklyn Laboratory Charter Schools, lessees.

SUBJECT – Application April 30, 2018 – Special Permit (§73-19) to permit the operation of a school (UG 3) (Brooklyn Laboratory Charter School) to be located on portions of the first, the second through fifth floors and part of the twelfth floor of an existing building contrary to ZR §42-10. M1-6 zoning district.

PREMISES AFFECTED – 73-77 Sands Street, Block 77, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #2BK

ACTION OF THE BOARD – Laid over to August 21, 2018, at 10 A.M. for continued hearing.

Carlo Costanza, Executive Director

BULLETIN

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Tuesday, August 21, 2018**

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DOCKETS

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2018-135-A

40 East 72nd Street, Located on 72nd Street, between Park Avenue and Madison Avenue, Block 01386, Lot(s) 7503, Borough of **Manhattan, Community Board: 8**. Appeal of a final determination of the New York City Department of Buildings determination to deny a request that the Department consider multiple chimney flues that serve several fireplaces in the same building on an individual basis for the purpose of determining the minimum required distance between the subject building flue termination and the adjacent building. R10 district.

2018-136-BZ

251-77 Jericho Turnpike, Located on the northwestern corner of Little Neck Parkway and Jericho Turnpike, Block 08668, Lot(s) 80, 108, Borough of **Queens, Community Board: 13**. Special Permit (§73-44) to permit a reduction in the required parking spaces for an ambulatory diagnostic or treatment facility with an PRC-B1 parking category contrary to ZR §36-21. C8-1/R2A zoning district. C8-1/R2A district.

2018-137-BZ

251-77 Jericho Turnpike, Located on the northwestern corner of Little Neck Parkway and Jericho Turnpike, Block 08668, Lot(s) 108, 80, Borough of **Queens, Community Board: 13**. Special Permit (§73-19) to permit the operation of a daycare (Children of America) contrary to ZR §32-10. C8-1 zoning district. C8-1/R2A district.

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

CALENDAR

REGULAR MEETING OCTOBER 11, 2018, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Thursday morning, October 11, 2018, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

SPECIAL ORDER CALENDAR

498-83-BZ

APPLICANT – Rampulla Associates Architects, for 2131 Hylan Holding, llc, owner.

SUBJECT – Application June 16, 2017 – Amendment of a previously approved Variance (§72-21) which permitted the enlargement of a then existing banquet hall into the residential portion of the lot and permitted accessory parking within the residential portion of the lot. The amendment seeks to demolish the existing building to permit the development of an As-of-Right commercial building retaining the accessory parking on the residential portion of the lot; Extension of Time to Obtain a Certificate of Occupancy; Waiver of the Rules. C8-1 & R3X (Lower Density Growth Management Area)

PREMISES AFFECTED – 2131 Hylan Boulevard, Block 3589, Lot 63, Borough of Staten Island.

COMMUNITY BOARD #2SI

247-09-BZ

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for Central Synagogue, owner.

SUBJECT – Application July 11, 2018 – Extension of Time to complete construction of a previously approved variance (§72-21) for the expansion of a UG4 community use facility (Central Synagogue), which expired on June 10, 2018. C5-2 & C5-2.5 (MiD) zoning district.

PREMISES AFFECTED – 123 East 55th Street, Block 1310, Lot 10, Borough of Manhattan.

COMMUNITY BOARD #5M

62-13-BZ

APPLICANT – Sheldon Lobel, P.C., for 2703 East Tremont LLC, owner; BXC Gates, LLC, lessee.

SUBJECT – Application March 23, 2018 – Extension of Term of a previously approved Special Permit (§73-243) which permitted the legalization of an eating and drinking establishment (Wendy's) with an accessory drive-through facility which expires on July 9, 2018. C1-2/R6 zoning district.

PREMISES AFFECTED – 2703 East Tremont Avenue, Blok 4076, Lot 12, Borough of Bronx.

COMMUNITY BOARD #10BX

123-13-BZ & 125-13-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for 95-97 Grattan Street, LLC, owner.

SUBJECT – Application July 17, 2018 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) to allow for a new seven-family residential development, contrary to use regulation ZR §42-00 which expired on June 24, 2018. M1-1 zoning district.

PREMISES AFFECTED – 95 & 97 Grattan Street, Block 3004, Lot 39, Borough of Brooklyn.
COMMUNITY BOARD #1BK

APPEALS CALENDAR

2017-318-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Blue Print Metals, Inc., owner.

SUBJECT – Application October 11, 2018 – Proposed development of a one-story warehouse building (UG 16B) to be divided into six separate units not fronting on a mapped street contrary to General City Law §36. M3-1 (Special Richmond District).

PREMISES AFFECTED – 155 Johnson Street, Block 7207, Lot 283, Borough of Staten Island.

COMMUNITY BOARD #3SI

REGULAR MEETING OCTOBER 11, 2018, 1:00 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Thursday afternoon, October 11, 2018, 1:00 P.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

ZONING CALENDAR

2016-1-BZ

APPLICANT – Akerman, LLP, for Union Square Associates, LLC, owner; CrossFit Union Square, LLC, lessee.

SUBJECT – Application January 4, 2016 – Special Permit (§73-36) to permit a physical culture establishment (fitness center) on a portion of an existing building's ground and cellar floors. C6-1/C6-4 (Special Union Square District) zoning district.

PREMISES AFFECTED – 1 Union Square West, Block 842, Lot 21, Borough of Manhattan.

COMMUNITY BOARD #2M

CALENDAR

2016-4238-BZ

APPLICANT – Qiang Su Ra, for 388 Broadway Owners LLC, owner; Eden Day Spa, lessee.

SUBJECT – Application August 10, 2016 – Special Permit (§73-36) to operate a physical culture establishment (*Eden Day Spa*) within an existing building. C6-2A zoning district within the Tribeca East Historic District.

PREMISES AFFECTED – 388 Broadway, Block 195, Lot 3, Borough of Manhattan.

COMMUNITY BOARD #1M

2017-33-BZ

APPLICANT – Philip L. Rampulla, for Dorothy Lasiello, owner.

SUBJECT – Application February 3, 2017 – 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).

PREMISES AFFECTED – 398 Lenevar Avenue, Block 6949, Lot 26, Borough of Staten Island.

COMMUNITY BOARD #3SI

2017-286-BZ

APPLICANT – Eric Palatnik, P.C., for Ditmars 31st Associates LLC, owner; KCOR Ditmas LLC, lessee.

SUBJECT – Application October 27, 2017 – 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.

PREMISES AFFECTED – 22-06 31st Street, Block 844, Lot 40, Borough of Queens.

COMMUNITY BOARD #1Q

2018-10-BZ

APPLICANT – Sheldon Lobel, P.C., for Gershon Klein, owner.

SUBJECT – Application January 26, 2018 – Special Permit (§73-622) to permit the enlargement of a detached single-family home contrary to ZR §23-141 (FAR and open space ratio); ZR §23-631 (front yard sky exposure plane) and ZR §23-632 (rear yard and side yards). R2 zoning district.

PREMISES AFFECTED – 1238 East 26th Street, Block 7643, Lot 60, Borough of Brooklyn.

COMMUNITY BOARD #14BK

2018-57-BZ

APPLICANT – Jay Goldstein, Esq., for 24 West 40th Associates LLC, owner; CorePower Yoga, lessee.

SUBJECT – Application April 24, 2018 – Special Permit (§73-36) to permit the operation of a physical cultural establishment (*Core Power Yoga*) located on the second floor of an existing building contrary to ZR §32-10. C5-3 (MID) district.

PREMISES AFFECTED – 24 West 40th Street, Block 841, Lot 7502, Borough of Manhattan.

COMMUNITY BOARD #5M

Carlo Costanza, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, AUGUST 21, 2018
10:00 A.M.**

Present: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.

SPECIAL ORDER CALENDAR

390-61-BZ

APPLICANT – Sahn Ward Coschignano, PLLC, for 33rd Street LLC, PJW 33rd Street, LLC, 4JS Lexington LLC, Stone Oak, LLC, owner; 148 E. 33rd Street Associates, LLC c/o Rapid Park, lessee.

SUBJECT – Application March 22, 2018 – Extension of Term (§11-411) of a previously approved variance which permitted a four (4) story public parking garage and an auto rental establishment (UG 8) which expired on March 3, 2018. R8B zoning district.

PREMISES AFFECTED – 148-150 East 33rd Street, Block 888, Lot 51, 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

Absent: Commissioner Scibetta and Commissioner Sheta...2

THE RESOLUTION –

WHEREAS, this is an application for an extension of term of a variance, previously granted by the Board; and

WHEREAS, a public hearing was held on this application on August 21, 2018, after due notice by publication in *The City Record*, and then to decision on the same date; and

WHEREAS, Vice-Chair Chanda performed an inspection 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 33rd Street, between Lexington Avenue and Fifth Avenue, in an R8B zoning district, in Manhattan; and

WHEREAS, the Board has exercised jurisdiction over the subject site since July 18, 1961, when, under the subject calendar number, the Board granted a variance to permit the erection of a four-story, with cellar, structure for use as an open type parking lot for a term of twenty (20) years, expiring July 18, 1981, on condition that the rear wall of the building be a masonry wall of a 3-hour fire construction except for a 20-foot opening and that a certificate of occupancy be obtained; and

WHEREAS, on December 11, 1978, under the subject

calendar number, the Board granted an extension of term of ten (10) years, expiring November 14, 1988, on condition that a new certificate of occupancy be obtained within one (1) year, by November 14, 1979; and

WHEREAS, on April 4, 1989, under the subject calendar number, the Board granted an extension of term of ten (10) years, expiring November 14, 1998, on condition that a new certificate of occupancy be obtained within one (1) year, by April 4, 1990; and

WHEREAS, on March 3, 1998, under the subject calendar number, the Board granted an extension of term of ten (10) years, expiring March 3, 2008, on condition that no signs be installed at the roof level of the subject site, that the site be maintained graffiti free and that a new certificate of occupancy be obtained within one (1) year, by March 3, 1999; and

WHEREAS, on January 29, 2008, under the subject calendar number, the Board granted an extension of term of ten (10) years, expiring March 3, 2018, on condition that the term be listed on the certificate occupancy, that signage comply with C1 zoning district regulations and that a revised certificate of occupancy be obtained by June 29, 2008; and

WHEREAS, on December 13, 2011, under the subject calendar number, the Board amended the variance to permit the change in use at the cellar level from a parking garage (Use Group 8) to an auto rental establishment (Use Group 8) and granted an extension of time to obtain a certificate of occupancy, expiring December 13, 2012, on condition that the hours of operation for the auto rental establishment use be limited to Monday to Friday, 7:30 a.m. to 7:30 p.m., Saturday, 7:30 a.m. to 3:00 p.m., and Sunday, 8:00 a.m. to 3:00 p.m., on condition that the above conditions be listed on the certificate of occupancy; and

WHEREAS, on April 16, 2013, under the subject calendar number, the Board granted an extension of time to obtain a certificate of occupancy, expiring October 16, 2014; and

WHEREAS, the term having expired, the applicant now seeks an extension; and

WHEREAS, the applicant states that no changes to the existing layout, operations or use of the parking garage are proposed herein; and

WHEREAS, in response to questions from the Board at hearing, the applicant states that lighting on the rooftop is shielded from adjacent residences and that barbed wire will be removed; and

WHEREAS, based upon its review of the record, the Board has determined 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 July 18, 1961, as amended through April 16, 2013, so that as amended this portion of the resolution shall read: “to *permit* an extension of term of ten (10) years, expiring March 3, 2028; *on condition* that all work and site conditions shall conform to drawings filed with this application marked “Received July 9, 2018” – Nine (9)

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sheets; and *on further condition*:

THAT the term of the grant shall be limited to ten (10) years, expiring March 3, 2028;

THAT lighting on the rooftop of the subject building shall be directed away from residential windows and shall be shielded;

THAT barbed wire at the subject site shall be removed;

THAT the hours of operation for the auto rental establishment use shall be limited to Monday to Friday, 7:30 a.m. to 7:30 p.m., Saturday, 7:30 a.m. to 3:00 p.m., and Sunday, 8:00 a.m. to 3:00 p.m.;

THAT the site shall be maintained graffiti free;

THAT no signs shall be installed at the roof level of the subject site;

THAT signage shall comply with C1 zoning district regulations;

THAT the rear wall of the building shall be a masonry wall of a 3-hour fire construction except for a 20-foot opening;

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 21, 2022;

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 21, 2018.

40-06-BZ

APPLICANT – MP Design and Construction/Maria Maloney, for UDR 10 Hanover-LLC-Constantine Koukoulis, owner; 10 Hanover Sq Gym, LLC-Alex Reznik-Senior MGM Dir, lessee.

SUBJECT – Application June 9, 2017 – Extension of Term of a previously approved Special Permit (§73-36) which permitted the operation of a Physical Culture Establishment (Goldman-Sachs) on the cellar and sub-cellar levels in a 21-story mixed-use building which expired on August 22, 2016; Amendment to permit the change in operator to (Complete Body) and a change in hours of operation; Waiver of the Rules. C5-5 (LM) zoning district

PREMISES AFFECTED – 10 Hanover Sq (aka 4-12 Hanover Sq. 110-124 Pearl St, 76-88 Water Street), Block 31, 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 and Commissioner Ottley-Brown3

Negative.....0

Absent: Commissioner Sheta and Commissioner Scibetta...2

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Board’s Rules of Practice and Procedure, an amendment and an extension of term of a special permit, previously granted by the Board; and

WHEREAS, a public hearing was held on this application on May 15, 2018, after due notice by publication in *The City Record*, and then to decision on August 21, 2018; and

WHEREAS, Commissioner Ottley-Brown performed an inspection 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 Hanover Square, between Water Street and Pearl Street, in a C5-5 zoning district, in Manhattan; and

WHEREAS, the Board has exercised jurisdiction over the subject site since August 22, 2006, when, under the subject calendar number, the Board granted a special permit to allow the operation of a physical culture establishment (“PCE”) on the first floor, cellar and sub-cellar of the subject building for a term of ten (10) years, expiring August 22, 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 to Thursday, 5:30 a.m. to 10:30 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 all massages be performed only by New York State licensed massage professionals, 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”) and that fire safety measures be installed and maintained as shown on the Board-approved drawings; and

WHEREAS, the term having expired, the applicant now seeks a waiver of the Board’s Rules of Practice and Procedure to permit the late filing of this application, an amendment and an extension of term; and

WHEREAS, the applicant represents that there have been no changes to the floor plan, as previously approved by the Board; and

WHEREAS, the applicant states that the PCE has operated as Complete Body since June 15, 2012, with the following amended hours of operation proposed: Monday to Thursday, 5:00 a.m. to 10:00 p.m., Friday, 5:00 a.m. to 8:00 p.m., and Saturday and Sunday, 8:00 a.m. to 6:00 p.m.; and

WHEREAS, the Department of Investigation has performed a background check on the corporate owner and operator of the establishment and the principals thereof, and

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issued a report which the Board has deemed to be satisfactory; and

WHEREAS, by letter dated August 17, 2018, the Fire Department states that it has no objection to this application on condition that the Schedule A be amended to reflect the physical culture establishment at the first floor, cellar and sub-cellar of the subject building and that the operating permit for public assembly be amended to reflect occupancy of the physical culture establishment; 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, based upon its review of the record, the Board has determined that the requested waiver of the Board's Rules of Practice and Procedure, amendment 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 *wave* the Rules of Practice and Procedure and *reopen* and *amend* the resolution, dated August 22, 2006, so that as amended this portion of the resolution shall read: "to *permit* an extension of term of ten (10) years, expiring August 22, 2026; *on condition* that all work, operations and site conditions shall conform to drawings filed with this application marked "Received August 20, 2018"-Nine (9) sheets; and *on further condition*:

THAT the term of this grant shall be limited to ten (10) years, expiring August 22, 2026;

THAT the Schedule A shall be amended to reflect the physical culture establishment at the first floor, cellar and sub-cellar of the subject building;

THAT the operating permit for public assembly shall be amended to reflect occupancy of the physical culture establishment;

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 shall be limited to Monday to Thursday, 5:00 a.m. to 10:00 p.m., Friday, 5:00 a.m. to 8:00 p.m., and Saturday and Sunday, 8:00 a.m. to 6:00 p.m.;

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 within four (4) years, by August 21, 2022;

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

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 drawings;

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 21, 2018.

2-10-BZ

APPLICANT – Venable LLP, for The New York Eye and Ear Infirmary/Beth Israel Medical Center, owner.

SUBJECT – Application June 18, 2018 – Amendment of a previously approved Special Permit (§73-461) which permitted the enlargement of a community facility (New York Eye and Ear Infirmary) within the required rear yard equivalent, contrary to §33-283. The Amendment seeks the addition of Tax Lots 20 and 52 to the existing zoning lot currently consisting of lots 60, 1, 5, and 7. C1-6A/C1-7A zoning districts.

PREMISES AFFECTED – 315, 327 East 13th Street, 310, 300, 326 East 14th Street, 224 Second Avenue, Block 455, Lot(s) 60, 1, 5, 7, 20, 52, Borough of Manhattan.

COMMUNITY BOARD #3M

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

Absent: Commissioner Scibetta and Commissioner Sheta...2

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings ("DOB"), dated June 12, 2018, acting on Alteration Application No. 123395655, reads in pertinent part:

"The proposed plan is contrary to that approved by Board of Standards and Appeals cal. no.

2-10-BZ"; and

WHEREAS, this is an application for an amendment of a special permit, previously granted by the Board; and

WHEREAS, a public hearing was held on this application on August 21, 2018, after due notice by publication in *The City Record*, and then to decision on the same date; and

WHEREAS, Community Board 3, Manhattan, waives its recommendation for this application; and

WHEREAS, the subject site is located on the south side of East 14th Street, between Second Avenue and First Avenue, partially in a C1-6A zoning district and partially in a C1-7A zoning district, in Manhattan; and

WHEREAS, the subject zoning lot has frontage along East 14th Street, frontage along Second Avenue, frontage

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along East 13th Street, approximately 44,870 square feet of lot area and consists of Lots 60, 1, 5 and 7; and

WHEREAS, the Board has exercised jurisdiction over the subject site since March 2, 2010, when, under the subject calendar number, the Board granted a special permit to allow the enlargement of a nine-story community-facility building into the required rear yard equivalent of a through lot; and

WHEREAS, the applicant now seeks an amendment to merge Lots 52 and 20 into the subject zoning lot that currently consists of Lots 60, 1, 5 and 7, thereby increasing the lot area of the subject zoning lot from approximately 44,870 square feet to 61,441 square feet; and

WHEREAS, pursuant to ZR §§ 73-11, the Board may, in appropriate cases, permit an amendment of a special permit; and

WHEREAS, the applicant submits that the enlargement allowed by the subject special permit has since been constructed and that a certificate of occupancy has been obtained; and

WHEREAS, the applicant states that the proposed amendment would not alter the physical structure authorized by the subject special permit and would not disturb any of the Board's findings; and

WHEREAS, based upon its review of the record, the Board has determined 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 March 2, 2010, so that as amended this portion of the resolution shall read: "to *permit* an amendment to merge Lots 52 and 20 into the subject zoning lot; *on condition* that all work and site conditions shall conform to drawings filed with this application marked "Received June 18, 2018"-Five (5) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as reflected on the Board-approved drawings;

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 21, 2022;

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 21, 2018.

163-13-BZ

APPLICANT – Eric Palatnik, P.C., for 39th Avenue Realty Management, LLC, owner.

SUBJECT – Application August 21, 2018 – Extension of Time to Complete Construction of a previously approved Special Permit (§73-44) permitting the reduction of parking spaces for the enlargement of a building containing Use Group 6 professional offices which expired on April 29, 2018. C4-2 zoning district.

PREMISES AFFECTED – 133-10 39th Avenue, Block 4973, Lot 12, 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

Absent: Commissioner Scibetta and Commissioner Sheta...2

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 August 21, 2018, after due notice by publication in *The City Record*, 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 subject site is located on the south side of 39th Avenue, between College Point Boulevard and Prince Street, in a C4-2 zoning district, in Queens; and

WHEREAS, the Board has exercised jurisdiction over the subject site since April 29, 2014, when, under the subject calendar number, the Board granted a special permit to allow a reduction in the required number of accessory parking spaces in connection with the enlargement of an existing office building (Use Group 6) from 28.75 spaces to 14.38 spaces on condition that there be no change in the use of the site without prior review and approval by the Board, that no certificate of occupancy may 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-street radius, that the above conditions appear on the certificate of occupancy and that DOB confirms that the 14.38 accessory parking spaces authorized under this grant may be waived, in accordance with ZR §§ 36-31 and 36-231; and

WHEREAS, the time to complete construction having expired, the applicant now seeks an extension; and

WHEREAS, based upon its review of the record, the Board has determined 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 April 29, 2014, so that as amended this portion of the

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resolution shall read: “to *permit* an extension of time to complete construction of four (4) years, expiring April 29, 2022; *on condition*:

THAT there shall be no change in the use of the site without prior review and approval by the Board;

THAT no certificate of occupancy may 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-street 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 April 29, 2022;

THAT DOB will confirm that the 14.38 accessory parking spaces authorized under this grant may be waived, in accordance with ZR §§ 36-31 and 36-231;

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 21, 2018.

254-13-BZ

APPLICANT – Law Offices of Marvin B. Mitzner LLC, for Lisjen Realty Inc., owner.

SUBJECT – Application March 29, 2018 – Amendment of a previously approved Variance (§72-21) permitting a development contrary to floor area (§23-141(a)), dwelling units (§23-22), lot coverage (§23-141(a)), front yard (§23-45(a)), side yard (§23-462(a)), and building height (§23-631(b)) regulations. The amendment seeks to increase the height of the elevator bulkhead contrary to the previously approved plans. R3-2 zoning district.

PREMISES AFFECTED – 2881 Nostrand Avenue, Block 7691, Lot 91, Borough of Brooklyn.

COMMUNITY BOARD #18BK

ACTION OF THE BOARD – Application withdrawn.

THE VOTE TO WITHDRAW –

Affirmative: Chair Perlmutter, Vice-Chair Chanda and Commissioner Ottley-Brown.....3

Negative.....0

Absent: Commissioner Sheta and Commissioner Scibetta...2

Adopted by the Board of Standards and Appeals, August 21, 2018.

677-53-BZ

APPLICANT – Akerman LLP, for James Marchetti, owner.

SUBJECT – Application November 17, 2016 – Extension of Term (§11-411) of a previously granted Variance permitting the operation of a UG16 Auto Body Repair Shop (*Carriage House*) with incidental painting and spraying which expired on October 18, 2016; Extension of Time to Obtain a Certificate of Occupancy which expired on October 18, 2012. Waiver of the Rules.C2-2/R4 zoning district.

PREMISES AFFECTED – 61-28 Fresh Meadow Lane, Block 6901, Lot 48, Borough of Queens.

COMMUNITY BOARD #8Q

ACTION OF THE BOARD – Laid over to October 30, 2018, at 10 A.M., for adjourned hearing.

60-82-BZ

APPLICANT – Eric Palatnik, P.C., for BP Products North America, owner.

SUBJECT – Application July 20, 2016 – Extension of Term (§11-411) of a previously granted variance permitting the operation of an Automotive Service Station (UG 16B) which expired on July 7, 2016. C2-3/R7X zoning district.

PREMISES AFFECTED – 60-11 Queens Boulevard, Block 1338, Lot 1, Borough of Queens.

COMMUNITY BOARD #2Q

ACTION OF THE BOARD – Laid over to October 11, 2018, at 10 A.M., for continued hearing.

540-84-BZ

APPLICANT – Eric Palatnik, P.C., for 341 Soundview Corp., owner.

SUBJECT – Application June 20, 2016 – Extension of Term of a previously approved Variance (§72-21) which permitted the operation of an Automotive Service Station (UG 16B) which expired on Jun 20, 2016. R3-2 zoning district.

PREMISES AFFECTED – 341 Soundview Avenue, Block 3473, Lot 43, Borough of Bronx.

COMMUNITY BOARD #9BX

ACTION OF THE BOARD – Laid over to October 30, 2018, at 10 A.M., for adjourned hearing.

31-91-BZ

APPLICANT – Alfonso Duarte, for Frank Mancini, owner.

SUBJECT – Application April 13, 2017 – Extension of term and amendment (§ 1-07.3(3) (ii)) of the Board's Rules of Practice and Procedures for a previously granted Variance (§72-21) which permitted a one story enlargement to an existing non-conforming eating and drinking establishment (Use Group 6) which expired on July 28, 2012;. Waiver of the Rules. R6 & R6B zoning districts.

PREMISES AFFECTED – 173 Kingsland Avenue aka 635 Meeker Avenue, Block 2705, Lot 34, Borough of Brooklyn.

COMMUNITY BOARD #1SI

ACTION OF THE BOARD – Laid over to January

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29, 2019, at 10 A.M., for adjourned hearing.

APPEALS CALENDAR

170-92-BZ

APPLICANT – Gerald J. Caliendo, RA, AIA, for Yeheskel Elias/Northern Boulevard Holding Corp., owner.

SUBJECT – Application August 9, 2017 – Extension of Term and amendment of a previously approved Variance (§72-21) which permitted the operation of an automotive laundry (UG 16B), expiring on December 7, 2018; Waiver of Rules. R1-2 zoning district.

PREMISES AFFECTED – 232-04 Northern Boulevard, Block 8165, Lot 23, Borough of Queens.

COMMUNITY BOARD #11Q

ACTION OF THE BOARD – Laid over to November 20, 2018, at 10 A.M., for continued hearing.

132-04-BZ

APPLICANT – Eric Palatnik, P.C., for Paco East Houston, LLC, owner.

SUBJECT – Application January 27, 2017 – 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. R7-2 zoning district.

PREMISES AFFECTED – 310 East Houston Street, Block 384, Lot(s) 4, 40, Borough of Manhattan.

COMMUNITY BOARD #3M

ACTION OF THE BOARD – Laid over to November 8, 2018, at 10 A.M., for continued hearing

322-05-BZ

APPLICANT – Eric Palatnik, P.C., for Queens Jewish Community Council, owner.

SUBJECT – Application April 6, 2017 – Extension of Time to Complete Construction for a previously granted variance (§72-21) which permitted the enlargement of an existing two story home and the change in use to a community use facility (Queens Jewish Community Council), which expired on March 7, 2017. R4B zoning district.

PREMISES AFFECTED – 69-69 Main Street, Block 6642, Lot 1, Borough of Queens.

COMMUNITY BOARD #8Q

ACTION OF THE BOARD – Laid over to January 29, 2019, at 10 A.M., for adjourned hearing.

102-15-A

APPLICANT – Eric Palatnik, P.C., for Kathleen Spezio, owner.

SUBJECT – Application May 11, 2015 – Proposed enlargement of a building located partially within the bed of mapped unbuilt street, pursuant Article 3 Section 35 of the General City Law and waiver under ZR 72-10-(g). R3-2/SRD zoning district.

PREMISES AFFECTED – 1088 Rossville Avenue, Block 7067, Lot 1, 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.....3

Negative.....0

Absent: Commissioner Sheta and Commissioner Scibetta...2

THE RESOLUTION –

WHEREAS, the decision on behalf of the Staten Island Borough Commissioner, dated April 10, 2015, acting on Department of Buildings (“DOB”) Application No. 520233998 reads in pertinent part:

1. GCL 35: Proposed construction 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. ZR [107-461]: 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 enlargement of a two-family dwelling partially located within the bed of a mapped street, contrary to General City Law (“GCL”) § 36, and a waiver of bulk regulations necessary to address non-compliances resulting from the location of the development within and outside the improved streets, pursuant to ZR § 72-01(g); and

WHEREAS, a public hearing was held on this application on March 27, 2018, after due notice by publication in *The City Record*, with continued hearings on May 15, 2018, June 26, 2018, and August 21, 2018, and then to decision on that date; and

WHEREAS, Community Board 3, Staten Island, recommends disapproval of this application, stating that the proposed construction in the bed of Rossville Avenue will disrupt that heavily trafficked and major thoroughfare, that the proposal lacks adequate parking and that the site has been advertised as a day care center, not a two-family dwelling as represented in this application; and

WHEREAS, Commissioner Ottley-Brown performed an inspection of the site and surrounding neighborhood; and

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WHEREAS, the subject site is located on the northwestern corner of Rossville Avenue and Poplar Avenue, in an R3-2 zoning district, in the Special South Richmond Development District (SRD), on Staten Island; and

WHEREAS, according to the New York City Tax Map and a survey of the site submitted by the applicant, the site is located within the street widening lines of both Rossville Avenue to a depth of approximately 15 feet and Poplar Avenue to a depth of approximately 11 feet; and

WHEREAS, the site has approximately 46 feet of frontage along Rossville Avenue, 89 feet of frontage along Poplar Avenue, 3,994 square feet of lot area and is occupied by a one-family, one-and-one-half story residential building partially located within mapped, but unbuilt, portions of both Rossville Avenue and Poplar Avenue; and

WHEREAS, in response to the Community Board's statements regarding the use of the site as a day care facility, the applicant acknowledged that the existing building was previously occupied as a day care, but stated that such use was terminated on October 18, 2017, and provided a letter from the New York State Department of Health and Mental Hygiene's Bureau of Child Care confirming a request to close the "Group Family Day Care Program" at the subject site on such date; and

WHEREAS, the applicant proposes to enlarge the existing dwelling into a two-family, two-story dwelling, maintaining the existing front yards, which measure approximately 4.74 feet to the subject property's southern lot line fronting Poplar Avenue and approximately 5 feet to the subject property's eastern lot line fronting Rossville Avenue; and

WHEREAS, at the subject site, front yards with a depth of at least 18 feet are required pursuant to ZR § 107-461; and

WHEREAS, GCL § 35 reads in pertinent part:

For the purpose of preserving the integrity of such official map or plan no permit shall hereby be issued for any building in the bed of any street or highway shown or laid out on such map or plan, provided, however, that is the land within such mapped street or highway is not yielding a fair return on its value to the owner, the board of appeals or other similar board in any city which has established such board having power to make variances or exception in zoning regulations shall have power in a specific case by the vote of a majority of its members to grant a permit for a building in such street or highway, or tend to cause a change of such official map or plan, and such board may impose reasonable requirements as a condition of granting such permit, which requirements shall inure to the benefit of the city; and

WHEREAS, with respect to the legal non-complying status of the existing front yard depths, the applicant provided a 1937 Sanborn maps of the immediate area evidencing a one-and-a-half story structure constructed on the subject site in approximately the same location as the existing structure, that

is, in the extreme southeastern corner of the site close to the intersection of Rossville and Poplar Avenues; and

WHEREAS, the applicant submits that the proposed enlargement will comply with all applicable regulations of the Zoning Resolution except those relating to minimum front yard depth and, thus, a waiver of ZR § 72-01(g) is required in addition to waiver of GCL § 35; and

WHEREAS, ZR § 72-01(g) reads in relevant part:

The Board of Standards and Appeals (referred to hereinafter as the Board) shall have the power, pursuant to the provisions of the New York City Charter and this Resolution, after public notice and hearing . . . to waive *bulk* regulations affected by unimproved *streets*¹ where a *development, enlargement* or alteration consists in part of construction within such *streets* and where such *development, enlargement* or alteration would be *non-complying* absent such waiver, provided the Board has granted a permit pursuant to Section 35 of the General City Law and has prescribed conditions which require the portion of the *development* or *enlargement* to be located within the unimproved *streets* to be compliant and conforming to the provision of this Resolution. Such bulk waivers shall only be as necessary to address *non-compliance* resulting from the location of the *development* or *enlargement* within and outside the unimproved *streets*, and the *zoning lot* shall comply to the maximum extent feasible with all applicable zoning regulations as if such unimproved *streets* were not mapped. . . .; and

WHEREAS, while the applicant originally proposed two off-street parking spaces, the proposal was subsequently revised to provide three off-street parking spaces in compliance with ZR § 25-22; and

WHEREAS, by letter dated July 23, 2015, the Fire Department states that it has neither objections nor recommendations with regards to this application; and

WHEREAS, by letter dated June 25, 2018, the New York City Department of Transportation ("DOT") states that, according to the Staten Island Borough President's Topographical Bureau, Rossville Avenue is mapped at a width of 50 feet on the City Map and has a Corporation Counsel Opinion of Dedication ("CCO"), dated June 22, 1982, for 35 to 40 feet as-in-use and Poplar Avenue is mapped at a width of 40 feet on the City Map and was deeded to the City of New York at that width; and

WHEREAS, DOT additionally states that the improvement of Rossville and Poplar Avenues at the subject location, which would involve the taking of a portion of the site, is not presently included in DOT's Capital Improvement Program, though this does not preclude a change in the program in the future; and

WHEREAS, by letter dated May 14, 2018, the New York City Department of Environmental Protection ("DEP")

1 Words in italics are defined terms per ZR § 12-10.

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states that there is an existing 15 inch diameter sanitary sewer and a 12 inch diameter and 20 inch diameter City water main in the bed of Rossville Avenue between Veterans Road East and Poplar Avenue; there is an existing 10 inch diameter sanitary sewer and an 8 inch diameter water main the bed of Poplar Avenue between Rossville Avenue and Veterans Road East; that the Drainage Plan No: TD-5, Sheet 5 of 5 dated December 13, 1973, for the subject location calls for a 15 inch diameter sanitary sewer and 60 inch diameter storm sewer in the bed of Rossville Avenue between Veterans Road East and Poplar Avenue, and for the 10 inch diameter sanitary sewer and 18 inch diameter storm sewer in the bed of Poplar Avenue between Rossville Avenue and Veterans Road East; that the applicant has submitted a Topographical Survey, dated May 7, 2018, prepared by a licensed surveyor, showing the total width of 80 feet of Rossville Avenue, from which 41.1 of irregular record width will be available for the installation, maintenance and/or reconstruction of the future and existing sewers and water mains, the total width of 60 feet of Poplar Avenue, from which 40 feet of record width will be available for the installation, maintenance and/or reconstruction of the future and existing sewers and water mains; and based on the foregoing, that the agency has no objections to the subject application; and

WHEREAS, in accordance with GCL § 35 and ZR § 72-01(g), the Board finds that the applicant has submitted adequate evidence to warrant the approval of this application subject to certain conditions.

Therefore, it is Resolved, that the Board modifies the decision of the Queens Borough Commissioner, dated April 10, 2015, acting on Department of Buildings Application No. 520233998, by the power vested in it by Section 35 of the General City Law to grant this appeal, limited to the decision noted, and also waives ZR § 107-461 on account of the subject site's location within unbuilt, but mapped, portions of Rossville Avenue and Poplar Avenue, pursuant to ZR § 72-01(g), on condition that construction shall substantially conform to the drawings filed with the application marked "Received August 21, 2018"-Seven (7) sheets and "October 15, 2018"-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 shall be signed off by DOB and all other relevant agencies by August 21, 2022;

THAT DOB shall review the plans approved herewith for compliance with all relevant provisions of the Zoning Resolution as if the unbuilt portions of Rossville Avenue and Poplar Avenue were not mapped;

THAT a revised Certificate of Occupancy shall be obtained within four (4) years, by August 21, 2022;

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 21, 2018.

2017-68-A thru 2017-96-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Joline Estates, LLC, owner.

SUBJECT – Applications March 27, 2017 – Proposed construction of twenty-nine (29) two-family residences, not fronting on a legally mapped street, contrary to General City Law 36. R3-X (SRD) zoning district.

PREMISES AFFECTED – 7 to 49 Torrice Loop and 11 to 16 Frosinone Lane, Block 7577, Various Lots, 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

Absent: Commissioner Scibetta.....1

ACTION OF THE BOARD – Laid over to September 27, 2018, at 10 A.M. for decision, hearing closed.

2016-4473-A

APPLICANT – Law Offices of Marvin B. Mitzner LLC, for 72-74 E. 3rd Street Condo Corp., owner.

SUBJECT – Application December 30, 2016 – 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.

PREMISES AFFECTED – 72-74 East 3rd Street, Block 444, Lot 7501, Borough of Manhattan.

COMMUNITY BOARD #3M

ACTION OF THE BOARD – Laid over to November 8, 2018, at 10 A.M., for continued hearing.

2017-276-A

APPLICANT – Eric Palatnik, P.C., for Frank McErlean, owner.

SUBJECT – Application October 4, 2017 – Proposed construction of a commercial building not fronting on a legally mapped street, contrary to General City Law 36. M3-1 zoning district.

PREMISES AFFECTED –96 Industrial Loop, Block 7206, Lot 176, Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Laid over to October 30, 2018, at 10 A.M., for continued hearing.

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2017-251-A & 2017-252-A

APPLICANT – Tarter Krinsky & Drogin LLP, for New York Central Line, owner; Outfront Media, LLC, lessee.

SUBJECT – Application August 28, 2017 – 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.

PREMISES AFFECTED – Brooklyn Queens Expressway at 31st Street and 32nd Avenue, Block 1137, Lot 22, Borough of Queens.

COMMUNITY BOARD #1Q

ACTION OF THE BOARD – Laid over to November 20, 2018, at 10 A.M., for continued hearing.

ZONING CALENDAR

2016-4468-BZ

CEQR #17-BSA-054M

APPLICANT – Bryan Cave LLP, for 27 East 61st 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 61st Street, Block 1376, Lot 24, Borough of Manhattan.

COMMUNITY BOARD #8M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Otley-Brown and Commissioner Sheta4

Negative.....0

Absent: Commissioner Scibetta.....1

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated December 5, 2016, acting on Alteration Application No. 120870156, reads in pertinent part:

“Proposed commercial FAR exceeds maximum permitted and is contrary to ZR 33-122”; and

WHEREAS, this is an application under ZR § 72-21 to permit, in a C5-1 zoning district and the Special Madison Avenue Preservation District, the conversion of the subject building into a commercial building that does not comply with zoning regulations for commercial floor area, contrary to ZR § 33-122; and

WHEREAS, a public hearing was held on this application on December 5, 2017, after due notice by publication in *The City Record*, with continued hearings on March 6, 2018, April 17, 2018, June 26, 2018, and then to

decision on August 21, 2018; 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 north side of East 61st Street, between Madison Avenue and Park Avenue, in a C5-1 zoning district and the Special Madison Avenue Preservation District, in Manhattan; and

WHEREAS, the subject site has approximately 15 feet of frontage along East 61st Street, 100 feet of depth, 1,506 square feet of lot area and is occupied by an existing six-story, with cellar, mixed-use commercial and residential building; and

WHEREAS, the applicant originally proposed to convert and enlarge the subject building into a commercial building with 9,038 square feet of commercial floor area (6.0 FAR); and

WHEREAS, in response to questions from the Board at hearing, the applicant reduced the massing and commercial floor area of the proposed building by providing 30-foot rear setbacks at the fifth and sixth stories; and

WHEREAS, the applicant now proposes to convert the subject building into a commercial building with 8,138 square feet of commercial floor area (5.40 FAR); and

WHEREAS, the applicant states that, at the subject site, a maximum of 6,025 square feet of commercial floor area (4.0 FAR) is permitted under ZR § 33-122; and

WHEREAS, the applicant states that there are unique physical conditions, including narrowness and smallness of lot size, that create practical difficulties or unnecessary hardship in complying strictly with the Zoning Resolution; and

WHEREAS, in support of this contention, the applicant studied the surrounding area, finding that only four other lots located in districts with similar bulk regulations have widths less than 17 feet, which reflects approximately 2 percent of the total lots surveyed; and

WHEREAS, the applicant further notes that, for an as-of-right mixed-use commercial and residential building, two separate means of egress with two entrances would be required, resulting in a substandard retail storefront with a width of 7'-7"; and

WHEREAS, the Board finds that the above unique physical conditions create practical difficulties or unnecessary hardship in complying strictly with applicable zoning regulations that are not created by general circumstances in the neighborhood or district; and

WHEREAS, the applicant states that there is no reasonable possibility that developing the subject site in strict conformity with the Zoning Resolution would bring a reasonable return; and

WHEREAS, in support of this contention, the applicant supplied a financial feasibility study demonstrating that an as-of-right development—consisting of a six-story, with cellar, mixed-use commercial and residential building—would result in a substantial loss on investment

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but that the proposed commercial building would yield a modest return; and

WHEREAS, the Board finds that, because of the above unique physical conditions, there is no reasonable possibility that development in strict conformity with applicable zoning regulations would bring a reasonable return; and

WHEREAS, the applicant states that the six-story commercial building proposed would comport with the built environment of the surrounding area; and

WHEREAS, the applicant notes that, with the exception of two buildings on the subject block, the subject building is shorter than every other building in the vicinity, which range from approximately 60 feet in height to 200 feet in height; and

WHEREAS, the applicant states that both sides of the subject block are primarily occupied by fully commercial buildings, including office, hotel and retail buildings; and

WHEREAS, the applicant states that the surrounding area also features a vibrant range of commercial uses, large apartment houses with ground-floor retail and notable community facilities; and

WHEREAS, the Board finds that the proposed variance will not alter the essential character of the neighborhood or district in which the subject site is located; 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 above practical difficulties or unnecessary hardship do not constitute a self-created hardship; and

WHEREAS, the Board finds that the above practical difficulties or unnecessary hardship have not been created by the owner or by a predecessor in title; and

WHEREAS, the applicant states that the proposed variance is the minimum necessary to permit a productive use of the site, as reflected in the financial feasibility study; and

WHEREAS, the Board finds that the proposed variance is the minimum necessary to afford relief within the intent and purposes of the Zoning Resolution; 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. 17BSA054M, received July 20, 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 February 16, 2017, the New York City Landmarks Preservation Commission (“LPC”) states that the site has neither architectural significance nor archaeological significance but that it is adjacent to the Upper East Side Historic District; and

WHEREAS, by correspondence dated June 23, 2017, LPC states that it has no objection to the construction protection plan dated June 23, 2017; and

WHEREAS, by letter dated October 18, 2017, the New York City Department of Environmental Protection states 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

WHEREAS, 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 of discretion.

Therefore it is Resolved, that the Board of Standards and Appeals does hereby *issue* 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 § 72-21 to *permit*, in a C5-1 zoning district and the Special Madison Avenue Preservation District, the conversion of the subject building into a commercial building that does not comply with zoning regulations for commercial floor area, contrary to ZR § 33-122; *on condition* that all work and site conditions shall conform to drawings filed with this application marked “Received August 2, 2018”-Thirteen (13) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: there shall be a maximum of 8,138 square feet of commercial floor area (5.40 FAR), as illustrated on the Board-approved drawings;

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 21, 2022;

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

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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 21, 2018.

2017-228-BZ

CEQR #18-BSA-006Q

APPLICANT – Fox Rothschild LLP, for Charles B. Wang Community Health Center, Inc., owner.

SUBJECT – Application July 17, 2017 – 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.

PREMISES AFFECTED – 131-66 40th Road, 131-68 40th Road, 40-46 College Point Boulevard, Block 5060, Lot(s) 37, 42, Borough of Queens.

COMMUNITY BOARD #7Q

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

Absent: Commissioner Scibetta.....1

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated December 4, 2017, acting on New Building Application No. 421519271, reads in pertinent part:

“ZR 33-43: Proposed Building does not comply with height and setback requirement per ZR 33-43. Secure BSA’s approval.

ZR 36-21: Proposed Building does not provide sufficient parking spaces. Secure BSA’s approval”; and

WHEREAS, this is an application under ZR § 72-21 to permit, in a C4-2 zoning district, the development of a 6-story, with cellar, community-facility building that does not comply with zoning regulations for height and setback and parking, contrary to ZR §§ 33-43 and 36-21; and

WHEREAS, this application is brought on behalf of Charles B. Wang Community Health Center, Inc. (the “Educational Facility”); and

WHEREAS, a public hearing was held on this application on March 6, 2018, after due notice by publication in *The City Record*, with continued hearings on April 17, 2018, and June 26, 2018, and then to decision on August 21, 2018; and

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

WHEREAS, Community Board 7, Queens, recommends disapproval of this application, citing concerns with parking and traffic; and

WHEREAS, New York State Assembly Member Ron Kim submitted testimony in support of this application, stating that the proposed development would enhance the character of the neighborhood by fitting in with the built-up, medium-density mix of uses in the vicinity and that public transportation and off-site parking would accommodate patients; and

WHEREAS, the subject site is located on the south side of 40th Road, west of College Point Boulevard, in a C4-2 zoning district, in a flood zone, in Queens; and

WHEREAS, the subject site has approximately 168 feet of frontage along 40th Road, 27 feet of frontage along College Point Boulevard, 12,410 square feet of lot area and is occupied by two one-story buildings to be demolished; and

WHEREAS, the applicant originally proposed to develop a nine-story, with cellar, community-facility building that would not comply with zoning regulations for height and setback, side yards and parking; and

WHEREAS, in response to community concerns and questions from the Board at hearing, the applicant revised the proposed building to comply with requirements for side yards, to modify the design of the proposed building to better comport with the neighborhood’s built conditions and to increase the parking proposed from 34 parking spaces to 45 parking spaces; and

WHEREAS, the applicant now proposes to develop a six-story, with cellar, community-facility building with a front wall height of 85’-5” and an initial setback distance of 20’-0” along 40th Road, a front wall height of 30’-5” and initial setback distance of 15’-0” along College Point Boulevard and 45 parking spaces (36 self-park spaces, two of which are accessible, and 9 attended parking spaces); and

WHEREAS, the applicant states that, at the subject site, the maximum permitted front wall height before setback is the lesser of four stories or 60’-0” under ZR § 33-43 and that 199 parking spaces are required under ZR § 36-21; and

WHEREAS, the applicant states that there are unique physical conditions that create practical difficulties or unnecessary in complying with applicable zoning regulations, including the shallow depth of the subject site; and

WHEREAS, specifically, the applicant states that the shallow depth of the subject site affects the resulting building shape by yielding an inefficient floorplate that precludes the development of parking spaces on levels beyond the first and second floor, as vertical transportation to such additional parking levels would be infeasible, and that fails to accommodate the minimum of 10,000 square feet of contiguous single-story floorplates required to fulfill the programmatic needs of the Educational Facility; and

WHEREAS, the applicant states that, as part of the integrated curricular requirements of the CUNY School of Medicine Sophie Davis School of Biomedical Education, the Educational Facility enables medical students to perform required clinical work, comprised of clinical rotations, for credit toward a medical degree; and

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WHEREAS, the applicant states that the requested waivers will facilitate floorplates large enough to accommodate the Educational Facility's particular programs planned to be housed in the proposed building, including two consecutive longitudinal clinically-oriented academic courses designed to meet the needs of fourth-year medical students with interactive lectures, small group learning formats, videotape-based sessions, role-playing tutorials, standardized patient tutorials and medical interviewing practice seminars in a full range of health service areas, including dental, mental health, internal medicine, family practice, women's health and pediatrics; and

WHEREAS, in further support of this contention, the applicant submitted a study of the Educational Facility's programmatic needs, determining that the Educational Facility's program requires sufficient floorplates to accommodate exam rooms and administrative space without unnecessary duplication, compliance with Patient-Centered Medical Home guidelines and increased administrative and exam room space for student training and observation, resulting in a minimum of 10,000 square feet of contiguous single-story footprint for each clinical floor and the administrative floor, allowing for approximately 16 exam and treatment rooms and waiting and support space per floor for a total of 48 exam rooms and 17 dental treatment stations, which cannot be accomplished absent relief from the Zoning Resolution's height and setback requirements; and

WHEREAS, the applicant further states that as-of-right development would be cost-prohibitive, would provide an insufficient number of floors with 10,000 square foot floorplates, would be unable to support an appropriate mix of exam rooms and support space and would be unable to accommodate the Educational Facility's six core services (dental, mental health, internal medicine, family practice, women's health and pediatrics) with only 42 exam rooms and 8 dental treatment stations; and

WHEREAS, the applicant states that development in conjunction with the issuance of a special permit under ZR § 73-44 would likewise fail to meet the Educational Facility's programmatic needs because it would be financially infeasible and includes identical, insufficient floorplates for clinical, dental and administrative floor layouts as the above as-of-right development; and

WHEREAS, in response to questions from the Board regarding the nursing and teamwork stations proposed, the applicant states that the 202 workstations include separate spaces for specific functions, including reception, health education, care management, consultation, medical student workstations, team workstations, nursing stations, staff offices and other administrative functions and that the 202 workstations are made possible by elimination of the side yard to comport with zoning requirements, which results in an increased in floorplate that allows administrative functions in close proximity to clinical programming; and

WHEREAS, the Board acknowledges that the Educational Facility, 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 N.Y.2d 583 (1986), a zoning board must grant an educational or religious institution's application 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, the Board finds that the Educational Facility's programmatic needs in conjunction with the above unique physical conditions create practical difficulties or unnecessary hardship in complying strictly with applicable zoning regulations that are not created by general circumstances in the neighborhood or district; and

WHEREAS, the applicant states that, because the Educational Facility is a non-profit organization and the proposed building is needed to further its programmatic mission, demonstrating that the proposed variance is necessary to realize a reasonable return from the subject site is unnecessary; and

WHEREAS, the applicant states that the proposed building has been designed to fit harmoniously with the character of the existing surrounding uses and built condition of the surrounding area and will not impair neighboring development nor be detrimental to the public welfare; and

WHEREAS, the applicant states that the use of the proposed building is consistent with the mixed-use and residential area, which includes multi-family residences, commercial, industrial and transportation uses; and

WHEREAS, the applicant states that the proposed building fits with the built character of the surrounding area, which includes three- to seven-story multi-family residences, 17-story residential towers immediately north and 10-story residences immediately to the east, indicating that the proposed building is comparable in size and scale to surrounding buildings; and

WHEREAS, the applicant states that the proposed 45-space parking facility will provide sufficient on-site parking to meet the parking demand of the Educational Facility and that the remainder of patients will access the proposed building by foot and public transportation; and

WHEREAS, the applicant states that the cellar will contain 18 self-park parking spaces and 9 attended parking spaces, to be utilized to the extent demand is greater than the self-park spaces available at the subject site, and that the first floor will contain 18 self-park parking spaces; and

WHEREAS, the applicant submits that the proposed building will not result in any significant adverse traffic or parking impacts, notwithstanding the proposed parking reduction, because the projected hourly parking demand for the proposed building peaks at 45 parking spaces from 11:00 a.m. to 12:00 p.m. on a weekday and 33 parking spaces from 2:00 p.m. to 3:00 p.m. on Saturday; and

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WHEREAS, the applicant states that the majority of the proposed off-street parking spaces within the proposed building would be used to accommodate employees of the Educational Facility with most spaces occupied during peak times, that the curbside parking regulations in the area generally include limited one-hour metered parking, no-standing or no-parking zones and alternate-side parking to accommodate street cleaning; and

WHEREAS, the applicant states that, within the subject area, detailed surveys of on-street parking regulations and utilization levels reveal that there are between 402 and 712 legal on-street parking spaces in the vicinity, depending upon the time of day and days of the week, that existing utilization levels are approximately 79 percent (80 spaces available), 95 percent (32 spaces available), 95 percent (30 spaces available) during the weekday morning, midday and afternoon peak periods respectively; however, the applicant states that there is sufficient off-street parking available in the surrounding area with 1,000 unused parking spaces available during peak hours in a nearby garage and 40 to 50 parking spaces approximately 0.2 miles from the subject site that are available to the Educational Facility's visitors; and

WHEREAS, by letter dated May 23, 2018, Rkks Parking Inc. states that its parking facility located at 132-03 Sanford Avenue, approximately 0.2 miles from the subject site, typically has between 40 and 50 unused parking spaces available and that visitors to the Educational Facility would be permitted to park at said parking facility should there be unmet parking demand generated by the Educational Facility; and

WHEREAS, in response to community concerns and questions from the Board at hearing regarding parking at the subject site, the applicant increased the number of parking spaces proposed from 34 to 45 parking spaces to accommodate peak parking demand, revised the cellar plan to include a parking attendant room and 9 attended parking spaces and revised the first-floor plan to provide 18 self-park spaces with an additional 2 spaces achieved by eliminating portions of paved hardscapes; and

WHEREAS, the applicant states that a parking attendant will be present from 10:00 a.m. to 12:00 p.m. and 1:00 p.m. to 4:00 p.m. to accommodate demand greater than the 36 self-park spaces, that it is anticipated that the first-floor parking level will be filled first in the morning with the second-floor parking level made available and operated as an attended parking facility in the event that all 36 self-park spaces are filled when additional vehicles arrive; and

WHEREAS, in response to questions from the Board, the applicant revised the proposed building to extend the elevator to the cellar level and redesigned the pedestrian ramp into the building to increase ease of access by providing a minimal exterior slope to the entrance to the proposed building in conjunction with an interior ramp to eliminate turns in the ramp and accommodate the increase in elevation within the proposed building; and

WHEREAS, the applicant submits that, because the

subject site is located in a flood zone, the proposed building complies with all applicable flood regulations, including Article VI, Chapter 4, of the Zoning Resolution and Appendix G of the New York City Building Code; and

WHEREAS, the Board finds that the proposed variance will not alter the essential character of the neighborhood or district in which the subject site is located, 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 above practical difficulties or unnecessary hardship do not constitute a self-created hardship; and

WHEREAS, the Board finds that the above practical difficulties or unnecessary hardship have not been created by the owner or by a predecessor in title; and

WHEREAS, the applicant states that the proposed variance is the minimum necessary to permit a productive use of the site, as reflected in the above study of the Educational Facility's programmatic needs; and

WHEREAS, the Board finds that the proposed variance is the minimum necessary to afford relief within the intent and purposes of the Zoning 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 Final Environmental Assessment Statement CEQR No. 18BSA006Q, dated August 21, 2018 (the "EAS"); 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 January 8, 2018, the Department of Environmental Protection ("DEP") recommends that an (E) designation for hazardous materials should be placed on the zoning map pursuant to Section 11-15 of the New York City Zoning Resolution for the subject property and states that the (E) designation shall ensure that testing and mitigation will be provided as necessary before any further development or soil disturbance; and

WHEREAS, an (E) designation (E-496) has been placed on the site for hazardous materials, and an environmental review by the New York City Office of Environmental Remediation ("OER") must be satisfied prior to the issuance of building permits to facilitate the construction of the proposed building; and

WHEREAS, by letter dated February 7, 2018, DEP states that the proposed project would not result in any significant adverse air quality or noise impacts; and

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WHEREAS, by correspondence dated July 6, 2017, the New York City Landmarks Preservation Commission states the subject site has no archaeological significance; and

WHEREAS, by letter dated August 20, 2018, the New York City Department of Transportation (“DOT”) states that a detailed traffic analysis is not warranted as the 50-vehicle trip threshold for the weekday and Saturday peak hours will not be exceeded; that the applicant shall conduct a Post Occupancy Monitoring Study one (1) year after opening, which study will including a travel demand and modal split survey of the new facility to document the new facility’s actual trip-making characteristics; that the survey results and calculated trip-making factors shall be compared to those presented in the EAS and reviewed by DOT to validate the conclusions; that, if the actual trip-making exceeds that projected, the applicant shall perform additional LOS studies at DOT approved locations/pedestrian elements to identify potential traffic and pedestrian issues surrounding the new facility; that the applicant shall identify traffic and pedestrian improvements for DOT’s review and approval and shall submit all supporting documents; and that the applicant shall coordinate with DOT and be responsible for all costs associated with the transportation analysis and subsequent improvement measures that may be identified; and

WHEREAS, by correspondence dated January 24, 2018, the New York City Department of City Planning’s Waterfront and Open Space Division states that it finds that the actions will not substantially hinder the achievement of any Waterfront Revitalization Program (“WRP”) policy and hereby concurs that this action 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; and

WHEREAS, 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 of discretion.

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 a C4-2 zoning district, the development of a 6-story, with cellar, community-facility building that does not comply with zoning regulations for height and setback and parking, contrary to ZR §§ 33-43 and 36-21; *on condition* that all work, operations and site conditions shall conform to drawings filed with this application marked “Received August 1, 2018”-Seventeen (17) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: a maximum front wall height of 85’-5” and minimum initial setback distance of 20’-0” along 40th Road, a maximum front wall height of 30’-5” and minimum initial setback distance of 15’-0” along College Point Boulevard, and 45 parking spaces (36 self-park spaces, two of which are accessible, and 9 attended parking spaces), as illustrated on the Board-approved drawings;

THAT an (E) designation (E-496) is placed on the site to ensure proper hazardous materials remediation;

THAT attended parking shall be provided at the cellar level Monday to Friday, from 10:00 a.m. to 4:00 p.m.;

THAT the applicant shall conduct a Post Occupancy Monitoring Study one (1) year after opening, which study shall including a travel demand and modal split survey of the new facility to document the new facility’s actual trip-making characteristics; the survey results and calculated trip-making factors shall be compared to those presented in the EAS and reviewed by DOT to validate the conclusions; if the actual trip-making exceeds that projected, the applicant shall perform additional LOS studies at Department of Transportation approved locations/pedestrian elements to identify potential traffic and pedestrian issues surrounding the new facility; the applicant shall identify traffic and pedestrian improvements for DOT’s review and approval and shall submit all supporting documents; and the applicant shall coordinate with DOT and be responsible for all costs associated with the transportation analysis and subsequent improvement measures that may be identified;

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 21, 2022;

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 21, 2018.

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

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and 45th Avenue. Block 5538, Lot 30. Borough of Queens.

COMMUNITY BOARD #11Q

ACTION OF THE BOARD – Laid over to October 30, 2018, at 10 A.M., for adjourned hearing.

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 September 13, 2018, at 10 A.M., for continued hearing.

2017-247-BZ

APPLICANT – Law Office of Lyra J. Altman, for Eli Leshkowitz and Rachel Leshkowitz, owners.

SUBJECT – Application August 22, 2017 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area ratio and open space ratio (ZR 23-141); and less than the required rear yard (ZR 23-47). R2 zoning district.

PREMISES AFFECTED – 1367 East 24th Street, Block 7660, Lot 17, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Laid over to November 20, 2018, at 10 A.M., for continued hearing.

2017-298-BZ

APPLICANT – Jay A Segal, Greenberg Traurig LLP, for 14 White Street Owner LLC, owner.

SUBJECT – Application November 9, 2017 – 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.

PREMISES AFFECTED – 14 White Street, Block 191, Lot 8, Borough of Manhattan.

COMMUNITY BOARD #1M

ACTION OF THE BOARD – Laid over to November 8, 2018, at 10 A.M. for continued hearing.

2018-4-BZ

APPLICANT – Law Office of Lyra J. Altman, for Laura Betesh and Isaac A. Cabasso, owners.

SUBJECT – Application January 16, 2018 – Special Permit (§73-622) for the enlargement of an existing single-family

home contrary ZR §23-142 (floor area, open space and lot coverage); ZR §23-48 (side yards) and ZR §23-47 (rear yard). R4 zoning district.

PREMISES AFFECTED – 2213 East 13th Street, Block 7374, Lot 79, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to November 8, 2018, at 10 A.M., for continued hearing.

REGULAR MEETING

TUESDAY AFTERNOON, AUGUST 21, 2018

1:00 P.M.

Present: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.

ZONING CALENDAR

2017-207-BZ

CEQR #17-BSA-140M

APPLICANT – Law Offices of Marvin B. Mitzner, LLC, for Ormonde Equities, owner; CorePower Yoga LLC, lessee.

SUBJECT – Application June 9, 2017 – Special Permit (§73-36) to permit the legalization 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.

PREMISES AFFECTED – 2030 Broadway, Block 1141, Lot 51, 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 Sheta4

Negative.....0

Absent: Commissioner Scibetta.....1

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated April 25, 2017, acting on Alteration Application No. 123042340, reads in pertinent part:

“The proposed Physical Culture Establishment/Yoga Studio . . . is not permitted use as of right. A special permit is required from the Board of Standards and Appeals as per Section 32-31 . . . and 73-36 of the Zoning Resolutions”; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to permit, on a site partially in a C4-6A zoning district and partially in an R8B zoning district, the legalization of a physical culture establishment on portions

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of the first floor and the second floor of the subject building; and

WHEREAS, a public hearing was held on this application on August 21, 2018, after due notice by publication in *The City Record*, and then to decision on the same date; and

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

WHEREAS, the subject site is located on the southeast corner of Broadway and West 70th Street, partially in a C4-6A zoning district and partially in an R8B zoning district, in Manhattan; and

WHEREAS, the subject site has approximately 113 feet of frontage along Broadway, 146 feet of frontage along West 70th Street, 12,040 square feet of lot area and is occupied by a 12-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 subject PCE has an entrance on the first floor and occupies 3,564 square feet of floor area on the second floor, including a reception area, two yoga studios, restrooms and showers; and

WHEREAS, the PCE has been in operation as CorePower Yoga since May 23, 2017, with the following hours of operation: Monday to Friday, 5:30 a.m. to 9:30 p.m., and Saturday and Sunday, 7:30 a.m. to 8:00 p.m.; and

WHEREAS, the applicant represents that the PCE use is consistent with the vibrant mixed-use area in which it is located, that the PCE use is fully contained within the envelope of an existing building and that the PCE use occupies less than one third of the floor area of the second floor; and

WHEREAS, in addition, the applicant states that sound attenuation measures have been provided within the space so as to not disturb other tenants in the building; and

WHEREAS, the Board finds that the PCE use is so located as not to 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, instructions and programs for physical improvement; and

WHEREAS, the Board finds that the subject PCE use is consistent with those eligible pursuant to ZR § 73-

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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

WHEREAS, in response to the Board's comments at hearing, the applicant represents that the entirety of the PCE use is located within a C4-6A zoning district; and

WHEREAS, on November 15, 2016, the New York City Landmarks Preservation Commission issued a Certificate of No Effect; 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 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-140M, dated August 31, 2017; and

WHEREAS, the Board finds that the evidence in the record supports the findings required to be made under ZR §§ 73-36 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion; 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 without a special permit.

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 §§ 73-36 and 73-03 to *permit*, on a site partially in a C4-6A zoning district and partially in an R8B zoning district, the legalization of a physical culture establishment on portions of the first floor and the second floor of the subject building; *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked "Received May 3, 2017"-Seven(7) sheets; and *on further condition*:

THAT this grant shall be limited to a term of ten (10) years, expiring May 23, 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 maintained leading to the required exits and that pathways shall be maintained unobstructed, including from any gymnasium equipment;

THAT the PCE shall remain fully sprinklered, as

indicated on the Board-approved plans;

THAT sound attenuation shall be maintained in the PCE;

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 August 21, 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, August 21, 2018.

2017-304-BZ

CEQR #18-BSA-064K

APPLICANT – Simons & Wright LLC, for 160 17th Street, LLC, owner; Brooklyn Prospect Charter School, lessee.

SUBJECT – Application November 21, 2017 – 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.

PREMISES AFFECTED – 160 17th Street, Block 630, Lot 22, Borough of Brooklyn.

COMMUNITY BOARD #7BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Sheta4

Negative.....0

Absent: Commissioner Scibetta.....1

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings ("DOB"), dated November 17, 2017, acting on New Building Application No. 321191517, reads in pertinent part:

"ZR 42-00; ZR 42-12" "The proposed Use Group 3A School is not permitted . . . and Requires a Special Permit from the Board of Standards and Appeals"; and

WHEREAS, this is an application under ZR §§ 73-19 and 73-03 to permit, in an M1-2D zoning district, the operation of a school, contrary to ZR § 42-00; and

WHEREAS, this application is brought on behalf of the Brooklyn Prospect Charter School (the "School"), a public educational institution; and

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WHEREAS, a public hearing was held on this application on May 15, 2018, after due notice by publication in *The City Record*, with a continued hearing on July 17, 2018, and then to decision on August 21, 2018; 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 south side of 17th Street, between 3rd Avenue and 4th Avenue, in an M1-2D zoning district, in Brooklyn; and

WHEREAS, the subject site has approximately 60 feet of frontage along 17th Street, 120 feet of depth, 6,932 square feet of lot area and is occupied by two existing buildings to be demolished; and

WHEREAS, ZR § 73-19 provides:

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 *street* 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.

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, as to whether the School qualifies as a school for purposes of ZR § 73-19, the applicant states that the School meets the ZR § 12-10 definition of “school” 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, further, the applicant submitted the School’s Charter certification documentation issued by the Board of Regents of the University of the State of New York and notes that the School’s academic school year mirrors the public school year with a minimum of 190 days of full-time instruction from 8:45 a.m. to 3:45 p.m. by New York State-certified teachers with a curriculum that offers special education, gifted classes and multiple foreign languages; and

WHEREAS, with respect to ZR § 73-19(a), an applicant must demonstrate its 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 an analysis of the School’s programmatic needs, determining that approximately 30,000 square feet are required for the School’s projected enrollment of 300 students; and

WHEREAS, in particular, the applicant states that the proposed eight-story building would allow for 16 total classrooms (11 standard classrooms, 3 science classrooms, an art room and a music rooms), that there would be a library, gymnasium, cafeteria, reading room and outdoor space with a full range of student support services, including counseling, guidance staff and a nurse’s office; and

WHEREAS, the applicant also submitted an hourly occupancy survey for the School’s classrooms for a typical school week with the school day starting at 8:45 a.m. and concluding at 3:45 p.m.; and

WHEREAS, thus, the applicant has demonstrated that its stated requirements related to size and configuration are justified by the School’s programmatic needs; and

WHEREAS, the applicant represents that the School has conducted an exhaustive search for potential expansion sites and that the School considered 22 sites, including extensive business negotiations, but that none of the sites were viable; and

WHEREAS, thus, the applicant maintains that the site search establishes that there is no practical possibility of

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obtaining a site of adequate size in a nearby zoning district where a school would be permitted as of right; and

WHEREAS, accordingly, 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 states that the School is approximately 261 feet from an R8A zoning district boundary line, and notes that school uses are permitted as of right in R8A zoning districts; and

WHEREAS, the applicant submitted a radius diagram which reflects that the subject site is adjacent to an R8A zoning district; and

WHEREAS, accordingly, 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 states that the proposed building will incorporate sound-attenuation measures to ensure that interior noise levels will not exceed 45 dBA, including sound-absorbing mineral wool insulation in the exterior walls, batting between the studs of the interior wall with inoperable, double-paned windows tested for conforming acoustic values; and

WHEREAS, with respect to air quality, the applicant states that the proposed building's closed window condition would mitigate any possible air quality impact; and

WHEREAS, with respect to traffic, the applicant states that the proposed building is set back approximately 15 feet from the public sidewalk, thereby further separating students from the public street as they enter and exit the School and allowing for a safer queueing area at the front entrance, and the applicant notes that both adjacent intersections are signalized and deemed safe; and

WHEREAS, accordingly, the Board finds that the conditions surrounding the site and the Proposed Building's use will adequately separate the proposed school use from noise, traffic and other adverse effects of any of the uses within the surrounding M1-2D 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 states that no significant impacts on traffic or pedestrian systems were found that would require mitigation but that the School proposed a 21 foot long student drop-off and pick-up zone on the south side of 17th Street immediately in front of the subject site with signage indicating "No Standing School Days 7 AM – 5 PM", that all vehicular drop-offs and pick-ups would be met by the School's staff to minimize curbside standing

time, that crossing guards would be placed at the intersection of 17th Street and 4th Avenue because of the concentration of public transportation to the east of the subject site and that personnel will be in place each time an ambulance enters or exits the subject site at 10:00 a.m. and 7:00 p.m. with a planter buffer placed between the School and ambulance bay; 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 March 15, 2017, DOT states that it has no objection to the proposed construction so long as, upon construction of the School, the School notifies DOT so that DOT can determine if traffic safety improvements or parking regulation changes are necessary; and

WHEREAS, the Board finds that the abovementioned measures will control traffic so as to protect children going to and from the proposed school; and

WHEREAS, therefore, the Board finds that the requirements of ZR § 73-19(d) are met; and

WHEREAS, in response to questions from the Board at hearing, the applicant removed the rear portion of the floor between the cellar and first floor to create a double-height cellar space in order to qualify as a rear yard permitted obstruction, removed the bathroom on the first floor to create additional lobby space and relocated the ambulance-corps outdoor deck to the second floor to eliminate any potential for interaction between the ambulance-corps staff and the School's students; and

WHEREAS, the applicant submitted further information about the operations of the ambulance corps proposed to be located within the proposed building, which has been designed to ensure total physical separation from the School; and

WHEREAS, the applicant also revised the drawings to reflect compliance with applicable construction codes and modified the design of the outdoor play area to reflect a barrier fence for noise mitigation; and

WHEREAS, the Board notes that the applicant shall apply to the Department of Buildings and Fire Department to consider the elimination of one of the fire egress routes that would allow the combination of, in the event of an emergency, the egress through one of those routes by the ambulance corps; and, should the Department of Buildings approve said elimination, it would be appropriate for the Board's staff to review associated changes to the Board-approved drawings as minor amendments pursuant to a request for a letter for substantial compliance filed in accordance with Section 1-12.11 of the Board's Rules of Practice and Procedure; 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

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WHEREAS, the proposed special permit use will not interfere with any pending public improvement project; 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. 18BSA064K, submitted August 21, 2018; 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 14, 2018 the Department of Environmental Protection (“DEP”) states that a Phase II Environmental Site Assessment is necessary to adequately identify/characterize the surface and subsurface soils of the property; and

WHEREAS, by correspondence dated June 13, 2018 the applicant requests that an (E) designation for hazardous materials be assigned for the premises to allow for the Phase II work to be done post-BSA approval due to scheduling, financial, and physical reasons; and

WHEREAS, by correspondence dated June 14, 2018, the Department of Environmental Protection states that it has no objection to the (E) designation for this project; and

WHEREAS, an (E) designation (E-495) has been placed on the site for hazardous materials, and an environmental review by the New York City Office of Environmental Remediation (“OER”) must be satisfied prior to the issuance of building permits to facilitate the construction of the proposed building; and

WHEREAS, by correspondence dated June 1, 2018, DEP states that the proposed project would not result in any significant adverse air quality; and

WHEREAS, by correspondence dated August 2, 2017, the New York City Landmarks Preservation Commission states the subject site has no archaeological significance; and

WHEREAS, by letter dated August 16, 2018, DOT states that the proposed action would not create any significant adverse traffic or pedestrian impacts; and

WHEREAS, by letter dated August 17, 2018, the New York City Department of Environmental Protection (“DEP”) states that the potential noise impacts from the outdoor area on the second floor of the proposed building were assessed during the hours of 8:00 a.m. to 4:00 p.m., assuming the outdoor area would be used as a playground for students, and concludes that the proposed outdoor area would not result in significant noise impact on nearby residential receptors; 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 finds that the evidence in the record supports the findings required to be made under ZR §§ 73-19 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion.

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 an M1-2D zoning district, the operation of a school, contrary to ZR § 42-00; *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked “Received August 21, 2018”-Twenty-three (23) sheets; and *on further condition*:

THAT an (E) designation (E-495) is placed on the site to ensure proper hazardous materials remediation;

THAT there shall be no lighting or amplified sounder permitted on the roof or on the third-floor terrace;

THAT the applicant shall apply to the Department of Buildings and Fire Department to consider the elimination of one of the fire egress routes that would allow the combination of, in the event of an emergency, the egress through one of those routes by the ambulance corps;

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 21, 2022;

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 drawings 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 drawings or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, August 21, 2018.

2018-37-BZ

CEQR #18-BSA-109M

APPLICANT – Rothkrug Rothkrug & Spector LLP, for ERY North Tower RHC Tenant LLC, owner.

SUBJECT – Application March 13, 2018 – Special Permit (§73-36) to permit the operation of a physical culture establishment (*Equinox Hotel Spa*) to be located on the fifth

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floor of a 72-story mixed-use building contrary to ZR §32-10. C6-4 Hudson Yards Special District.

PREMISES AFFECTED – 560 West 33rd Street aka 35 Hudson Yards, Block 702, Lot 150, Borough of Manhattan.

COMMUNITY BOARD #4M

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

Absent: Commissioner Scibetta.....1

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated February 27, 2018, acting on New Building Application No. 121192618, reads in pertinent part:

“Proposed Physical Culture Establishment (massage) at floors 5th floor . . . is not permitted as of right as per ZR 32-10”; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to permit, in an C6-4 zoning district and the Special Hudson Yards District, the operation of a physical culture establishment on portions of the first floor and fifth floor of the subject building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on August 21, 2018, after due notice by publication in *The City Record*, and then to decision on August 21, 2018; and

WHEREAS, Community Board 4, Manhattan, recommends approval of this application; and

WHEREAS, the subject site is located on the southeast corner of West 33rd Street and 11th Avenue, in an C6-4 zoning district and the Special Hudson Yards District, in Manhattan; and

WHEREAS, the subject site has approximately 175 feet of frontage along West 33rd Street, 189 feet of frontage along 11th Avenue, is part of a larger zoning lot with 570,000 square feet of lot area and is occupied by a 72-story mixed-use building under construction; 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 will have an entrance on the first floor and will occupy 4,554 square feet of floor area

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on the fifth floor, including reception and retail, a waiting area, a salon, saunas, a meditation-pod room, treatment rooms, post-treatment pods, a relaxation room, showers, locker rooms, restrooms and a cryotherapy room; and

WHEREAS, the PCE will be a spa operated by Equinox Hotel, with the following hours of operation: 9:00 a.m. to 9:00 p.m., daily; and

WHEREAS, the applicant represents that the PCE use is consistent with the vibrant mixed-use area in which it is located, that the PCE use will be fully contained within the envelope of a new building and that the PCE use will not generate noise because of its focus on creating a relaxing environment; and

WHEREAS, the Board finds that the PCE use is so located as not to 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 the practice of massage by New York State licensed masseurs and masseuses; 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 will be 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—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 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 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. 18-BSA-109M, dated March 13, 2018; and

WHEREAS, the Board finds that the evidence in the record supports the findings required to be made under ZR §§ 73-36 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion.

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 §§ 73-36 and 73-03 *to permit*, in an C6-4 zoning district and the Special Hudson Yards

District, the operation of a physical culture establishment on portions of the first floor and fifth floor of the subject building, contrary to ZR § 32-10; *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked “Received May 8, 2018”-Six (6) sheets; and *on further condition*:

THAT this grant shall be limited to a term of ten (10) years, expiring August 21, 2028;

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 therapists;

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 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 August 21, 2022;

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 21, 2018.

2018-50-BZ

CEQR #18-BSA-120M

APPLICANT – Eric Palatnik, P.C., for 45 w 45 Strategic Venture LLC, owner; EPOC Fitness and Tech Inc., lessee. SUBJECT – Application April 6, 2018 – Special Permit (§73-36) to permit the operation of Physical Cultural Establishment (*Orange Theory Fitness*) within the cellar of a commercial building contrary to ZR §32-10. C6-4.5 (Special Midtown District).

PREMISES AFFECTED – 45 West 45th Street, Block 1261, Lot 16, Borough of Manhattan.

COMMUNITY BOARD #5M

MINUTES

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

Absent: Commissioner Scibetta.....1

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated March 15, 2018, acting on Alteration Application No. 122760119, reads in pertinent part:

“Proposed ‘Physical Culture Establishment’ is not permitted As-Of-Right as per section ZR 32-10”; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to permit, in a C6-4.5 zoning district and the Special Midtown District, the operation of a physical culture establishment on portions of the first floor and cellar of the subject building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on August 21, 2018, after due notice by publication in *The City Record*, and then to decision on August 21, 2018; and

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

WHEREAS, the subject site is located on the north side of West 45th Street, between Sixth Avenue and Fifth Avenue, in a C6-4.5 zoning district and the Special Midtown District, in Manhattan; and

WHEREAS, the subject site has approximately 81 feet of frontage along West 45th Street, 100 feet of depth, 8,158 square feet of lot area and is occupied by a 16-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 will have an entrance on the first floor and will occupy 3,385 square feet of floor space in the cellar, including reception, a fitness studio, restrooms and showers; and

WHEREAS, the PCE will operate as Orange Theory Fitness, with the following hours of operation: Monday to Friday, 6:00 a.m. to 10:00 p.m., and Saturday and Sunday, 8:00 a.m. to 12:00 p.m.; and

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WHEREAS, the applicant represents that the PCE use is consistent with the vibrant commercial area in which it is located, that the PCE use is fully contained within the envelope of an existing building and that the subject site has pedestrian access to rapid transit facilities within the vicinity; 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

WHEREAS, the Board finds that the PCE use is so located as not to 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 and weight reduction; 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 will be 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—will be installed in the entire PCE space; and

WHEREAS, by letter dated August 16, 2018, the Fire Department represents 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 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 project is classified as a Checklist 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. 18-BSA-120M, dated April 4, 2018; and

WHEREAS, the Board finds that the evidence in the record supports the findings required to be made under ZR §§ 73-36 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion.

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 §§ 73-36 and 73-03 to *permit*, in a C6-4.5 zoning district and the Special Midtown District, the operation of a physical culture establishment on portions

of the first floor and cellar of the subject building, contrary to ZR § 32-10; *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked “Received April 6, 2018”- Six (6) sheets; and *on further condition*:

THAT this grant shall be limited to a term of ten (10) years, expiring August 21, 2028;

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 August 21, 2022;

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 21, 2018.

**2018-62-BZ
CEQR #18-BSA-132K**

APPLICANT – Sheldon Lobel, P.C., for RFK/K 77 Sands Owner, LLC; Brooklyn Laboratory Charter Schools, lessees.
SUBJECT – Application April 30, 2018 – Special Permit (§73-19) to permit the operation of a school (UG 3) (Brooklyn Laboratory Charter School) to be located on portions of the first, the second through fifth floors and part of the twelfth floor of an existing building contrary to ZR §42-10. M1-6 zoning district.

PREMISES AFFECTED – 73-77 Sands Street, Block 77, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #2BK

MINUTES

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Sheta4
Negative.....0

Absent: Commissioner Scibetta.....1

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated April 24, 2018, acting on Department of Buildings (“DOB”) Application No. 321732372 reads in pertinent part:

The proposed Use Group 3 school within an M1-6 zoning district is contrary to ZR 42-12 and therefore requires a special permit from the Board [sic] of Standards and Appeals pursuant [sic] to ZR 73-19; and

WHEREAS, this is an application for a special permit, pursuant to ZR § 73-19, to permit, on a zoning lot located in an M1-6 zoning district, the occupancy of a portion of the twelfth floor and the entirety of the second through fifth floors of an existing 12-story building with a Use Group 3 school contrary to applicable use regulations set forth in ZR § 42-12; and

WHEREAS, this application is filed on behalf of Brooklyn Laboratory Charter Schools (“BLCS” or the “Applicant”), a public charter school operator, to facilitate the development of a school facility for its middle school and high school students; and

WHEREAS, a public hearing was held on this application on August 14, 2018, after due notice by publication in *The City Record*, with a continued hearing on August 21, 2018, 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 2, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is an entire tax block, bound by Sands Street to the south, Pearl Street to the west, Prospect Street to the north and Jay Street to the east, within an M1-6 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 172 feet of frontage along Sands Street, 100 feet of frontage along Pearl Street, 124 feet of frontage along Prospect Street, 113 feet of frontage along Jay Street, 14,800 square feet of lot area and is occupied by 12-story commercial building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since November 1, 1955, when, under BSA Cal. No. 735-55-BZ, the Board granted a variance of the manufacturing use, B area district regulations to permit the construction of required loading berths within 50 feet of a street intersection on condition that, in all other respects, the loading berths and building and occupancy shall comply with all laws, rules and regulations applicable thereto; and

WHEREAS, BLCS proposes to renovate the entirety of the second through fifth floors and a portion of the twelfth floor of the existing 12-story building to accommodate a Use

Group 3 school; and

WHEREAS, Use Group 3 schools are not permitted within the subject M1-6 zoning district as-of-right, pursuant to ZR § 42-10, et seq.; and

WHEREAS, accordingly, the Applicant seeks the subject relief; 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, pursuant to ZR § 12-10, a “school” is, in pertinent part, “an institution providing 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 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 the Applicant represents that BLCS it is an institution providing full-time day instruction and a course of study that meets the requirements of the New York State Education Law in

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accordance with the ZR § 12-10 definition of “school”; and

WHEREAS, specifically, the Applicant submitted the Initial Charter, executed with the Board of Regents of the State of New York, to establish the Brooklyn Laboratory Charter School, an independent public school established under the New York Charter Schools Act of 1998 (the “Act”), and authorizing the operation of a school in accordance with the Act, codified as Article 56 of the Education Law and Board of Regents of the State of New York approval of the merger and revisions to the charters of Brooklyn Laboratory Charter School and Brooklyn Laboratory Charter High School with Brooklyn Laboratory Charter School as the surviving education corporation under the amended name, “Brooklyn Laboratory Charter Schools,” effective July 1, 2017; and

WHEREAS, BLCS currently operates out of two locations, one occupied by 173 middle school students and a second occupied by 421 middle school and high school students; and

WHEREAS, BLCS proposes to relocate all of the students from its middle school only location and all of its high school students from its middle and high school location to the subject location, a total initial enrollment of 450 students in grades 6 through 12, which is anticipated to grow to 1,020 students within the next 5 years; and

WHEREAS, BLCS seeks to occupy a total of 60,402 gross square feet in the existing building with a Use Group 3 school (14,334 square feet on each of the second through fifth floors and 3,066 square feet on the twelfth floor); and

WHEREAS, the existing 12-story building is otherwise occupied by Use Group 6 office uses and a Use Group 6 eating or drinking establishment on the ground floor; and

WHEREAS, with regards to ZR § 73-19(a), BLCS states that it has searched for sites of adequate size within a zoning district that would have permitted a Use Group 3 school use as-of-right within the bounds of Community District 13, located close to public transportation within BLCS’ price range for over a year and asserts that there is no practical possibility of obtaining such a site; and

WHEREAS, as to ZR § 73-19(b), BLCS asserts that the subject site is located approximately 68 feet from an R6 zoning district in which a Use Group 3 school use is permitted as-of-right and, thus, the subject proposed Use Group 3 school is located not more than 400 feet from the boundary of a district wherein such school is permitted as-of-right; and

WHEREAS, in satisfaction of ZR § 73-19(c), the Applicant asserts that the proposed school is adequately separated from noise, traffic and other adverse effects of the surrounding manufacturing district; and

WHEREAS, the Applicant conducted a noise analysis and identified the dominant source of noise in the vicinity to be comprise of local vehicular traffic and the elevated subway lines on the Manhattan Bridge, immediately to the east of the site; and

WHEREAS, in order to ensure an interior noise level of 45 dBA acceptable for school use, the Applicant proposes to install additional attenuation at all facades of the subject building on the second, third, fourth, fifth and portions of the

twelfth floors BLCS proposes herein to occupy; specifically any building façade with frontage along Pearl Street must provide a minimum composite window/wall attenuation rating of 35 dBA, any building façade with frontage along Prospect Street must provide a minimum composite window/wall attenuation rating of 42 dBA, any building façade with frontage along Jay Street must provide a minimum composite window/wall attenuation rating of 50 dBA, and any building façade with frontage along Sands Street must provide a minimum composite window/wall attenuation rating of 33 dBA; and

WHEREAS, finally, with regards to ZR § 73-19(d), the Applicant states that, pursuant to a transportation analysis prepared by a consultant and based on standard CEQR criteria, transportation surveys of the surrounding commercial buildings and BLCS’s current students, among other things, the split of transportation modes utilized to access the site is anticipated to be as follows: 76 percent of students will arrive to the site by public transportation, 20 percent of students will arrive by foot and 4 percent will arrive by private vehicle; approximately 62 percent of teachers will arrive to the site by public transportation, approximately 28 percent will arrive by foot or bicycle and approximately 10 percent will arrive by private vehicle; and

WHEREAS, during arrival and dismissal, the Applicant states that school staff will be located in hallways of the Use Group 3 school space, street frontages of the building, nearby intersections and external Stair B—the stair case of the existing 12-story building exclusively dedicated to ingress and egress for the Use Group 3 school use to prevent the possibility of students commingling with stranger adults occupying other portions of the subject building—in order to ensure safe passage to the site; and

WHEREAS, with regards to the loading berth located at the site and the Applicant’s right to exclusively utilize external Stair B, the Applicant submitted an executed rider to its lease confirming BLCS’s exclusive use of Stair B as the primary means of ingress and egress between Sands Street and the second floor of the subject building and restricted use of the building’s loading dock by all occupants of the building between 7:45 a.m. and 8:30 a.m. and 3:45 p.m. and 4:30 p.m. Monday through Friday, other than on days in which school is not in session; and

WHEREAS, at hearing, the Board expressed concern regarding “restricted” use of the loading dock, rather than its full closure, during the proposed school’s hours of arrival and dismissal and, accordingly, conditions approval of this application on the presence of school staff and/or security personnel escorting students into and out of the building in order to protect them from potential loading dock activities and the Applicant’s pursuit of any available means to further restrict the use of the loading dock during arrival and departure times; and

WHEREAS, the rider additionally required that BLCS install, at its sole cost and expense, a vestibule or shed on Sands Street, with its sole entrance facing Jay Street, or an awning; and

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WHEREAS, at hearing, the Board noted that the Applicant must acquire a revocable consent in order to install a vestibule or shed on a public street; and

WHEREAS, the Board referred the application to the New York City Department of Transportation (“DOT”) Division of Transportation Planning and Management and, by letter dated July 20, 2018, DOT requested that the Applicant investigate the feasibility of constructing a pull-out area for vehicles in the south curb of Prospect Street adjacent to the existing building to accommodate student pick-up and drop-off for students expected to arrive and depart by private vehicle and that, upon approval of the application and construction of the school, the Applicant notify DOT so that DOT can determine if traffic safety improvements or parking regulation changes are necessary; and

WHEREAS, the Applicant further asserts that additional pedestrian safety measures are proposed to be implemented in the immediate vicinity of the subject site in conjunction with DOT’s School Safety Division, including the installation of high visibility crosswalk safety measures at the intersections of Jay Street and Sands Street, Pearl Street and Sands Street and Pearl Street and Prospect Street, where high pedestrian activity is anticipated; the installation of “School Zone Ahead” signs at Sands Street between Jay Street and Pearl Street, Sands Street between Adams Street and Pearl Street and Prospect Street between Adams Street and Pearl Street; and the addition of school crossing guards at the north and east crosswalks at the intersection of Sands Street and Pearl Street, at the south crosswalk at the intersection of Prospect Street and Pearl Street and at the west crosswalk at the intersection of Sands Street and Jay Street; and

WHEREAS, in satisfaction of ZR § 73-03(a), the Applicant asserts that, under the conditions and safeguards imposed, the hazards or disadvantage to the community at large of this special permit at this particular site are outweighed by the advantages to be derived by the community by the grant of such special permit and, in accordance with ZR § 73-03(b), that the subject proposal will not interfere with any public improvement project in accordance with ZR § 73-03(b); and

WHEREAS, in light of the foregoing, the Board determines that the evidence in the records supports the findings required to be made under ZR §§ 73-19 and 73-03; and

WHEREAS, the project is classified as a Type I action pursuant to 6 NYCRR, Part 617.4(b)(9); 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. 18BSA132K, received August 14, 2018 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 reviewed the proposal and concludes that, while the subject site is of neither architectural nor archaeological significance, it is adjacent to the New York State and National Register listed Manhattan Bridge, but no adverse impacts are anticipated to the bridge as a result of this proposal, which does not involve new construction or in-ground excavation; and

WHEREAS, by letter dated July 31, 2018, the New York City Department of Environmental Protection (“DEP”) states that it finds the July 2018 Phase II investigation of the site for hazardous materials acceptable and, therefore, has no objection to the issuance of any remaining permits by DOB related to this project; and

WHEREAS, by letter dated August 13, 2018, DEP requested that the Air Quality section of the EAS be revised to indicate that the proposal will not include any operable windows, that fresh air would be provided from the existing air unit located on the roof and to include the screening analysis for elevated sources and the natural gas fired burner system of a nearby manufacturing use; DEP additionally requested that, with regard to noise, the school maintain an acceptable interior noise level of 45 dBA, that field noise measurements be provided as project backup material and that the Noise section of the EAS be revised to indicate that alternative means of ventilation are included in the proposed project; and

WHEREAS, the EAS includes attenuation requirements of 36 dBA of composite window/wall attenuation on any western-facing façade along Pearl Street, 43 dBA window/wall attenuation on any northern-facing façade along Prospect Street, 49 dBA window/wall attenuation on any eastern-facing façade along Jay Street, and 40 dBA window/wall attenuation on any southern-facing façade along Sands Street to maintain an interior noise level of 45 dBA or below; and

WHEREAS, with these revisions, DEP concludes that significant air quality and noise impacts from and on the proposed project are not anticipated; and

WHEREAS, the Applicant subsequently revised the EAS in accordance with DEP’s August 13, 2018, letter; and

WHEREAS, by letter dated August 13, 2018, DOT’s Division of Transportation Planning and Management state that, in light of DOT’s concerns, raised during the environmental review process, regarding the proximity of the building’s loading dock to the proposed school entrance, the Applicant has expressed a commitment to the following safety measures that would be incorporated into the Board’s resolution: (1) to ensure student safety, school staff would be stationed outside of the building during arrival and dismissal hours; (2) truck deliveries would be coordinated with building management to avoid truck loading/unloading during the school arrival and dismissal hours; (3) the Applicant will

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notify the New York City Police Department to assign three school crossing school guards during the school arrival and dismissal hours stationed at the intersections of Sands Street and Pearl Street, Sands Street and Jay Street and Prospect Street and Pearl Street, and that on school days when crossing guards are not available, the Applicant will provide alternate means (i.e. school staff) to aid students crossing the streets during school arrival and dismissal hours; and (4) the Applicant will coordinate with School Safety and the Borough Engineer to install proposed "School Zone Ahead" signage on Prospect Street between Adams Street and Pearl Street, Sands Street between Jay Street and Pearl Street and on Sands Street between Adams Street and Pearl Street; and

WHEREAS, DOT states that base on its review of the EAS, DOT has concluded that the proposed project would not result in any adverse significant impact to analyzed pedestrian elements; 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 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 §§ 73-19 and 73-03 to permit, in an M1-6 zoning district, the occupancy of a portion of the twelfth floor and the entirety of the second through fifth floors of an existing 12-story building with a Use Group 3 school contrary to applicable use regulations set forth in ZR § 42-12; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received August 14, 2018"-Twelve (12) sheets; and *on further condition*:

THAT school staff and/or security personnel shall escort students into and out of the building in order to protect them from potential loading dock activities;

THAT truck deliveries shall be coordinated with building management to avoid truck loading/unloading during the school arrival and dismissal hours; and

THAT to the extent that the school can further restrict the use of the loading dock during students' arrival and departure times, the school shall pursue such methods;

THAT the Applicant shall apply for a revocable consent to permit the construction of any structure required by the terms of its lease to protect and/or separate students from loading dock use;

THAT upon the completion of construction of the school, the Applicant shall notify DOT so that DOT can determine if traffic safety improvements or parking regulation changes are necessary;

THAT the Applicant shall notify the New York City Police Department to assign three school crossing school guards stationed at the intersections of Sands Street and Pearl Street, Sands Street and Jay Street and Prospect Street and Pearl Street during the school arrival and dismissal hours and, on school days when crossing guards are not available, the Applicant shall provide alternate means (i.e. school staff) to aid students crossing the streets during school arrival and dismissal hours;

THAT the Applicant shall coordinate with School Safety and the Borough Engineer to install proposed "School Zone Ahead" signage on Prospect Street between Adams Street and Pearl Street, Sands Street between Jay Street and Pearl Street and on Sands Street between Adams Street and Pearl Street;

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 21, 2018.

2018-130-BZ

CEQR #19-BSA-020K

APPLICANT – NYC Mayor's Office of Housing Recovery Operation.

SUBJECT – Application August 7, 2018 – 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 – 22 and 32 Stanton Road, Block 8800, Lot 100, 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.....3

Negative.....0

Absent: Commissioner Sheta and Commissioner Scibetta...2

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 development of a single-family

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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 August 21, 2018, 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 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 development of a three-story single-family detached dwelling set back 13 feet from the eastern lot line, 4.5 feet from the southern lot line, 10

feet from the western lot line and 4.5 feet from the northern lot line with an exterior stair to the east, an exterior stair to the west and a wheelchair lift to the east as proposed obstructions; 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

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- 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 residence, which, as it existed, was 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 development 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. 19BSA020K, dated August 6, 2018; 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 development 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 August 6, 2018"- Five (5) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: set back 13 feet from the eastern lot line, 4.5 feet from the southern lot line, 10 feet from the western lot line and 4.5 feet from the northern lot line with an exterior stair to the east, an exterior stair to the west and a wheelchair lift to the east, as illustrated on the BSA-approved drawings;

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 August 21, 2022;

THAT the approved drawings 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 21, 2018.

2018-131-BZ

CEQR #19-BSA-020K

APPLICANT – NYC Mayor's Office of Housing Recovery Operation.

SUBJECT – Application August 7, 2018 – 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 – 22 and 32 Stanton Road, Block 8800, Lot 100, 52, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Application granted on

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condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown.....3

Negative.....0

Absent: Commissioner Sheta and Commissioner Scibetta...2

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 development 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 August 21, 2018, 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 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 development of a three-story single-family detached dwelling set back 13 feet from the western lot line, 4.5 feet from the northern lot line, 10 feet from the eastern lot line and 4.5 feet from the southern lot line with an exterior stair to the west, an exterior stair to the east and a wheelchair lift to the west as proposed obstructions; 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

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(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 residence, which, as it existed, was 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 development 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. 19BSA020K, dated August 6, 2018; 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 development 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 August 6, 2018"- Five (5) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: set back 13 feet from the western lot line, 4.5 feet from the northern lot line, 10 feet from the eastern lot line and 4.5 feet from the southern lot line with an exterior stair to the west, an exterior stair to the east and a wheelchair lift to the west, as illustrated on the BSA-approved drawings;

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 August 21, 2022;

THAT the approved drawings 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 21, 2018.

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2018-134-BZ

CEQR #19-BSA-023K

APPLICANT – NYC Mayor’s Office of Housing Recovery Operation.

SUBJECT – Application August 10, 2018 – 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 – 24A Mesereau Court, Block 8797, Lot 101, 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

Absent: Commissioner Sheta and Commissioner Scibetta...2

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 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, 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 August 21, 2018, 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 Mesereau Court, north of Dunne Place, in an R4-1 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 47 feet of frontage along Mesereau Court, 2,345 square feet of lot area and is occupied by a one-story single-family detached residence, which is set back 16.4 feet from the northern lot

line, 10.6 feet from the eastern lot line, 2.7 feet from the southern lot line, 1.6 feet from the western lot line and is non-compliant with the applicable yard regulations; 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 set back approximately 19 feet from the northern lot line, 10 feet from the eastern lot line, 5 feet from the southern lot line and 10 feet from the western lot line; 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 for 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

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- 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 residences 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. 19BSA023K, dated August 10, 2018; and

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*, on a site within an R4-1 zoning district, the reconstruction of a

single-family 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, 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 August 10, 2018"- Five (5) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: set back 19 feet from the northern lot line, set back 10 feet from the eastern lot line, set back 5 feet from the southern lot line and set back 10 feet from the western lot line with an exterior stair and landing to the north, an exterior stair and landing to the east and a roof overhang to the east, 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 August 21, 2022;

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 21, 2018.

MINUTES

268-14-BZ

APPLICANT – Akerman LLP, for Kenfa Madison, LLC; Two Deer Group, LLC, owner.

SUBJECT – Application October 31, 2014 – Variance (§72-21) proposed enlargement of the existing Use Group 6, eating and drinking establishment at the subject site. R1-2 zoning district.

PREMISES AFFECTED – 231-06/10 Northern Boulevard, Block 8164, Lot(s) 22,122, 30, 130, 43 15, 230, Borough of Queens.

COMMUNITY BOARD #11Q

ACTION OF THE BOARD – Laid over to November 20, 2018, at 10 A.M., for continued hearing.

2017-47-BZ

APPLICANT – Law Office of Lyra J. Altman, for Susan Nabet and Benjamin Nabet, owners.

SUBJECT – Application February 17, 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) and less than the required rear yard (ZR §23-47). R2 zoning district.

PREMISES AFFECTED – 1052 East 22nd Street, Block 7585, Lot 77, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Laid over to November 20, 2018, at 10 A.M., for continued hearing.

2017-266-BZ

APPLICANT – Law Office of Lyra J. Altman, for Chedvah Rabinovich & Jeffrey Rabinovich, owners.

SUBJECT – Application September 12, 2017 – 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.

PREMISES AFFECTED – 2302 Avenue K aka 1093 East 23rd Street, Block 7605, Lot 8, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Laid over to November 20, 2018, at 10 A.M., for continued hearing.

2018-1-BZ

APPLICANT – Jesse Masyr, Esq., Fox Rothschild LLP, for 11-02 37th Avenue LLC, owner; New York Black Car Operators' Injury Compensation Fund, Inc., lessee.

SUBJECT – Application January 2, 2018 – Special Permit (§73-44) to permit the reduction of required accessory off-street parking spaces for a UG 6B office use (PRC-B1 parking category) contrary to ZR §44-21. M1-3 zoning district.

PREMISES AFFECTED – 11-02 37th Avenue, Block 361, Lot 18, Borough of Queens.

COMMUNITY BOARD #1Q

ACTION OF THE BOARD – Laid over to November 8, 2018, at 10 A.M., for continued hearing.

Carlo Costanza, Executive Director

BULLETIN

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September 23, 2018

DIRECTORY

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SHAMPA CHANDA, *Vice-Chair*

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DOCKETS

New Case Filed Up to September 13, 2018

2018-138-BZ

257 West 17th Street, located on the north side of West 17th Street between 7th and 8th Avenues., Block 00767, Lot(s) 7502, Borough of **Manhattan, Community Board: 4**. Special Permit (§73-36) to permit the legalization of a Physical Cultural Establishment (Brick New York in a portion of the cellar and first floor of an existing building contrary to ZR 32-10. C6-2A zoning district. C6-2A district.

2018-139-BZ

620-622 Myrtle Avenue, Located on the southeast corner of Kent Avenue and Myrtle Avenue, Block 1912, Lot(s) 21, 22, Borough of **Brooklyn, Community Board: 3**. Variance (§72-21) to permit the development of a school (UG 3) (Yeshiva Mesivta Arugath Habosem) contrary to ZR §33-121 (Floor Area/Floor Area Ratio), ZR §23-662(a) (Building Height), ZR §23-662(c) (Setback), ZR §24-12 (Lot Coverage) and ZR §33-26 (Rear Yard). R7A zoning district. R7A district.

2018-140-BZ

100-03 North Conduit Avenue, Located on the northeast corner of N. Conduit Avenue and Cohancy Street, Block 11562, Lot(s) 106,111,113,119, Borough of **Queens, Community Board: 10**. Special Permit (§73-211) to permit the operation of an Automotive Service Station (UG 16B) with an accessory convenience store contrary to ZR §32-10. C2-2/R3X zoning district. R3X/C2-2 district.

2018-141-BZ

110-37 68th Drive, Located between 110th Street and 112th Street, Block 2227, Lot(s) 0048, Borough of **Queens, Community Board: 6**. Special Permit (§73-621) to permit the enlargement of a two-family home contrary to ZR §23-142 (floor area ratio, lot coverage and open space). R1-2A zoning district R1-2A district.

2018-142-BZ

204-23 46th Road, Located on the intersection of 46th Road and Clearview Expressway, Block 7304, Lot(s) 0053, Borough of **Queens, Community Board: 19**. Variance (§72-21) to permit the development of a two-story plus attic & cellar Use Group (“UG”) 2 residential building contrary to ZR §§22-00 (Zero Lot line building) & § 32-461a (Side Yard less than minimum required). R3-1 zoning district. R3-1 district.

2018-143-BZ

20 West 14th Street, Located on the south side of West 14th Street, 275 feet west of intersection with 5th Avenue, Block 00577, Lot(s) 0030, Borough of **Manhattan, Community Board: 2**. Special Permit (§73-36) to permit the operation of a Physical Cultural Establishment (FitHouse) to be located within portions of the cellar and first floor of the north wing of an existing six story mixed use building contrary to ZR §32-10. C6-2M and C6-2 zoning districts. C6-2M/C6-2 district.

2018-144-BZ

551 Madison Avenue, Located at the northeast corner intersection of Madison Avenue and East 55th Street., Block 01291, Lot(s) 0021, Borough of **Manhattan, Community Board: 5**. Special Permit (§73-36) to permit the operation of a Physical Cultural Establishment (NOVA Fitness) to be located on a portion of the third floor of an existing commercial building contrary to ZR §32-10. C5-3 zoning districts. C5-3 district.

2018-145-BZ

251-73 Jericho Turnpike, located at the corner northeast intersection of Jericho Turnpike and Little Neck Parkway, Block 08668, Lot(s) 108, Borough of **Queens, Community Board: 13**. Special Permit (§73-36) to permit the operation of a Physical Cultural Establishment (Planet Fitness) to be located on portions of the first and second floors of a new building contrary to ZR §32-10. C8-1 Zoning District. C8-1 district.

2018-146-BZ

1315 East 24th Street, Located between Avenue M and Avenue N, Block 07660, Lot(s) 0039, Borough of **Brooklyn, Community Board: 14**. Special Permit (§73-622) to permit the enlargement of an existing single-family home contrary to ZR §23-142 (FAR, Lot Coverage and Open Space); ZR §23-621(b) (Perimeter Wall Height); ZR §23-47 (Rear Yard) and ZR §23-461 (Side Yard). R2 zoning district. R2 district.

2018-147-A

3805 Beach 38th Street, Premise is located between Beach 38th Street and Atlantic Avenue, Block 07044, Lot(s) 0539, Borough of **Brooklyn, Community Board: 13**. Proposed development of a two (2) family detached residence not fronting on a legally mapped street contrary to General City Law 36. R3 zoning district. R3-1 district.

DOCKETS

2018-148-BZ

32 West 18th Street, Located on the South Side of West 18th Street between Fifth and Sixth Avenues, Block 00819, Lot(s) 7503, Borough of **Manhattan, Community Board: 5.** Special Permit (§73-36) to permit the operation of a Physical Cultural Establishment (CorePower Yoga) to be located on portion of first floor of an existing mixed-use building contrary to ZR §32-10. C8-4A Ladies Mile Historic District. C6-4A district.

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

CALENDAR

REGULAR MEETING OCTOBER 23, 2018, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, October 23, 2018, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

SPECIAL ORDER CALENDAR

193-05-BZ

APPLICANT – Patrick W. Jones, P.C., for 32 East 31st Street Corp., owner; Tone House, lessee.

SUBJECT – Application May 24, 2016 – Extension of Term of a previously granted Special Permit (§73-36) for the continued operation of Physical Culture Establishment (*Tone House*) which expired on April 25, 2016. C5-2 zoning district.

PREMISES AFFECTED – 32 East 31st Street, Block 860, Lot 55, Borough of Manhattan.

COMMUNITY BOARD #5M

177-14-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP for MADDD Properties LLC, owner; CF Flatbush LLC, lessee. SUBJECT – Application January 4, 2018 – Amendment of a previously approved Special Permit (§73-36) permitting the operation of a physical culture establishment (*Crossfit*) within portions of an altered building contrary to ZR §32-10.

The amendment seeks to enlarge to use by 584 sq. ft. C4-4A/R6A zoning district.

PREMISES AFFECTED – 1038 Flatbush Avenue, Block 5125, Lot 60, Borough of Brooklyn.

COMMUNITY BOARD #14BK

322-14-BZ

APPLICANT – Eric Palatnik, P.C., for Maks Kutsak, owner.

SUBJECT – Application March 9, 2018 – Amendment of a previously approved Special Permit (§73-622) permitting the enlargement of an existing single-family home contrary to floor area, lot coverage and open space (ZR §23-141). The amendment seeks to decrease the approved FAR from 0.96 to 0.94 and to increase the lot coverage from 37% to 38%. R3-1 zoning district.

PREMISES AFFECTED – 82 Coleridge Street, Block 8728, Lot 58, Borough of Brooklyn.

COMMUNITY BOARD #15BK

APPEALS CALENDAR

2018-14-A

APPLICANT – NYC Department of Buildings, for Daniel Nelson, owner,

SUBJECT – Application January 31, 2018 – Application by the NYC Department of Buildings pursuant to New York City Charter §§ 645(b)(3)(e) and 666.6(a) to request that the NYC Board of Standards and Appeals revoke the Certificate of Occupancy No. 300859122 issued on May 5, 2000. R5 zoning district

PREMISES AFFECTED – 596 East 81st Street, Block 7959, Lot 90, Borough of Brooklyn.

COMMUNITY BOARD #18BK

REGULAR MEETING OCTOBER 23, 2018, 1:00 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, October 23, 2018, 1:00 P.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

ZONING CALENDAR

2017-257-BZ

APPLICANT – Law Offices of Marvin B. Mitzner, LLC, for GMI Realty, owner; CorePower Yoga LLC, lessee.

SUBJECT – Application October 23, 2018 – 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.

PREMISES AFFECTED – 159 North 4th Street, Block 2344, Lot 7503, Borough of Brooklyn.

COMMUNITY BOARD #1BK

2017-295-BZ

APPLICANT – Law Office of Jay Goldstein, for 129 West 26th Street Development LLC, owner.

SUBJECT – Application November 6, 2017 – 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.

PREMISES AFFECTED – 128 West 26th Street, Block 801, Lot 58, Borough of Manhattan.

COMMUNITY BOARD #4M

CALENDAR

2017-303-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Mayfield Group LLC, owner.

SUBJECT – Application November 20, 2017 – 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.

PREMISES AFFECTED – 1281 Forest Avenue, Block 1042, Lot 13, Borough of Staten Island.

COMMUNITY BOARD #1SI

2018-54-BZ

APPLICANT – Sheldon Lobel, P.C., for Dagny Enterprises LLC, owner; Civic Builders, Inc., lessee.

SUBJECT – Application April 16, 2018 – Special Permit (§73-19) to permit the construction of a charter school (UG 3) (Classical Charter School) contrary to ZR §32-10. C8-3 zoning district.

PREMISES AFFECTED – 761 Sheridan Avenue/757 Concourse Village West, Block 2458, Lot 124, Borough of Bronx.

COMMUNITY BOARD #4BX

2018-64-BZ & 2018-65-A

APPLICANT – Sheldon Lobel, P.C., for Benjamin Brecher, owner.

SUBJECT – Application May 1, 2018 – Variance (§72-21) to permit the construction of a House of Worship (UG 4) (*Kehilas Bais Yisroel*) contrary to ZR §24-111 (FAR); ZR §24-521 (maximum wall height); ZR §24-35(a) (side yard regulations); ZR §24-36 (rear yard); ZR §24-34 (front yard); and ZR §§25-31 & 25-32 (parking regulations) within the bed of a mapped street contrary to Article III, Section 35 of the General City Law. R2X zoning district.

PREMISES AFFECTED – 725 Mobile Road, Block 15553, Lot(s) 13 & 22, Borough of Queens.

COMMUNITY BOARD #14Q

2018-107-BZ

APPLICANT – Eric Palatnik, P.C., for Corporate Commons Three, LLC, owner.

SUBJECT – Application July 5, 2018 – Variance (§72-21) to permit a school campus (UG 3) (Integration Charter Schools) contrary to ZR §42-00. M1-1 zoning district.

PREMISES AFFECTED – 1441 South Avenue, Block 2165, Lot 120, Borough of Staten Island.

COMMUNITY BOARD #2SI

2018-158-BZ

CEQR #19-BSA-042Q

APPLICANT – NYC Mayor’s Office of Housing Recovery Operation.

SUBJECT – Application October 15, 2018 – Special Permit (§64-92) to waive bulk requirements for the reconstruction of homes damaged/destroyed by Hurricane Sandy for a property registered in the NYC Build it Back Program. Waiver of minimum required side yards (ZR §§23-461(a) and 64-A352). R3A/Special Coastal Risk District ZD.

PREMISES AFFECTED – 622 Cross Bay Boulevard, Block 15451, Lot 1, Borough of Queens.

COMMUNITY BOARD #

2018-159-BZ

CEQR #19-BSA-043Q

APPLICANT – NYC Mayor’s Office of Housing Recovery Operation.

SUBJECT – Application October 15, 2018 – Special Permit (§64-92) to waive bulk requirements for the reconstruction of homes damaged/destroyed by Hurricane Sandy for a property registered in the NYC Build it Back Program. Waiver of minimum required side yards (ZR §§23-461(a) and 64-A352). R3A/Special Coastal Risk District ZD.

PREMISES AFFECTED – 110 East 8th Road, Block 15462, Lot 11, Borough of Queens.

COMMUNITY BOARD #

2018-159-BZ

APPLICANT – NYC Mayor’s Office of Housing Recovery Operation.

SUBJECT – Application October 15, 2018 – Special Permit (§64-92) to waive bulk requirements for the reconstruction of homes damaged/destroyed by Hurricane Sandy for a property registered in the NYC Build it Back Program. Waiver of minimum required side yards (ZR §§23-461(a) and 64-A352). R3A/Special Coastal Risk District ZD.

PREMISES AFFECTED – 110 East 8th Road, Block 15462, Lot 11, Borough of Queens.

COMMUNITY BOARD #

2018-160-BZ

APPLICANT – NYC Mayor’s Office of Housing Recovery Operation.

SUBJECT – Application October 15, 2018 – Special Permit (§64-92) to waive bulk requirements for the reconstruction of homes damaged/destroyed by Hurricane Sandy for a property registered in the NYC Build it Back Program. Waiver of minimum required side yards (ZR §§23-461(a) and 64-A352). R4 ZD.

PREMISES AFFECTED – 33 Roosevelt Walk, Block 16350, Lot 400, Borough of Queens.

COMMUNITY BOARD #

CALENDAR

2018-161-BZ

APPLICANT – NYC Mayor’s Office of Housing Recovery Operation.

SUBJECT – Application October 15, 2018 – Special Permit (§64-92) to waive bulk requirements for the reconstruction of homes damaged/destroyed by Hurricane Sandy for a property registered in the NYC Build it Back Program. Waiver of minimum required side yards (ZR §§23-461(a) and 64-A352). R4 ZD.

PREMISES AFFECTED – 30 Roosevelt Walk, Block 16350, Lot 300, Borough of Queens.

COMMUNITY BOARD #

2018-162-BZ

APPLICANT – NYC Mayor’s Office of Housing Recovery Operation.

SUBJECT – Application October 15, 2018 – Special Permit (§64-92) to waive bulk requirements for the reconstruction of homes damaged/destroyed by Hurricane Sandy for a property registered in the NYC Build it Back Program. Waiver of minimum required side yards (ZR §§23-461(a) and 64-A352). R4 ZD.

PREMISES AFFECTED – 70 Bedford Avenue, Block 16350, Lot 300, Borough of Queens.

COMMUNITY BOARD #

2018-163-BZ

APPLICANT – NYC Mayor’s Office of Housing Recovery Operation.

SUBJECT – Application October 15, 2018 – Special Permit (§64-92) to waive bulk requirements for the reconstruction of homes damaged/destroyed by Hurricane Sandy for a property registered in the NYC Build it Back Program. Waiver of minimum required side yards (ZR §§23-461(a) and 64-A352). R3A/Special Coastal Risk District ZD.

PREMISES AFFECTED – 123 East 6th Road, Block 15400, Lot 5, Borough of Queens.

COMMUNITY BOARD #

Carlo Costanza, Executive Director

MINUTES

**REGULAR MEETING
THURSDAY MORNING, SEPTEMBER 13, 2018
10:00 A.M.**

Present: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.

SPECIAL ORDER CALENDARS

933-28-BZ

APPLICANT – Gerard J. Caliendo, R.A., AIA, for RB Auto Repair/Roger Budhu, owner.

SUBJECT – Application October 16, 2015 – Extension of Term, Amendment & Waiver (11-413) for an extension of the term of a variance which permitted the operation of an automotive repair facility and gasoline service station (UG 16) and an Amendment for the legalization of the enlargement with an insulated corrugated metal enclosure. R5 zoning district.

PREMISES AFFECTED – 125-24 Metropolitan Avenue, Block 9271, Lot 4, Borough of Queens.

COMMUNITY BOARD #9Q

ACTION OF THE BOARD – Laid over to December 11, 2018, at 10 A.M., for continued hearing.

131-97-BZ

APPLICANT – Pryor Cashman LLP, for Ricky’s Bronx Property, LLC, owner; McDonald’s Corporation, lessee.

SUBJECT – Application June 29, 2016 – Amendment to re-instate and eliminate the term of a previously approved Variance (72-21) which permitted an eating and drinking establishment (UG 6) with an accessory drive-through facility, which expired on January 27, 2003; change the hours of operation, enlarge the existing building, and reduce the parking from 9 to 8 spaces; Waiver of the Rules. R1-2 zoning district.

PREMISES AFFECTED – 1600 Boston Road, Block 2967, Lot 42, Borough of Bronx.

COMMUNITY BOARD #3BX

ACTION OF THE BOARD – Laid over to October 30, 2018, at 10 A.M., for continued hearing.

309-09-BZ

APPLICANT – Eric Palatnik, P.C., for Yong Lin, owner.

SUBJECT – Application April 20, 2018 – Extension of Time to Complete Construction of a previously approved Variance (§72- 21) to permit construction of a four-story (three levels and a basement) eight-unit multiple dwelling that does not provide a required side yard, contrary to ZR § 23-51 which expired on May 3, 2015; Amendment to permit a height increase from an approved 34’-8” to 37’-8”; Waiver

of the Rules. C2-3/R5 and R6A zoning districts.

PREMISES AFFECTED – 2173 65th Street, Block 5550, Lot 40, Borough of Brooklyn.

COMMUNITY BOARD #11BK

ACTION OF THE BOARD – Laid over to October 30, 2018, at 10 A.M., for continued hearing.

67-13-A

APPLICANT – NYC Department of Buildings, for ESS PRISA II LLC, owner; OTR Media, lessee.

SUBJECT – Application June 8, 2018 – Request for a Rehearing to provide new evidence to demonstrate that the advertising sign never existed at the premises as of November 1, 1979, and therefore was never granted legal non-conforming status pursuant to ZR §42-55.

PREMISES AFFECTED – 945 Zerega Avenue, Block 3700, Lot 31, Borough of Bronx.

COMMUNITY BOARD #9X

ACTION OF THE BOARD – Laid over to December 4, 2018, at 10 A.M., for continued hearing.

67-13-AIV

APPLICANT – Goldman Harris LLC, for ESS Prisa II LLC, owner; OTR Media Group, Inc. & OTR 945 Zerega LLC, lessee.

SUBJECT – Application June 12, 2018 – Appeal of Department of Building’s determinations *a) denying the registration for an advertising sign located at 945 Zerega Avenue, Bronx, NY; and (b) revoking permit numbers 201143253 and 210039224 for the aforementioned sign. This is a remand from New York State Supreme Court limited to review of the BSA’s prior resolution in light of its decision in BSA Calendar Numbers 24-12-A and 147-12-A.

PREMISES AFFECTED – 945 Zerega Avenue, Block 3700, Lot 31, Borough of Bronx.

COMMUNITY BOARD #9BX

ACTION OF THE BOARD – Laid over to December 4, 2018, at 10 A.M., for continued hearing.

APPEALS CALENDAR

2017-193-A thru 2017-199-A

APPLICANT – Eric Palatnik, P.C., for Frank McErlean, owner.

SUBJECT – Application May 26, 2017 – 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.

PREMISES AFFECTED – 9, 10, 11, 12, 14, 15, and 17 Tulepo Court, Block 2260, Lot(s) 4, 10, 60, 62, 64, 66, 68, Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Application granted on

MINUTES

condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda and Commissioner Ottley-Brown.....3

Negative: Commissioner Sheta and Commissioner Scibetta.2

THE RESOLUTION –

WHEREAS, the decisions of the Staten Island Deputy Borough Commissioner, dated May 15, 2017, acting on Department of Buildings Application Nos. 520273285, 520273258, 520273276, 520273267, 520048948, 520048957 and 520048984 all read in pertinent part:

GCL 36; BC 502.1: 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 502.1 of the 2014 NYC Building Code; and

WHEREAS, this is an application to permit the construction of seven two-story plus basement single-family residences with frontage solely on Tupelo Court, a proposed street not duly placed on the official New York City map, contrary to General City Law (“GCL”) § 36; and

WHEREAS, a public hearing was held on these applications on February 13, 2018, after due notice in *The City Record*, with continued hearings on March 27, 2018, May 15, 2018, and July 17, 2018, and then to decision on September 13, 2018; and

WHEREAS, Commissioner Ottley-Brown performed an inspection of the site and the surrounding area; and

WHEREAS, Community Board 2, Staten Island, recommends disapproval of this application, as Community Board 2 reports that is always opposes construction that does not front on a legally mapped street; and

WHEREAS, by letter dated March 23, 2018, United States Congress member Daniel Donovan requests careful review of this application in light of the considerable opposition expressed by the Community Board and local civic associations; and

WHEREAS, by letter dated May 10, 2018, New York State Senator Andrew Lanza states that the subject applications are “extremely worrisome . . . as it would compound already important concerns” affecting the surrounding community, specifically overcrowding; and

WHEREAS, by letter dated May 11, 2018, Staten Island Borough President James Oddo states that he opposes the subject applications and requests that the Board require the mapping of Tupelo Court; and

WHEREAS, by letter dated July 10, 2018, Richmondtown and Clarke Avenue Civic Association (the “Civic Association”) states that the subject property is in a Special Natural Area district, designated as Class 1 freshwater wetlands and that further activity on the property would be in

legal conflict with all historical designations to date; and

WHEREAS, the Civic Association additionally states that the site is a “highly environmentally sensitive area” contiguous with the Richmond Creek Bluebelt and adjacent to a FEMA flood zone A and asserts that development of the property would contribute to accelerated water runoff compromising the limited capacity Bluebelt, would cause significant erosion and bursts of flooding, re-route natural drainage and severely limit the absorption of storm water and conflict with all post Hurricane Sandy agendas and recommendations undertaken by the City and State of New York; and

WHEREAS, the Board was also in receipt of dozens of letters and testimony from civic organizations (including the Coalition for Wetlands and Forests, the Preservation League of Staten Island and Protectors of Pine Oak Woods) and neighbors in opposition to this application, citing concerns about traffic, flooding, drainage, the subject site’s adjacency to the Richmond Creek Bluebelt, the destruction of forested wetland habitats and a preference that the subject premises be acquired for wetlands and open space; and

WHEREAS, the subject site is located on the north side of Richmond Road, between Aultman Avenue and Hitchcock Avenue, in an R1-2 zoning district, the Special Natural Area District and the Lower Density Growth Management Zone, on Staten Island; and

WHEREAS, by letter date July 28, 2017, the Office of the Borough President of Staten Island states that, at the subject location, the north side of Richmond Road is mapped from the east side of Aultman Avenue easterly to a point approximately 410 feet therefrom with a record width of between 50 and 60 feet, has a final mapped width of 100 feet, and recognized as in-use pursuant to an Opinion of Dedication for its full record width dated June 7, 1922, and that the north side of Richmond Road is mapped from a point approximately 410 feet east of Aultman Avenue easterly to the west side of Hitchcock Avenue with a record width of 100 feet, a final map width of 100 feet, with title vested to the City for the full record width of 100 feet as of December 1, 1965; and

WHEREAS, a survey provided by the applicant represents that, at the subject site, Richmond Road is mapped to a width of 100 feet as acquired by the City of New York; and

WHEREAS, the subject site consists of seven vacant tax lots without any frontage on a legally mapped street; and

WHEREAS, the tax lots are proposed to be accessed by Tupelo Court, an unmapped street that will be accessed from the northern side of Richmond Road and is proposed to be 38 feet wide, curb to curb, with a 3’-6” planting strip, 4-foot-wide sidewalks that will connect to the public sidewalks along Richmond Road, private street lighting and a new 8-inch water main and fire hydrants; and

WHEREAS, the subject tax lots are part of a larger development of 13 total residential buildings on 13 tax lots (the “Larger Development”), but the remaining six lots are not before the Board in this application because they have frontage on Richmond Road and, therefore, do not require

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waivers of GCL § 36; and

WHEREAS, the applicant submits that the residences proposed on the subject tax lots will comply with all applicable zoning provisions including, but not limited to, those relating to minimum lot area; and

WHEREAS, the Board has exercised jurisdiction over tax lots 64, 66 and 68 since April 24, 2012, when, under BSA Cal. Nos. 208-10-A, 209-10-A and 210-10-A, respectively, the Board granted waivers of GCL § 35 to permit the proposed construction of a single-family home on each of the tax lots within the bed of a mapped street, on condition that construction substantially conform to drawings filed with the applications, the proposal comply with all applicable zoning district requirements and that all other applicable laws, rules and regulations be complied with, and on further condition that all necessary DEC and DEP approvals be obtained prior to the issuance of DOB permits; the necessary DCP review and authorization be obtained prior to the issuance of DOB permits; DOB review the proposed plans to ensure compliance with the relevant provisions of the Zoning Resolution and the approved plans be considered approved only for the portions related to the specific relief granted; and

WHEREAS, by letter dated March 20, 2012, the New York State Department of Environmental Conservation (“DEC”) states that a DEC freshwater wetlands (ECL Art. 24) permit was issued on June 10, 2010, (Application No. 2-6404-01121/00001) for the Larger Development, that the development and wetland preservation configuration on the site plan was deemed by DEC to be the minimum necessary to fulfil the statutory mandate of Article 24 of the Environmental Conservation Law to protect freshwater wetlands and their benefits to the public on the subject property; that the plan keeps portions of the beds of St. Andrews Road, Mace Street and Ascot Avenue, which are “paper streets” that include portions of the wetlands and regulated adjacent areas to the wetlands within their street beds, unbuilt in perpetuity to preserve and protect freshwater wetlands and their benefits; and that, as the final permit was issued more than 120 days prior, it is highly unlikely that DEC would revisit the decision to issue the permit; and

WHEREAS, by letter dated January 21, 2014, to the DOB Deputy Borough Commissioner of Staten Island, the New York City Department of City Planning (“DCP”) states that application N 130141 ZAR for authorizations pursuant to ZR §§ 105-421, 105-422 and 105-425 for modification of topographic features on Tier I sites, modification of steep slope and steep slope buffer and modification of botanic environment and tree preservation and planting requirements to facilitate the Larger Development was approved by the City Planning Commission (“CPC”) on December 4, 2013, subject to verification by DOB for compliance with all other applicable provisions of the Zoning Resolution; and

WHEREAS, in connection with the CPC approval, and in accordance with the CPC’s requirements, a Notice of Restrictions was recorded in the Office of the Richmond County Clerk on December 27, 2013, against 14 tax lots (Block 2260, Lots 24, 26, 28, 30, 3, 8, 4, 10, 60, 62, 64, 66,

68 and 36), including the subject tax lots, prohibiting development on tax lot 36, which constitutes approximately 64 percent of the total lot area and has been designated as the “NYC DEP Easement Area”; and

WHEREAS, the Board notes that many of the comments provided in opposition to this application regarding the subject site’s proximity to wetlands and suitability of its development were previously submitted to DCP and DEC in opposition to the applications made to those agencies regarding the Larger Development and that, while the original DEC freshwater wetlands permit was issued prior to Hurricane Sandy, CPC’s authorizations and the NYC DEP Easement Area were defined after Hurricane Sandy; and

WHEREAS, by letter dated August 8, 2017, the New York City Department of Environmental Protection (“DEP”) states that, based on DEP maps, there are 20 inch diameter City water main and an 18 inch diameter sanitary sewer in Richmond Road between Aultman Avenue and Hitchcock Avenue; no existing water mains or sewers are crossing the existing privately owned referenced lots (including Tupelo Court); that, as per the Department of Finance Tax Map, Tupelo Court is a proposed private easement on the subject tax lots; that the proposed internal sanitary and storm pipes will be constructed as per the Site Connection Proposal ID # 2140, approved on June 13, 2016, and proposed Internal Water Main (IWM) will be constructed as per IWM # IWR-05/17, approved on March 1, 2017, and will be maintained by the Homeowners Association; that sanitary and storm connections and service connections to the IWM, constructed in Tupelo Court, will be maintained by the Homeowners Association; that the internal sanitary, storm and IWM pipes and connections will not be maintained by the City of New York; and, based on the above, DEP has no objections to the subject application; and

WHEREAS, by letter dated April 9, 2018, the Fire Department states that it has no objections to the subject application and that the requirements of the Fire Department are as follows: the location of all hydrants shall be as indicated on the stamped plan; a minimum of two (2) No Parking signs complying with Fire Code 503.2.7.2 shall be posted within the cul-de-sac; the Homeowner’s Association shall be responsible for maintaining the cul-de-sac clear of any parked vehicles and will subject to enforcement action if not in compliance; all proposed residences shall be fully sprinklered; and two off-street parking spaces shall be provided for each residence; and

WHEREAS, the applicant provided a draft Homeowners Agreement for the Tupelo Homeowners Association, Inc., specifying that members and their guests are not allowed to park on the common street (Tupelo Court); that the maintenance, repair and replacement of the private roadways, sidewalks and landscaped area and street lights on the property, including snow removal, shall be the responsibility of and at the cost and expense of the Homeowners Association; and granting the Fire Department an easement across association property for the purpose of performing any duty necessary to carry out their function; and

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WHEREAS, the applicant additionally submitted a draft Restrictive Declaration requiring compliance with the Fire Department requirements set forth in the April 9, 2018, letter and clarifying that the declarant is responsible for maintaining Tupelo Court in a good state of repair and cleanliness, including but not limited to maintaining the paved surfaces in good repair; maintaining street lights in good working order; assuring that street lights operate during hours of darkness; replacing street light when needed; plowing snow at such times as the accumulated snow falls in any 12-hour period exceeds two inches; maintaining any required storm and sanitary drainage systems in a clear, workable and efficient manner; and maintaining all required utilities located under the streets in good working order; and

WHEREAS, at hearing, Board Commissioners disagreed as to whether and/or how the Board should evaluate concerns regarding the subject development proposal's impact on the adjacent wetlands in an application for waivers of GCL § 36, particularly in light of the DEC and CPC approvals relating to the Larger Development; and

WHEREAS, in the course of public hearings on these applications, Board staff reached out to DEC in response to the extensive community concern regarding site drainage issues and flooding, forwarded a report on flood impacts anticipated to result from the proposed development provided to the Board by the Richmondtown and Clarke Avenue Civic Association and sought confirmation that the DEC freshwater wetlands permit is still valid; and

WHEREAS, in response, DEC confirmed that the freshwater wetlands permit is valid until June 9, 2020, that the report on flood impacts submitted to the Board did not reference the DEC permitted plans, making it difficult for DEC to provide comment, that only five of the 13 single-family residences proposed in the Larger Development are under DEC's jurisdiction and three are believed to be already constructed and a 60 foot deed restricted area of no disturbance was required between the wetland the developed area; and

WHEREAS, General City Law § 36(2), which relates to cities having a population of one million or more, states, in relevant part:

No certificate of occupancy shall be issued in such city for any building unless a street or highway giving access to such structure has been duly placed on the official map or plan, which street or highway, and any other mapped street or highway abutting such building or structure shall have been suitably improved to the satisfaction of the department of transportation of the city in accordance with standards and specifications approved by such department as adequate in respect to the public health, safety and general welfare for the special circumstances of the particular street or highway, or, alternately, unless the owner has furnished to the department of transportation of such city a performance bond naming the city as obligee, approved by such

department, to the full cost of such improvement as estimated by such department, or other security approved by such department, that such improvement will be completed within the time specified by such department. [. . .] Where the enforcement of the provisions of this section 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, the applicant for such a certificate of occupancy may appeal from the decision of the administrative officer having charge of the issuance of certificates of occupancy to the board of standards and appeals or other similar board of such city having power to make variances or exceptions in zoning regulations, and the same provisions are hereby applied to such appeals and to such board as are provided in cases of appeals on zoning regulations. The board may in passing on such appeal many any reasonable exception and issue the certificate of occupancy subject to conditions that will protect any future street or highway layout. [. . .]; and

WHEREAS, at an executive session, one Commissioner stated that an approval of the subject applications would not provide the same protections to the immediate area as a mapping of Tupelo Court by application to DCP; that the text of GCL § 36 does not explicitly include consideration of factors such as drainage; that developments like that proposed at the subject premises require contemplation of factors other than the integrity of the street grid; that the legislature did not intend for GCL § 36 waivers to be obtained in lieu of mapping actions; and that the applicant has failed to show practical difficulty or hardship, as required by the statute; and

WHEREAS, at hearing, the Commissioner opined that applications for waivers of GCL § 36 should be limited to one or two residences that do not front a mapped street and for which a mapping action would be an unnecessary hardship, but where, as here, the proposed development is larger in scale and the applicant is choosing to not front a mapped street, such applications are inappropriate; and

WHEREAS, a majority of the Board, however, finds that the requested waivers are appropriate for the scale of development proposed on the seven subject tax lots, that DEP and DEC have extensively reviewed the subject development with regards to flooding and its adjacency to wetlands and that further review of those topics is not contemplated by the text of GCL § 36; and

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

Therefore it is Resolved, that the decisions of the DOB dated May 15, 2017, acting on Department of Buildings Application Nos. 520273285, 520273258, 520273276, 520273267, 520048948, 520048957 and 520048984, are modified by the power vested in the Board by Section 36 of

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the General City Law, and that these appeals are granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked "Received August 24, 2018"-Three (3) sheets; 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 proposed residences shall fully comply with all applicable provisions of the Zoning Resolution;

THAT the proposed curbs and sidewalk on Tupelo Court shall maintain existing curb line;

THAT the private roadway, curbs and sidewalks within Tupelo Court shall conform to New York City Department of Transportation ("DOT") standards for public streets;

THAT prior to completion of construction, the building/developer shall retain a licensed engineer to inspect the construction of the private roadway, curbs and sidewalks for conformance to DOT standards for public streets and submit a letter to DOB to that effect;

THAT the height of the dwellings shall not exceed 35 feet above grade plane;

THAT interconnected smoke alarms shall be designed and installed in all dwellings in compliance with New York City Building Code Section 907.2.10;

THAT hydrants shall be located within 250 feet of the entrance to each dwelling unit and hydrants shall be on an eight-inch or greater water main;

THAT the location of all hydrants shall be as indicated on the stamped plan;

THAT a minimum of two (2) No Parking signs complying with Fire Code 503.2.7.2 shall be posted within the cul-de-sac;

THAT the Homeowner's Association shall be responsible for maintaining the cul-de-sac clear of any parked vehicles and will subject to enforcement action if not in compliance;

THAT all proposed residences shall be fully sprinklered;

THAT two off-street parking spaces shall be provided for each residence;

THAT the proposed internal sanitary and storm pipes shall be constructed as per the Site Connection Proposal ID # 2140, approved on June 13, 2016;

THAT the proposed Internal Water Main (IWM) shall be constructed as per IWM # IWR-05/17, approved on March 1, 2017;

THAT the proposed IWM shall be maintained by the Home Owners Association;

THAT sanitary and storm connections and service connections to the IWM, constructed in Tupelo Court, shall be maintained by the Home Owners Association;

THAT the internal sanitary, storm and IWM pipes and connections shall not be maintained by the City of New York;

THAT the sidewalks on Tupelo Court shall connect to and be contiguous with the public sidewalks on Richmond Road;

THAT a Homeowners Agreement shall be filed with the

State of New York and recorded in the Office of the City Register in Richmond County against the subject tax lots specifying that members and their guests are not allowed to park on the common street (Tupelo Court); that the maintenance, repair and replacement of the private roadways, sidewalks and landscaped area and street lights on the property, including snow removal, shall be the responsibility of and at the cost and expense of the Homeowners Association; and granting the Fire Department an easement across association property for the purpose of performing any duty necessary to carry out their function;

THAT the above conditions, the BSA Calendar Numbers and a cross-reference number and title of the restrictive declaration, described below, shall be recorded on any temporary and permanent certificate of occupancy hereafter issued to the subject sites;

THAT the restrictive declaration submitted in connection with this application shall be recorded in the Office of the City Register in Richmond County against the subject tax lots prior to the issuance of certificates of occupancy to provide notice to future owners of the proposed single-family residences of the obligations to maintain Tupelo Court;

THAT proofs of filing and recordation shall be provided to the Board;

THAT the record restrictive declaration shall substantially conform to the form and substance of the following:

DECLARATION made this _____, by FRANK MCERLEAN, hereinafter referred to as the "Declarant," with a principal office at 3902 Amboy Road, Staten Island, NY 10308.

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 2260 Lots 3, 4, 8, 10, 60, 62, 64, 66 and 68 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. 2017-193-A through 199-A, Block 2260, Lots 4, 10, 60, 62, 64, 66 and 68 to appeal the decisions of the Staten Island Deputy 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.	Application Number	Denial Date	Address	Block	Lot	Prior BSA Cal. No. - GCL 35
2017-193-A	520273285	May 15, 2017	9 Tupelo Court	2260	4	N/A
2017-194-A	520273258	May 15, 2017	10 Tupelo Court	2260	10	N/A
2017-195-A	520273276	May 15, 2017	11 Tupelo Court	2260	60	N/A
2017-196-A	520273267	May 15, 2017	12 Tupelo Court	2260	62	N/A

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2017-197-A	520048948	May 15, 2017	14 Tupelo Court	2260	64	208-10-A
2017-198-A	520048957	May 15, 2017	15 Tupelo Court	2260	66	209-10-A
2018-199-A	520048984	May 15, 2017	17 Tupelo Court	2260	68	210-10-A

WHEREAS, the BSA requires Declarant to execute and file this restrictive declaration against Block 2260 Lots 3, 4, 8, 10, 60, 62, 64, 66 and 68 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 be legally responsible for operating and maintain the Subject Premises in compliance with the following restrictions of the Fire Department’s Letter of No Objection dated April 9, 2018, and that such compliance shall be subject to enforcement by the Fire Commissioner:

- The location of all hydrants shall be as indicated on the stamped plan;
- A minimum of two (2) No Parking signs complying with Fire Code 503.2.7.2 shall be posted within the cul-de-sac;
- The Homeowner’s Association shall be responsible for maintaining the cul-de-sac clear of any parked vehicles and will subject to enforcement action if not in compliance;
- All proposed residences shall be fully sprinklered;
- Two off-street parking spaces shall be provided for each residence.

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 an intent to form a Homeowners Association, file a homeowner’s agreement (“HOA”) with the State of New York and consents to the filings of an HOA being a condition of the BSA’s approval;

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 the 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 in good working order;
- c) Assuring that street lights operate during hours of darkness;
- d) Replacing street lights when needed;
- e) Snow plowing at such times as the

accumulated snow fall in any 12-hour period exceeds 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 street in good working order.
 1. This declaration may not be modified, amended or terminated without 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;
 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.

IN WITNESS WHEREOF, Declarant has made and executed the foregoing restrictive declaration as of the date hereinabove written.

THAT certificates of occupancy shall be obtained within four (4) years, by September 13, 2022;

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, September 13, 2018.

215-15-A

APPLICANT – Gerald J. Caliendo, RA, AIA, for Farhad Bokhour, owner.

SUBJECT – Application September 1, 2015 – Proposed construction of a two story two family dwelling (U.G. 2), located within the bed of a mapped street contrary to Article 3, Section 35, of the General City Law, within an R3A zoning district.

PREMISES AFFECTED – 144-14 181st Street, Block 13089, Lot 56, Borough of Queens.

COMMUNITY BOARD #12Q

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ACTION OF THE BOARD – Laid over to January 29, 2019, at 10 A.M., for continued 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 November 20, 2018, at 10 A.M., for continued hearing.

2017-5-A thru 2017-7-A

APPLICANT – Eric Palatnik, P.C., for Cetka Mersimovski, owner.

SUBJECT – Application January 6, 2017 – 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.

PREMISES AFFECTED – 620A, 620B, 620C Sharrotts Road, Block 7400, Lot 40, Borough of Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Laid over to October 30, 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 November 20, 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 November 20, 2018, at 10 A.M., for continued hearing.

2017-248-A

APPLICANT – Tarter Krinsky & Drogin LLP, for New York Central Line, owner; Outfront Media, LLC, lessee.

SUBJECT – Application August 28, 2017 – 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.

PREMISES AFFECTED – Long Island Expressway and 74th Street, Block 2814, Lot 4, Borough of Queens.

COMMUNITY BOARD #5Q

ACTION OF THE BOARD – Laid over to December 4, 2018, at 10 A.M., for continued hearing.

2017-253-A

APPLICANT – Tarter Krinsky & Drogin LLP, for New York Central Line, owner; Outfront Media, LLC, lessee.

SUBJECT – Application August 28, 2017 – 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.

PREMISES AFFECTED – Brooklyn Queens Expressway at 34th Avenue, Block 125, Lot 1, Borough of Queens.

COMMUNITY BOARD #2Q

ACTION OF THE BOARD – Laid over to November 20, 2018, at 10 A.M., for postponed hearing.

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ZONING CALENDAR

2017-209-BZ

CEQR #17-BSA-142K

APPLICANT – Eric Palatnik, P.C., for Yoel Zagebaum, owner.

SUBJECT – Application June 9, 2017 – 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.

PREMISES AFFECTED – 1622 East 29th Street, Block 679, Block 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 Sheta and Commissioner Scibetta.....5

Negative:0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated July 18, 2018, acting on Alteration Application No. 321511636, reads in pertinent part:

“Official denial for submission to the Board of Standards and Appeals in regarding to the matters of;

1. ZR-142 – Floor Area
2. ZR-142 – Lot Coverage
3. ZR-142 – Open Space
4. ZR-631b – Perimeter Wall Height
5. ZR-23-47 – Rear Yard
6. ZR-23-461 – Side Yard”; and

WHEREAS, this is an application under ZR §§ 73-622 and 73-03 to permit, in an R3-2 zoning district, the enlargement of an existing single-family detached residence that does not comply with zoning regulations for floor area, lot coverage, open space, perimeter wall height, rear yards and side yards, contrary to ZR §§ 23-142, 23-631(b), 23-47 and 23-461; and

WHEREAS, a public hearing was held on this application on May 15 2018, after due notice by publication in *The City Record*, with a continued hearing on July 24, 2018, and then to decision on September 13, 2018; and

WHEREAS, Commissioner Ottley-Brown performed an inspection of the site and surrounding neighborhood; and

WHEREAS, Community Board 15, Brooklyn, recommends approval of this application, stating that the proposed building would fit in with the character of the neighborhood; and

WHEREAS, the subject site is located on the west side of East 29th Street, between Quentin Avenue and Avenue P, in an R3-2 zoning district, in Brooklyn; and

WHEREAS, the subject site has approximately 50 feet

of frontage along East 29th Street, 100 feet of depth, 5,000 square feet of lot area and is occupied by an existing 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, 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 questions from the Board at hearing about the retention of existing building material, the applicant revised the drawings to reflect that adequate amounts of exterior walls will be retained at the exterior of the subject building and that adequate amount of floor joists will be retained; and

WHEREAS, the applicant proposes to enlarge the existing residence from 2,247 square feet of floor area (0.44 FAR) to 5,016 square feet of floor area (1.02 FAR), from 25 percent lot coverage to 40 percent, from 75 percent open space to 60 percent, maintaining a perimeter wall height of 23'-6", maintaining a rear yard with a depth of 23'-9" and maintaining side yards with a depth of 4'-1" to the north and a depth of 8'-9" to the south; and

WHEREAS, the applicant states that, at the subject site, floor area may not exceed 2,500 square feet (0.5 FAR) under ZR § 23-142, lot coverage may not exceed 35 percent under ZR § 23-142, open space must be at least 55 percent under ZR § 23-142, perimeter wall height may not exceed 21 feet under ZR § 23-631, rear yards must have depths of 30 feet under ZR § 23-47 and side yards must have minimum widths of five feet for a total width of 13 feet under ZR § 23-461; and

WHEREAS, the applicant represents that the proposed building as enlarged is consistent with the built character of the neighborhood; and

WHEREAS, in support of this contention, the applicant surveyed single- and two-family residences in the surrounding area, finding that there are 17 residences with more than 0.9 FAR, that there are 23 residences with lot coverage between 35 percent and 55 percent, that the adjacent residence has an equivalent perimeter wall height

and that 18 residences on the subject block have rear yards with depths of 25 feet or less; and

WHEREAS, the applicant also submitted a rear yard study, lot coverage diagram, photographic streetscape montage and a photographic neighborhood study demonstrating that the proposed building will fit in with the built conditions of the surrounding area; and

WHEREAS, based upon its review of the record and inspections of the subject site and surrounding neighborhood, the Board finds that the proposed building as enlarged will not alter the essential character of the neighborhood or district in which the subject building is located, 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 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 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-142K, dated June 9, 2017; and

WHEREAS, the Board finds that the evidence in the record supports the findings required to be made under ZR §§ 73-622 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion.

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 §§ 73-622 and 73-03 to *permit*, in an R3-2 zoning district, the enlargement of an existing single-family detached residence that does not comply with zoning regulations for floor area, lot coverage, open space, perimeter wall height, rear yards and side yards, contrary to ZR §§ 23-142, 23-631(b), 23-47 and 23-461; *on condition* that all work and site conditions shall conform to drawings filed with this application marked "Received August 24, 2018"-Thirteen (13) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: a maximum of 5,016 square feet of floor area (1.02 FAR), maximum lot coverage of 40 percent, a minimum of 75 percent open space, a maximum perimeter wall height of 23'-6", a rear yard with a minimum depth of 23'-9" and side yards with a minimum depth of 4'-1" to the north and a minimum depth of 8'-9" to the south, as illustrated on the Board-approved drawings;

THAT removal of existing joists or perimeter walls in excess of that shown on the Board-approved plans shall void the special permit;

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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 13, 2022;

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 13, 2018.

2017-213-BZ

CEQR #17-BSA-146K

APPLICANT – Slater & Beckerman, P.C., for Dynamic Youth Community, Inc., owner.

SUBJECT – Application June 14, 2017 – 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).

PREMISES AFFECTED – 1808 Coney Island Avenue, Block 6592, 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 Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated May 22, 2017, acting on New Building Application No. 321569655, reads in pertinent part:

“Proposed . . . does not conform to the use regulations of section 23-10 et seq. of the Zoning Resolution”

“Proposed . . . does not comply with rear yard regulations 33-26 of the zoning resolution”

“Proposed . . . does not comply with district boundary yard regulations of section 33-292 of the zoning resolution”; and

WHEREAS, this is an application under ZR § 72-21 to permit, in a C8-2 zoning district and the Special Ocean Parkway District, the development of a six-story, with cellar, community-facility building for use as a non-profit

institution with sleeping accommodations (Use Group 3), contrary to ZR §§ 23-10, 33-26 and 33-292; and

WHEREAS, this application is brought on behalf of Dynamic Youth Community, Inc. (the “Educational Facility”); and

WHEREAS, a public hearing was held on this application on March 27, 2018, after due notice by publication in *The City Record*, with continued hearings on May 22, 2018, June 5, 2018, July 24, 2018, and then to decision on September 13, 2018; and

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

WHEREAS, Community Board 12, Brooklyn, recommends approval of this application on condition that there be 24/7 security cameras, that there be a security guard posted at the subject site, that there be no more than 20 beds and that residents not congregate in front of the subject building; and

WHEREAS, by letter dated September 12, 2017, the New York City Department of Education submitted testimony in support of this application; and

WHEREAS, by letter dated August 14, 2017, New York State Assembly Member Steven H. Cymbrowitz submitted testimony in support of this application; and

WHEREAS, by letter dated September 12, 2017, New York State Senator Martin J. Golden submitted testimony in support of this application; and

WHEREAS, neighbors and organizations from the surrounding area submitted testimony, including more than 240 letters, in support and in opposition to this application; and

WHEREAS, the subject site is located on the west side of Coney Island Avenue, between Avenue N and Avenue O, in a C8-2 zoning district and the Special Ocean Parkway District, in Brooklyn; and

WHEREAS, the subject site has approximately 20 feet of frontage along Coney Island Avenue, 100 feet of depth, 2,000 square feet of lot area and is occupied by a two-story community facility building; and

WHEREAS, the applicant proposes to develop a six-story, with cellar, community-facility building for use as a non-profit institution with sleeping accommodations (Use Group 3) that has a rear yard with a depth of 0 feet at the first floor and between 11’-5” and 30 feet at the second through sixth floors; and

WHEREAS, the applicant states that, at the subject site, non-profit institutions with sleeping accommodations (Use Group 3) are not permitted under ZR § 23-10 and that rear yards must have a minimum depth of 20 feet under ZR § 33-26 and a minimum depth of 30 feet under ZR § 33-29; and

WHEREAS, the applicant states that, as part of the curricular requirements of the New York City Department of Education District 79 ReStart Academy, the Educational Facility provides educational services for students to improve academic skills in an environment integrated with

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residential treatment services; and

WHEREAS, the applicant states that the requested waivers will facilitate floorplates large enough to accommodate the Educational Facility's particular programs planned to be housed in the proposed building, including spaces for classroom instruction, counseling and individual tutoring spaces, recreational space and sleeping accommodations for 20 students who will enroll in an on-site High School track or High School Equivalency track program; and

WHEREAS, in support of this contention, the applicant submitted a study of the Educational Facility's programmatic needs demonstrating that the Educational Facility will provide regular, direct educational instruction by licensed teachers within the proposed building, that adjacency to on-site sleeping accommodations is a critical component of the Educational Facility's educational program and that a complying development would fail to meet the Educational Facility's programmatic needs because of significant reductions in usable spaces within the building; and

WHEREAS, the Board acknowledges that the Educational Facility, 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 N.Y.2d 583 (1986), a zoning board must grant an educational or religious institution's application 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, the Board finds that the Educational Facility's programmatic needs create practical difficulties or unnecessary hardship in complying strictly with applicable zoning regulations that are not created by general circumstances in the neighborhood or district; and

WHEREAS, the applicant states that, because the Educational Facility is a non-profit organization and the proposed building is needed to further its programmatic mission, demonstrating that the proposed variance is necessary to realize a reasonable return from the subject site is unnecessary; and

WHEREAS, the applicant states that the Educational Facility's proposed building will not alter the essential character of the immediate neighborhood or district; and

WHEREAS, in support of this contention, the applicant studied the surrounding area, finding that Coney Island Avenue includes a vibrant mix of uses, including local retail, community facilities, residences and automotive uses; and

WHEREAS, the applicant submits that the proposed building fits within the built character of the surrounding area, which includes buildings of similar or greater height than the conforming height proposed, and that the rear yard

of the proposed building is adjacent to a non-complying rear yard of analogous depth, a yard obstructed with a one-story structure and an automotive use; and

WHEREAS, in response to questions from the Board at hearing, the applicant states that the stair tower at the rear of the subject building cannot be reduced in size because of applicable laws requiring minimum dimensions and the Educational Facility's need to provide light and air to its sleeping accommodations; and

WHEREAS, the applicant submits that the Educational Facility will comply with all applicable laws and regulations, including those of the New York State Office of Alcoholism and Substance Abuse Services, by providing a compliant residential program with reintegration services (rather than stabilization and rehabilitation services, which are subject to different regulations), and notes that applicable regulations require the Educational Facility to provide educational services; and

WHEREAS, the applicant represents that the Educational Facility will provide safeguards, including overnight staff and security cameras and systems, to ensure the safety and security of its residents; and

WHEREAS, the applicant states that the proposed building will feature a closed window condition with a minimum of 35 dBA window-wall attenuation on all facades in order to maintain an interior noise level of 45 dBA and that the stair tower in the rear of the subject building is enclosed; and

WHEREAS, the applicant represents that the proposed building will be entirely clad in brick and that the proposed elevator will not require a machine room, thereby allowing for an elevator bulkhead that does not extend above the parapet atop the roof of the proposed building; and

WHEREAS, the Board finds that the proposed variance will not alter the essential character of the neighborhood or district in which the subject site is located; 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 above practical difficulties or unnecessary hardship do not constitute a self-created hardship; and

WHEREAS, the Board finds that the above practical difficulties or unnecessary hardship have not been created by the owner or by a predecessor in title; and

WHEREAS, the applicant states that the proposed variance is the minimum necessary to permit a productive use of the site, as reflected in the Educational Facility's programmatic needs study; and

WHEREAS, the Board finds that the proposed variance is the minimum necessary to afford relief within the intent and purposes of the Zoning 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

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Final Environmental Assessment Statement CEQR No. 17BSA146K, dated September 10, 2018; 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 correspondence dated March 1, 2017, the New York City Landmarks Preservation Commission represents that no significant architectural or archaeological impacts are expected from the project; and

WHEREAS, by letter dated March 9, 2017, the New York State Office of Parks, Recreation and Historic Preservation states that the project will have no impact on archaeological or historic resources listed in or eligible for the New York State and National Registers of Historic Places; and

WHEREAS, by correspondence dated March 14, 2018, the Department of Environmental Protection (“DEP”) recommends that an (E) designation for hazardous materials be placed on the zoning map pursuant to Section 11-15 of the New York City Zoning Resolution for the subject property and states that the (E) designation shall ensure that testing and mitigation will be provided as necessary before any further development or soil disturbance; and

WHEREAS, an (E) designation (E-500) has been placed on the site for hazardous materials, and an environmental review by the New York City Office of Environmental Remediation (“OER”) must be satisfied prior to the issuance of building permits to facilitate the construction of the proposed building; and

WHEREAS, by letter dated September 4, 2018, the New York City Department of Environmental Protection (“DEP”) states that the proposed project would not result in potential significant adverse air quality impacts; and

WHEREAS, by letter dated September 7, 2018, DEP states that no significant noise impact is expected from 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

WHEREAS, 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 of discretion.

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 a C8-2 zoning district and the Special Ocean Parkway District, the development of a six-story, with cellar, community-facility building for use as a non-profit institution with sleeping accommodations (Use Group 3), contrary to ZR §§ 23-10, 33-26 and 33-292; *on condition* that all work, operations and site conditions shall conform to drawings filed with this application marked “Received September 13, 2018”-Sixteen (16) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: a rear yard with a depth of 0 feet at the first floor and between 11’-5” and 30 feet at the second through sixth floors, as illustrated on the Board-approved drawings;

THAT the above condition shall appear on the certificate of occupancy;

THAT a certificate of occupancy shall be obtained within four (4) years, by September 13, 2022;

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 13, 2018.

2017-214-BZ CEQR #17-BSA-147K

APPLICANT – Eric Palatnik, P.C., for Mark Strimber, owner.

SUBJECT – Application June 16, 2017 – 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.

PREMISES AFFECTED – 1459 East 24th Street, Block 7678, Lot 25, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated June 5, 2017, acting on Alteration Application No. 321186505, reads in pertinent part:

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1. Proposed plans are contrary to ZR 23-141 in that the proposed Floor Area Ratio (FAR) exceeds the permitted
2. Proposed plans are contrary to ZR 23-141 in that the proposed Open Space Ratio (OSR) is less than the required
3. 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 an existing single-family detached residence that does not comply with zoning regulations for floor area, open space ratio and rear yards, contrary to ZR §§ 23-141 and 23-47; and

WHEREAS, a public hearing was held on this application on March 20, 2018, after due notice by publication in *The City Record*, with a continued hearing on July 17, 2018, and then to decision on September 13, 2018; and

WHEREAS, Vice-Chair Chanda and Commissioner Ottley-Brown 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 24th Street, between Avenue N and Olean Street, in an R2 zoning district, in Brooklyn; and

WHEREAS, the subject site has approximately 35 feet of frontage along East 24th Street, 100 feet of depth, 3,500 square feet of lot area and is occupied by an existing 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 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, in response to questions from the Board at hearing about the retention of existing building material,

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the applicant revised the drawings to reflect that adequate amounts of exterior walls will be retained at the exterior of the subject building and that adequate amount of floor joists will be retained; and

WHEREAS, the applicant proposes to enlarge the existing residence from 1,562 square feet of floor area (0.45 FAR) to 3,499 square feet of floor area (1.00 FAR), from an open space ratio of 1.68 to 0.52 and from a rear yard with a depth of 40'-6" to 20'-0" at the first and second floors to 23'-0" at the third floor; and

WHEREAS, the applicant states that, at the subject site, floor area may not exceed 1,750 square feet (0.50 FAR) under ZR § 23-141, open space ratio must be at least 1.50 under ZR § 23-141 and rear yards must have minimum depths of 30 feet under ZR § 23-47; and

WHEREAS, the applicant represents that the proposed building as enlarged is consistent with the built character of the neighborhood; and

WHEREAS, in support of this contention, the applicant surveyed single- and two-family residences in the surrounding area, finding that there are 12 residences with more than 1.0 FAR, that there are 17 residences with less than 0.60 open space ratio and that there are 14 rear yards with depths less than 30 feet, including a residence directly adjacent to the subject site with a 20-foot rear yard at the first and second floors; and

WHEREAS, the applicant also submitted a height study, rear yard study, floor area ratio diagram, open space diagram, lot coverage diagram, side yard diagram, photographic streetscape montage, a contextual streetscape illustration and a photographic neighborhood study demonstrating that the proposed building will fit in with the built conditions of the surrounding area; and

WHEREAS, based upon its review of the record and inspections of the subject site and surrounding neighborhood, the Board finds that the proposed building as enlarged will not alter the essential character of the neighborhood or district in which the subject building is located, nor impair the future use or development of the surrounding area; and

WHEREAS, in response to questions from the Board at hearing about the effect of the enlarged building on residences nearby, the applicant reduced the proposed building's incursion into the rear yard by modifying the design of the proposed 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 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-147K, dated June 16, 2017; and

WHEREAS, the Board finds that the evidence in the record supports the findings required to be made under ZR §§ 73-622 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion.

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 §§ 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 zoning regulations for floor area, open space and rear yards, contrary to ZR §§ 23-141 and 23-47; *on condition* that all work and site conditions shall conform to drawings filed with this application marked "Received September 13, 2018"-Thirteen (13) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: a maximum of 3,499 square feet of floor area (1.00 FAR), a minimum open space ratio of 0.52 and a rear yard with minimum depths of 20'-0" at the first and second floors and 23'-0" at the third floor, as illustrated on the Board-approved drawings;

THAT removal of existing joists or perimeter walls in excess of that shown on the Board-approved drawings shall void the special permit;

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 13, 2022;

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 drawings 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 drawings or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, September 13, 2018.

77-15-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Arasu Jambukeswaran, owner.

SUBJECT – Application April 9, 2015 – Variance (§72-21) to allow the alteration of an existing two-family dwelling on the second floor and an enlargement, located within an R2A zoning district.

PREMISES AFFECTED – 244-36 85th Avenue, Block 8609, Lot 22, Borough of Queens.

COMMUNITY BOARD #13Q

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ACTION OF THE BOARD – Laid over to December 11, 2018, at 10 A.M., for adjourned hearing.

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 January 29, 2019, at 10 A.M., for adjourned hearing.

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 September 27, 2018, at 10 A.M., for continued hearing.

2016-4472-BZ

APPLICANT – Sheldon Lobel, P.C., for Marino Plaza 63-12, LLC, owner; Body By Fitness Health Club 1 Inc., lessee.
SUBJECT – Application December 28, 2016 – 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 zoning district.

PREMISES AFFECTED – 245-01–245-13 Jamaica Avenue aka 245-13 Jericho Turnpike, Block 8659, Lot 1, Borough of Queens.

COMMUNITY BOARD #13Q

ACTION OF THE BOARD – Laid over to November 20, 2018, at 10 A.M., for continued hearing.

2017-131-BZ

APPLICANT – Sheldon Lobel, P.C., for Congregation Divrei Yoel, owner.

SUBJECT – Application April 18, 2018 – 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 §§24-36 & 23-47 (Required Rear Yards), and ZR 23-33(b) permitted obstructions in rear yard. R7A zoning district.

PREMISES AFFECTED – 77-85 Gerry Street, Block 2266,

Lot(s) 46,47,48,49, Borough of Brooklyn.

COMMUNITY BOARD #1BK

ACTION OF THE BOARD – Laid over to December 4, 2018, at 10 A.M. for continued hearing.

2017-235-BZ

APPLICANT – Snyder & Snyder LLP on behalf of T-Mobile Northeast LLC, for 111th Avenue LLC, owner; T-Mobile Northeast LLC, lessee.

SUBJECT – Application August 9, 2017 – 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.

PREMISES AFFECTED – 111-02 Sutphin Boulevard, Block 11965, Lot 188, Borough of Queens.

COMMUNITY BOARD #12Q

ACTION OF THE BOARD – Laid over to November 20, 2018, at 10 A.M., for adjourned hearing.

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 December 11, 2018, at 10 A.M., for adjourned hearing.

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REGULAR MEETING

THURSDAY AFTERNOON, SEPTEMBER 13, 2018
1:00 P.M.

Present: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.

2017-22-BZ

CEQR #17-BSA-072Q

APPLICANT – Eric Palatnik, P.C., for Crossfit Bridge and Tunnel, owner.

SUBJECT – Application January 24, 2017 – Special Permit (§73-36) to operate a physical culture establishment (*CrossFit*) within an existing one-story building. M1-4D zoning district.

PREMISES AFFECTED – 16-45 Decatur Street, Block 3555, Lot 74, Borough of Queens.

COMMUNITY BOARD #5Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:0

THE RESOLUTION –

WHEREAS, the decision of the Borough Commissioner, dated December 27, 2016, acting on Department of Buildings (“DOB”) Application No. 421404796, reads in pertinent part:

ZR 42-31, ZR 73-36: Proposed use as a physical culture establishment, as defined by ZR 12-10 in zoning district M1-4D is contrary to 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 legalize, on a site located within an M1-4D zoning district, a physical culture establishment (“PCE”) on a portion of the first floor of an existing one-story non-storage garage and warehouse, contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on September 13, 2018, after due notice by publication in *The City Record*, and then to decision on the same date; and

WHEREAS, Community Board 5, Queens, states that it has no objection to this application; and

WHEREAS, the Board was in receipt of seven (7) form letters in support 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 west side of Decatur Street, bounded by Cypress Avenue to the north and Wyckoff Avenue the south, within an M1-4D zoning

district in Queens; and

WHEREAS, the site has approximately 200 feet of frontage along Decatur Street, 100 feet of depth, 20,026 square feet of lot area and is occupied by a one-story building occupied in part by the subject PCE; 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, the Board notes that, because no portion of the subject PCE is represented as being 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

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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 applicant submitted evidence that the subject PCE occupies 4,894 square feet of floor area on the ground floor; and

WHEREAS, the applicant represents that the PCE has been in operation since January 2015 as CrossFit with the following hours of operation: Monday through Friday, 6:00 a.m. to 9:30 p.m.; Saturday from 9:00 a.m. to 3:00 p.m.; Sunday 10:00 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 the PCE is located in a manufacturing district, is adjacent to commercial and manufacturing uses in the subject building and surrounded by other manufacturing and commercial buildings, there are neither residential uses within the building nor adjacent to the premises, and the PCE has small classes, capped at eighteen participants, that fit well within the PCE space; 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 represents that the PCE contains facilities for the provision of physical fitness instruction and weight loss classes that incorporate gymnastics, weight lifting and cardio exercises; and

WHEREAS, accordingly, 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 submits that the subject building, including the PCE, is equipped with an automatic wet sprinkler system; and

WHEREAS, by letter dated September 7, 2018, the

Fire Department confirms that the subject premises have a sprinkler system, though the permit for such system has expired, that a test order was issued and that the premises owners scheduled a hydrostatic pressure test for February 20, 2019, and the Fire Department has no additional comments or recommendations relative to this application; and

WHEREAS, the applicant represents that the PCE will not impact the privacy, quiet, light and air of the neighborhood on account of its membership is from the immediate neighborhood; members do not generally drive to the PCE; on-street parking is available on Decatur Street in front of the PCE with limited restrictions; 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, 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. 17BSA072Q, dated January 24, 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 an M1-4D zoning district, a physical culture establishment on a portion of the first floor of an existing one-story non-storage garage and warehouse, contrary to ZR § 42-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “September 12, 2018”– Six (6) sheets; and *on further condition*:

THAT the term of the PCE grant shall expire on January 1, 2025;

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

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

THAT the existing 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 a Certificate of Occupancy shall be obtained within one year, by September 13, 2019;

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);

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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 13, 2018.

2018-61-BZ

CEQR #18-BSA-131K

APPLICANT – Jay Goldstein, Esq., for A Shamosh Realty, owner.

SUBJECT – Application April 27, 2018 – Special Permit (§73-36) to permit the operation of a Physical Cultural Establishment (*Goldfish Swim School*) within a portion of the first floor of an existing building contrary to ZR §42-10. M1-2 zoning district.

PREMISES AFFECTED – 620 Degraw Street, Block 427, Lot 21, 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, Commissioner Sheta and Commissioner Scibetta.....5

Negative:0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”) Examiner, dated April 16, 2018, acting on DOB Application No. 321679028, reads in pertinent part:

A Physical Culture use is not permitted, as of right, in an M1-2 Zoning District as per sections 42-10 and 73-36 of the Zoning Resolution; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to permit, on a site located within an M1-2 zoning district, a proposed physical culture establishment (“PCE”) on a portion of the first floor of an existing one-story building, contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on September 13, 2018, after due notice by publication in *The City Record*, and then to decision on the same date; and

WHEREAS, the Board was in receipt of two (2) form letters in support of this application; and

WHEREAS, Community Board 6, Brooklyn, recommends approval of this application on condition that the operator work with the adjacent business owners and the community board to help alleviate illegal parking, which affects deliveries in the area; and

WHEREAS, Commissioner Ottley-Brown performed an inspection of the site and surrounding neighborhood; and

WHEREAS, the subject site is a lot located on the south side of Degraw Street, bound by 3rd Avenue and 4th Avenue, within an M1-2 zoning district in Brooklyn; and

WHEREAS, the site has approximately 155 feet of frontage along Degraw Street, 100 feet of depth, 15,500 square feet of lot area and is occupied by a one-story building, a portion of which will be dedicated to the proposed PCE; 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, the applicant represents that, 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

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- 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 applicant submitted evidence that the subject PCE will occupy 9,133 square feet of floor area on the ground floor of the existing building with a three-lane swimming pool, changing rooms with showers, bathrooms, a viewing area, reception area, and offices; and

WHEREAS, the applicant represents that the PCE will operate as Goldfish Swim School with the following proposed hours of operation: Sunday 9:00 a.m. to 6:00 p.m.; Tuesday 3:30 p.m. to 7:00 p.m.; Wednesday and Thursday 9:00 a.m. to 7:00 p.m.; Friday 9:00 a.m. to 8:00 p.m.; and Saturday 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 entirely within a commercial building – the other tenant in the subject building is a Use Group 12A eating or drinking establishment with dancing – in an area surrounded primarily by commercial buildings; and

WHEREAS, the applicant represents that the proposed space is of slab on grade construction with a recessed concrete swimming pool, that, because the building is one-story, there are no tenants below or above the proposed PCE and that the occupancies adjacent to the space are an eating or drinking establishment with dancing to the west and a vacant lot to the east; and

WHEREAS, with regards to sound attenuation measures proposed for or already existing at the site, the applicant submits that the existing exterior wall of the subject building is 8-inch thick brick with 1/2-inch gypsum board on one face along the north, south and east lot lines with an STC rating of 53; the existing interior insulated metal stud demising wall between the PCE and adjacent eating or drinking establishment with dancing has an STC rating of 45; the spaces adjoining the demising wall between

the PCE and the eating or drinking establishment with dancing consist solely of changing rooms, bathrooms and a reception area; the pool, located at the western end of the subject building, is separated by a glazed interior partition and a distance of more than 35 feet; and that penetrations or openings in walls, partitions or floors for pipe sleeves, electric devices, etc. shall be packed, sealed, lined, back-plastered or otherwise isolated by sufficient mass to maintain those surfaces' respective STC ratings; and

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

WHEREAS, the applicant represents that the PCE contains facilities for the provision of physical fitness instruction, specifically classes that teach swimming and swim safety skills utilizing the proposed swimming pool, which has 1,875 square feet; and

WHEREAS, accordingly, 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, by letter dated September 12, 2018, the Fire Department confirms that the premises are fully protected by an existing sprinkler system and that the Fire Department permit is current, but requires that a fire alarm be installed in the PCE space and that non-ammonia based fire extinguishers also be installed due to the fact that chemicals will be stored on the premises for the maintenance of the pool and the adjacent eating or drinking establishment with dancing has permits issued by the Fire Department for the storage of combustible and corrosive liquids; and

WHEREAS, the applicant represents that a fire alarm system – including area smoke detectors, manual pull stations at each required exit and local audible and visual alarms – will be installed in the entire 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 impact the privacy, quiet, light and air of the neighborhood on account of its location in relationship to its neighbors and its limited size; 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. 18-BSA-131K, dated April 27, 2018; and

Therefore it is Resolved, that the Board of Standards

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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 within an M1-2 zoning district, the operation of a physical culture establishment in a portion of a one-story building, contrary to ZR § 42-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “April 27, 2018” – Four (4) sheets; and *on further condition*:

THAT the term of the PCE grant shall expire on September 13, 2028;

THAT the following sound attenuation measures shall be maintained as indicated on the Board-approved plans: exterior 8-inch brick independent wall with 1/2-inch gypsum board on one face along the north, south and east lot lines with an STC rating of 53; interior insulated metal stud demising wall between the PCE and adjacent eating and drinking establishment with dancing with an STC rating of 45; penetrations or openings in walls, partitions or floors for pipe sleeves, electric devices or similar shall be packed, sealed, lined, back-plastered or otherwise isolated by sufficient mass to maintain those surfaces’ respective STC ratings; 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 accessibility compliance under Local Law 58/87 shall be as reviewed and approved by DOB;

THAT the fire alarm – including area smoke detectors, manual pull stations at each required exit and local audible and visual alarms – shall be installed within the PCE space and sprinkler systems shall be maintained as indicated on the Board-approved plans;

THAT the non-ammonia-based fire extinguishers be provided as required by the New York City Fire Department; and

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 Certificate of Occupancy shall be obtained within four (4) years, by September 13, 2022

THAT substantial construction, in accordance with the BSA-approved plans, shall be completed pursuant to ZR § 73-70;

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 13, 2018.

2016-4239-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Atlantis Marina and Yacht Club, owner.

SUBJECT – Application August 11, 2016 – Special Permit (§73-242) to allow an existing building to be operated as an eating and drinking establishments (Use Group 6), contrary to use regulations (§32-15). C3A (SRD) zoning district.

PREMISES AFFECTED – 180 Mansion Avenue, Block 5207, Lot 28, Borough of Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Laid over to December 11, 2018, at 10 A.M., for continued hearing.

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2016-4335-BZ

APPLICANT – Gerald J. Caliendo, RA, AIA, for 193 Street LLC, Joseph Atarien, President, owner.

SUBJECT – Application November 21, 2016 – Variance (§72-21) proposed construction of a two story, two family dwelling contrary to Floor Area Ratio and Maximum Lot Coverage (ZR 23-141), Number of Dwelling Units (ZR 23-22) and Front Yard (ZR 23-45). R3X zoning district.

PREMISES AFFECTED – 220-21 137th Avenue, Block 13112, Lot 1, Borough of Queens.

COMMUNITY BOARD #13Q

ACTION OF THE BOARD – Laid over to January 8, 2019, at 10 A.M., for continued hearing.

2017-288-BZ

APPLICANT – Lisa M. Orrantia, for JMDH Real Estate Offices, LLC, owner.

SUBJECT – Application October 30, 2017 – 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.

PREMISES AFFECTED – 17-10 Whitestone Expressway, Block 4127 & 4148, Lot(s) 20 & 78, Borough of Queens.

COMMUNITY BOARD #19Q

ACTION OF THE BOARD – Laid over to November 20, 2018, at 10 A.M., for continued hearing.

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2018-3-BZ

APPLICANT – Trout Sanders LLP, for Harlem Park Associates, LLC, owner.

SUBJECT – Application January 11, 2018 – Variance (§72-21) to permit the development of an integrated educational and medical facility in conjunction with the Ichan School of Medicine at Mount Sinai contrary to ZR §33-432(a) (height and setback); ZR §33-26 (rear yard) and ZR §33-292 (required depth of yard along district boundaries. C4-4 zoning district.

PREMISES AFFECTED – 154-160 West 124th Street, Block 1908, Lot(s) 60 & 4, Borough of Manhattan.

COMMUNITY BOARD #10M

ACTION OF THE BOARD – Laid over to December 4, 2018, at 10 A.M., for continued hearing.

Carlo Costanza, Executive Director

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***CORRECTION**

This resolution adopted on January 30, 2018, under Calendar No. 2016-4181-BZ and printed in Volume 103, Bulletin No. 6, is hereby corrected to read as follows:

**2016-4181-BZ
CEQR #16-BSA-116K**

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 14th Street, Block 7293, 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 and Commissioner Sheta.....4

Negative:0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated April 1, 2016, acting on Alteration Application No. 321271413, reads in pertinent part:

1. Creates non-compliance with respect to the side yards by not meeting the minimum requirements of Section 23-461 of the Zoning Resolution.
2. 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 and 73-03 to *permit*, in an R5 zoning district, the enlargement of an existing detached residence that does not comply with zoning regulations for side yards and rear yards, contrary to ZR §§ 23-461 and 23-47; and

WHEREAS, a public hearing was held on April 25, 2017, after due notice by publication in *The City Record*, with continued hearings on June 20, 2017, August 15, 2017, October 31, 2017, January 9, 2018, and January 23, 2018, and then to decision on January 30, 2018; 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 east side of East 14th Street, between Avenue S and Avenue T, in an R5 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 40 feet of frontage, 100 feet of depth, 4,000 square feet of lot area and is occupied by a three-story, with cellar, two-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*

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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 residence, as contemplated in ZR § 73-622; and

WHEREAS, the applicant originally proposed to convert the two-family residence to a single-family detached residence and to enlarge the subject building by reducing the rear yard from 23'-2" to 20'-0", maintaining the existing side yards with depths of 2'-6" and 8'1" increasing the floor area ratio ("FAR") from 0.59 (2,372 square feet of floor area) to 1.13 (4,507 square feet of floor area), decreasing open space from 70 percent to 51 percent and increasing the height of the proposed building from 36 feet to 40 feet; and

WHEREAS, in response to questions from the Board regarding the incursion of the enlarged building's rear yard and massing on the built character of the subject block and neighborhood, the applicant redesigned the proposed building to maintain the existing rear yard and to reduce the floor area and height while increasing open space; and

WHEREAS, the applicant also revised the drawings to clarify that the proposed building will be an enlargement of an existing building and submitted evidence of existing non-

compliances; and

WHEREAS, the applicant proposes to enlarge the subject building by maintaining the existing side yards with depths of 2'6" and 8'1" and maintaining the existing rear yard with a depth of 23'-2¾"; and

WHEREAS, the applicant represents that, at the subject site, side yards must have a minimum depth of 5 feet and 8 feet under ZR § 23-461 and rear yards must have a minimum depth of 30 feet under ZR § 23-47; and

WHEREAS, the applicant represents that the enlarged building proposed is consistent with the character of the neighborhood; and

WHEREAS, in support of this contention, the applicant surveyed properties in the surrounding area, finding that 10 properties have rear yards with depths less than 26 feet, eight of which have rear yards with depths less than 23'-3", and that the distances between most of the residences on the east side of East 14th Street are equal to or smaller than the existing conditions between the subject site and adjacent residences; and

WHEREAS, the applicant also submitted, among other evidence, a photographic streetscape illustrating that the proposed enlargement is in context with surrounding properties as well as a building-face width diagram, front yard diagram, streetscape study and lot coverage diagram; and

WHEREAS, based upon its review of the record and inspections of the subject site and surrounding neighborhood, the Board finds that the proposed building as enlarged will not alter the essential character of the neighborhood or district in which the subject building is located, 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 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. 16BSA116K, dated May 2, 2016; and

WHEREAS, the Board finds that the evidence in the record supports the findings required to be made under ZR §§ 73-622 and 73 03 and that the applicant has substantiated

MINUTES

a basis to warrant exercise of discretion.

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 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 §§73-622 and 73-03 to *permit*, in an R5 zoning district, the enlargement of an existing detached residence that does not comply with zoning regulations for side yards and rear yards, contrary to ZR §§23-461 and 23-47; *on condition* that all work and site conditions shall substantially conform to drawings filed with this application marked “Received January 24, 2018”-Fifteen (15) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: side yards shall have minimum depths of 2’-6” and 8’1”, and the rear yard shall have a minimum depth of 23’-2¾”, as illustrated on the Board-approved plans;

THAT removal of existing joists or perimeter walls in excess of that shown on the Board-approved plans shall void the special permit;

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 30, 2022;

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, January 30, 2018.

***The resolution has been Amended. Corrected in Bulletin Nos. 36-38, Vol. 103, dated September 23, 2018.**

BULLETIN

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October 7, 2018

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Thursday, September 27, 2018**

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2018-149-BZ

230-48 146th Avenue, Located on the SWC of 146th Avenue and 231st Street, Block 13465, Lot(s) 0035, Borough of **Queens, Community Board: 4**. Special Permit (§73-621) to permit a one-story extension to a one family dwelling contrary to ZR §23-142) (Floor Area Ratio). R3-1 zoning district. R3-1 district.

2018-150-BZ

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2018-151-A

6-05 129th Street, Located on 129th Street between 6th and 7th Avenues, Block 3959, Lot(s) 0013, Borough of **Queens, Community Board: 7**. Application to permit the development of a three story, 24-unit residential building on a lot that is located partially in the bed of a mapped but unbuilt portion of a street contrary to General City Law §35. R3-2 and R3-1 zoning districts. R3-2/R3-1 district.

2018-152-BZ

2 East 15th Street, Located on the southeasterly corner of Fifth Avenue and East 15th Street, Block 00842, Lot(s) 0042, Borough of **Manhattan, Community Board: 5**. Special Permit (§73-36) to permit the operation of a Physical Cultural Establishment (The Well) to be located in portions of the cellar and first floor of an existing eleven story commercial building contrary to ZR §32-10. C6-4M Ladies Mile Historic District. C6-4M district.

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

CALENDAR

REGULAR MEETING OCTOBER 30, 2018, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, October 30, 2018, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

SPECIAL ORDER CALENDAR

219-97-BZ

APPLICANT – Eric Palatnik, P.C., for Remica Property Group Corp., owner.

SUBJECT – Application May 11, 2018 – Extension of Term of a previously approved Variance (§72-21) which permitted the operation of an Automotive Service Station (UG 16B) with accessory uses which expires on February 23, 2019. R3-2 zoning district.

PREMISES AFFECTED – 130-11 North Conduit Avenue, Block 11864, Lot(s) 13, 16, Borough of Queens.

COMMUNITY BOARD #10Q

35-09-BZ

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for Direct Supply Co. Inc., owner.

SUBJECT – Application July 17, 2018 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of a contractors' establishment (UG 16B) which expires on June 9, 2019. R7A zoning district.

PREMISES AFFECTED – 345-347 East 103rd Street, Block 1675, Lot(s) 21, 22, Borough of Manhattan.

COMMUNITY BOARD #11M

REGULAR MEETING OCTOBER 30, 2018, 1:00 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, October 30, 2018, 1:00 P.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

ZONING CALENDAR

2016-4272-BZ

APPLICANT – Sheldon Lobel, P.C., for Arwin 74th Street LLC, owner; Ripped Fit, lessee.

SUBJECT – Application October 24, 2016 – Special Permit (§73-36) to permit the operation a Physical Cultural Establishment (*Ripped Fitness*) on the first floor of an existing building. C1-9/R8B Zoning district.

PREMISES AFFECTED – 1432 2nd Avenue, Block 1449, Lot 3, Borough of Manhattan.

COMMUNITY BOARD #8M

2017-43-BZ

APPLICANT – Law Office of Steven Simicich, for CeeJay Real Estate Development Corp., owner.

SUBJECT – Application February 10, 2017 – 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.

PREMISES AFFECTED – 140 Hendricks Avenue, Block 44, Lot 19, Borough of Staten Island.

COMMUNITY BOARD #1SI

2017-268-BZ

APPLICANT – Sheldon Lobel, P.C., for World Chan Buddhist Association, owner.

SUBJECT – Application September 13, 2017– 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 zoning district.

PREMISES AFFECTED – 33-73 154th Street, Block 5239, Lot 9, Borough of Queens.

COMMUNITY BOARD #7Q

CALENDAR

2017-284-BZ

APPLICANT – Sheldon Lobel, P.C., for 605 Third Avenue Fee LLC, owner; Midtown Fitness Partners LLC, lessee.

SUBJECT – Application October 26, 2017 – Special Permit (§73-36) to permit the operation of the Physical Culture Establishment (*Orangetheory Fitness*) on portions of the first floor and cellar level contrary to ZR §32-10. C5-3 & C1-9 zoning districts.

PREMISES AFFECTED – 605 Third Avenue, Block 920, Lot 12, Borough of Manhattan.

COMMUNITY BOARD #6M

2018-5-BZ

APPLICANT – Cutrona Architecture, PLLC, for 306-308 East 126th Street, LLC, owner.

SUBJECT – Application January 17, 2018 – Special Permit (§73-50) to permit the development of a two-story automotive repair building (UG 16B) contrary to ZR §43-302 (building does not provide the required 30-ft' rear yard coincidental to a residential zoning district. M1-2 zoning district.

PREMISES AFFECTED – 306-308 East 126th Street, Block 1802, Lot(s) 45, 46, Borough of Manhattan.

COMMUNITY BOARD #11M

2018-56-BZ

APPLICANT – Sheldon Lobel, P.C., for Dmitry Vayner, owner.

SUBJECT – Application April 19, 2018 – 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). R3-1 zoning district.

PREMISES AFFECTED – 83 Coleridge Street, Block 8729, Lot 50, Borough of Brooklyn.

COMMUNITY BOARD #15BK

2018-60-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Diamondrock NY Lex Owner, LLC, owner; Crunch LLC, lessee.

SUBJECT – Application April 27, 2018 – Special Permit (§73-36) to permit the operation of a Physical Cultural Establishment (*Crunch*) in portions of the cellar and first floor of an existing 27 story commercial building §32-10. C6-6 and C6-4.5 (MID) Designated as an Individual Landmark Building.

PREMISES AFFECTED – 511 Lexington Avenue, Block 1302, Lot 51, Borough of Manhattan.

COMMUNITY BOARD #8M

Carlo Costanza, Executive Director

MINUTES

**REGULAR MEETING
THURSDAY MORNING, SEPTEMBER 27, 2018
10:00 A.M.**

Present: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.

SPECIAL ORDER CALENDARS

341-43-BZ

APPLICANT – Seyfarth Shaw LLP, for SP HHF Sub B LLC, owner.

SUBJECT – Application April 13, 2018 – Extension of Term (§11-411) of a previously approved variance which permitted a storage warehouse (UG 16B) which expired on June 4, 2016; Waiver of the Board’s Rules. C2-4, C2-3, R7A and R5 zoning district.

PREMISES AFFECTED – 3319 Atlantic Avenue, Block 4145, Lot(s) 1, 13, 23, 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, Commissioner Sheta and Commissioner Scibetta.....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; and

WHEREAS, a public hearing was held on this application on July 24, 2018, after due notice by publication in *The City Record*, and then to decision on September 27, 2018; and

WHEREAS, Commissioner Scibetta performed an inspection of the site and the surrounding neighborhood; and

WHEREAS, the subject site is comprised of three contiguous tax lots located on Block 4145: tax lot 1, located the northeastern corner of Atlantic Avenue and Euclid Avenue, within an R7A (C2-4) zoning district; tax lot 13, located immediately to the north and adjacent to tax lot 1, within an R7A zoning district; and tax lot 23, located immediately to the north and adjacent to tax lot 13, partially within an R5 zoning district and partially within an R5 (C2-3) zoning district, in Brooklyn; and

WHEREAS, tax lot 1 has approximately 156 feet of frontage along Atlantic Avenue, 142 feet of frontage along Euclid Avenue, 19,686 square feet of lot area and is occupied by a four-story warehouse; tax lot 13 is an L-shaped lot with approximately 70 feet of frontage along Euclid Avenue, 14,987 square feet of lot area and is partially occupied by a one-story warehouse and tax lot 23 is located

within the middle of Block 4145, has no frontage on any surrounding street, has a length of approximately 250 feet parallel to Euclid Avenue, 53 feet parallel to Atlantic Avenue, 13,235 square feet of lot area and is occupied by a one-story warehouse; and

WHEREAS, the Board has exercised jurisdiction over tax lot 1 site since January 4, 1944, when, under the subject calendar number, the Board granted a variance to permit, in a residence use district, the maintenance of extensions to an existing wet was laundry and accessory driveway, on condition that the buildings located on the lot not be further extended in height or area and only so long as the premises be maintained substantially as set forth; any trucks belonging to or used in connection with the laundry be stored when not in use, within the premises and not along the streets and when being supplied with gasoline be supplied within the lot; the existing fencing and shrubbery as proposed be maintained; the building and occupancy comply with all other laws, rules and regulations applicable thereto in all other respects; all permits required be obtained and all work completed within one (1) year from the date of the resolution; and

WHEREAS, on July 25, 1944, under the subject calendar number, the Board amended the 1944 variance resolution to permit extended building height and area only for necessary construction in connection with a new roof for the metal building as indicated on approved plans, and to extend the time to complete to one (1) year from the date of the amendment; and

WHEREAS, on November 12, 1947, under the subject calendar number, the Board further amended the resolution to permit accessory dry cleaning and add that the buildings on the site may be further extended for the proposed use as indicated on the revised plans with the location of gasoline pump and entrance relocated on condition that the building and occupancy comply with all laws, rules and regulations in all other respects, the boiler equipment be arranged that there not be undue smoke or gases from the chimney on the premises and such smoke reducing equipment be attached as to prevent undue smoke or gases and all permits required be obtained and all work completed within one (1) year; and

WHEREAS, on December 9, 1947, under the subject calendar number, the Board further amended the 1944 variance to permit further extension of the wet wash laundry consistent with revised plans and relocation of gasoline pumps and entrances on condition that the boiler equipment be arranged so that there be no undue smoke or gas from the chimney on the premises and such appliance be installed in connection with the heater and chimney as to prevent undue smoke or gas and all permits required be obtained and all work completed within one (1) year; and

WHEREAS, on November 23, 1948, and October 23, 1951, under the subject calendar number, the Board amended the 1944 variance to extend the time to complete construction for six (6) months from the dates of the respective amendments; and

WHEREAS, on September 24, 1957, under the subject

MINUTES

calendar number, the Board amended the resolution to permit the moving of an eight-inch wall to reduce the area used for garment storage as indicated on revised plans; and

WHEREAS, on May 12, 1959, under the subject calendar number, the Board granted a variance to permit the extension of a laundry with accessory dry cleaning, previously solely on tax lot 1, onto adjoining tax lots 13 and 23 – including the conversion of Building B, a one-story public garage located on tax lot 13 and the alteration of 55 one-car garages and one 2-car garage on tax lot 23 – with the addition of accessory laundry truck storage use and the extension of the Building B for accessory laundry storage use on condition that there be no connection to or use extending into the small garages and driveways on tax lot 23; the loading platform in the new public garage be along the south wall and extend 20 feet to the north to the office at Euclid Avenue front; there be a fire door through the brick walls to the garment rack part of the existing laundry to the south, said firewall to be protected by doors as required by the Building Code; the areas of the public garage not used for loading and unloading may be used for the Riteway Laundry trucks for storage; the garage building be continued and maintained as now existing in all other respects without any extension in area or height; portable fire-fighting appliances be maintained as the Fire Commissioner directs; the existing vehicular door in the north wall of the public garage opening on to the driveway of the individual garages on lot 23 be bricked up to a pedestrian doorway not exceeding 3 feet in width and 7 feet in height; this doorway be used for no other purpose but an emergency exit and not be used in any way in conjunction with the loading or unloading or in any otherwise in conjunction to the use of the garage or as accessory to the laundry on Atlantic Avenue; and all permits and a certificate of occupancy be obtained and all work completed within one (1) year; and

WHEREAS, on December 4, 1962, under the subject calendar number, the Board granted a variance, for a term of 25 years, expiring December 4 1987, to permit the conversion of a bank of 57 single-car public garages into laundry supplies and garment storage and the extension of the interior parking on condition that the work be done in accordance with drawings filed with the application; the passageway from Euclid Avenue and the door in the west wall of the storage space be used for emergency egress only; no manufacturing or work be done in the additional space; and all work to be completed and a certificate of occupancy obtained within one (1) year from the date of the resolution; and

WHEREAS, on July 9, 1963, under the subject calendar number, the Board amended the December 4, 1962, resolution by adding “that this variance shall not be deemed to prohibit the owner from altering any building on its premises, other than those affected by this resolution, in any manner permitted by the provisions of the Zoning Resolution than [sic] in effect; that the changes shown on the drawings marked Received May 29, 1963, 3 sheets, shall be permitted, including the construction of an archway to the

passage from Euclid Ave., with dimensions as shown, to prevent the entrance of other than a passenger car into the driveway, on condition that other than as herein amended the resolution above cited shall be complied with in all respects;” and

WHEREAS, on May 3, 1988, under the subject calendar number, the Board reopened and amended the variance to include tax lot 123, grant an extension of the term of the variance for ten (10) years, expiring December 4, 1997, on condition that the sidewalk and curb be restored as per revised approved plans and to extend the time to obtain a certificate of occupancy to one (1) year from the date of the amendment; and

WHEREAS, on June 4, 1996, under the subject calendar number, the Board permitted a change in occupancy of the site from a laundry establishment (Use Group 16) to storage warehouse (Use Group 16), removed tax lot 123 from the variance, and extended the term of the variance for ten (10) years, expiring June 4, 2006, on condition that the easement over tax lot 123 be maintained, the site be kept graffiti-free, the building have an automatic dry sprinkler system connected to a Fire Department approved central station, the revised drawings be substantially complied with and that a certificate of occupancy be obtained within one (1) year of the date of the amendment; and

WHEREAS, on September 26, 2006, under the subject calendar number, the Board extended the term of the variance for ten (10) years, expiring June 4, 2016, and amended the variance to permit modifications to the previously approved plans, specifically, the removal of a partition on the second floor and replacement of a chain link fence around the accessory parking area with masonry; and

WHEREAS, on June 12, 2007, the Board issued a letter stating that proposed changes at the site – the demolition of the two-story building portion on lot, construction of a four-story building in its place, relocation of the curb cut on Atlantic Avenue and the addition of a curb cut along Euclid Avenue – substantially complied with the Board’s prior grant and the Board had no objection to such changes; and

WHEREAS, the prior term having expired, the applicant now seeks an extension of the term of the variance, first issued in 1944, pursuant to ZR § 11-411; and

WHEREAS, ZR § 11-411 states:

Where no limitation as to the duration of the *use* was imposed at the time of [the variance authorized by the Board of Standards and Appeals pursuant to the 1916 Zoning Resolution], such *use* may be continued. Where such *use* was authorized subject to a term of years, such *use* may be continued until the expiration of the term, and thereafter, the agency which originally

1 Words in *italics* are defined in Section 12-10 of the Zoning Resolution.

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authorized such *use* may, in appropriate cases, extend the period of continuance for one or more terms or not more than 10 years each. The agency may prescribe appropriate conditions and safeguards to minimize adverse effects of such *use* on the character of the neighborhood;

WHEREAS, in addition, because this application was filed less than 2 years after the expiration of the term, the applicant requests a waiver, pursuant to § 1-14.2 of the Board's Rules of Practice and Procedure (the "Board's Rules"), of § 1-07.3(b)(2) to permit the filing of this application; and

WHEREAS, § 1-07.3(b)(2) of the Board's Rules requires a demonstration by the applicant that the use has been continuous since the expiration of the term, and that substantial prejudice would result without such a waiver; and

WHEREAS, accordingly, the applicant provided utility company bills for the subject site from ConEdison continuously covering the entire period of May 2016, prior to the expiration of the previous term of the variance, through April 2018, the date of the application; and

WHEREAS, the applicant additionally states that substantial prejudice would result without a waiver of the § 1-07.3(b)(2) of the Board's Rules because it would jeopardize the ability of a 20-year-old established storage business to lawfully continue operations at the site and require, among other things, the return of all the customers' stored belongings; and

WHEREAS, at the public hearing, the Board requested the removal of the barbed wire at the site and inspection of the exterior walls of Building B, located on the landlocked tax lot 23 and surrounded by residential uses; and

WHEREAS, in response, the applicant provided photographs demonstrating the removal of the barbed wire and a letter from the applicant's architect attesting to his inspection of the exterior walls of Building B are in good condition and have no visual signs of structural damage; and

WHEREAS, based upon its review of the record, the Board has determined that the requested waiver of the Board's Rules and extension of the term of the variance are appropriate with certain conditions as set forth below; and

Therefore it is Resolved, that the Board of Standards and Appeals does hereby *waive* § 1-07.3(b)(2) of the Board's Rules of Practice and Procedure and, pursuant to ZR § 11-411, *reinstates* and *amends* a previously-granted variance to permit, on a site located partially within an R7A (C2-4), partially within an R7A zoning district, partially within an R5 zoning district and partially within an R5 (C2-3) zoning district, the operation of a storage warehouse and lawful uses accessory thereto *on condition* that all work and site conditions shall conform to drawings filed with this application marked "Received April 20, 2018"-Seven (7) sheets; and *on further condition*:

THAT the term of this grant shall expire on June 4, 2026;

THAT annual inspections of the perimeter walls and

exterior walls of the buildings on the site – including and in particular those walls abutting residential zoning lot lines – shall be conducted and, in the case that any repairs (including but not limited to repointing) are required, permission from neighbors shall be obtained, as necessary, to perform such repairs and/or maintenance;

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

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 September 27, 2019;

THAT this approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdictional 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 plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, September 27, 2018.

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 149th Street, Block 2623, Lot 140, 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, Commissioner Sheta and Commissioner Scibetta.....5

Negative:0

THE RESOLUTION –

WHEREAS, this is an application for an extension of the term of a variance previously granted by the Board, which expired on November 18, 2015; 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, March 7, 2017, January 9, 2018, May 15, 2018, June 26, 2018, August 7, 2018 and September 27, 2018, and then to decision on that date; and

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

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WHEREAS, Community Board 1, the Bronx, recommended approval of the subject application; and

WHEREAS, the Board was also in receipt of 15 letters in opposition to the subject application, citing the incompatibility of the subject use with the surrounding area, poor maintenance of the site, and health concerns due to the nature and operation of the facility in a largely residential neighborhood; and

WHEREAS, the subject site is bound by East 149th Street to the south, Jackson Avenue to the east, and Trinity Avenue to the west, in an R7-1 (C2-4) zoning district, in the Bronx; and

WHEREAS, the site has approximately 208 feet of frontage along East 149th Street, 75 feet of frontage along both Jackson Avenue and Trinity Avenue, 15,600 square feet of lot area and is occupied by a gasoline service station and accessory convenience store kiosk; and

WHEREAS, the Board has exercised jurisdiction over the subject site since November 14, 1950, when, under the subject calendar number, the Board granted a variance to permit the occupation of the subject site with a proposed gasoline service station, auto washing, lubrication, office, and sale of auto accessories for a term of fifteen (15) years, expiring November 14, 1965, on condition that all buildings and uses on the premises be removed and the plot be leveled substantially to the grade of East 149th Street; the premises be arranged substantially as indicated on plans filed with the application; the accessory building be arranged substantially as indicated and for the uses shown and comply in all respects with the requirements of the Building Code; the front and two ends of the building be faced with face brick instead of enameled steel; the pumps be not nearer than ten (10) feet from their bases to the street building line; the number of gasoline storage tanks be restricted to eight (8) 550-gallon tanks; planting be maintained with curbing as indicated; a masonry wall be constructed on the side and rear lot lines not less than five (5) feet six (6) inches in height, except where there are adjoining buildings on the lot lines; curb cuts be restricted to three (3) to East 149th Street and one (1) to Jackson Avenue, each 30 feet in width; at the intersection within the building line of East 149th Street and Jackson Avenue there be constructed and maintained a block of concrete extending for a distance of five (5) feet from the intersection within the building line and to a height of not less than 12 inches, with such block of concrete permitted to be segmental in shape; sidewalks and curbing adjoining the premises be reconstructed or repaired to the satisfaction of the borough president; no curb cut be nearer than five (5) feet to any lot line as prolonged; where not occupied by accessory building, pumps, and planting, the balance of the premises be paved with concrete or bituminous paving; signs be restricted to a permanent sign attached to the façade of the building and to the illuminated globes of the pumps, excluding all roof signs and temporary signs, but permitting the erection within the plot near the intersection of East 149th Street and Jackson Avenue of a post standard to support a sign which may be illuminated, advertising only

the brand of gasoline on sale, permitting such sign to extend for a distance of not over four (4) feet beyond the building line; the accessory uses may include auto washing, lubritorium, office, and sale of auto accessories as proposed; such portable fire-fighting appliances be installed as the fire commissioner may direct; before plans are filed with the borough superintendent, working drawings in accordance with the terms of the resolution be submitted to the Board within six (6) months from the date of the resolution; and all permits required be obtained and all work completed within one (1) year from the date of approval of such plans; and

WHEREAS, on January 16, 1951, under the subject calendar number, the Board reopened the application and approved the plans as being in substantial compliance with the requirements of the resolution adopted on November 14, 1950; and

WHEREAS, on June 11, 1957, under the subject calendar number, the Board amended the variance to permit an increase in the maximum number of total gasoline storage tanks permitted at the site from eight (8) to twelve (12) 550-gallon tanks; and

WHEREAS, on October 19, 1965, under the subject calendar number, the Board extended the term of the variance for ten (10) years, expiring October 19, 1975, on condition that the November 14, 1950, resolution be otherwise complied with in all respects and that a certificate of occupancy be obtained; and

WHEREAS, on November 18, 1975, under the subject calendar number, the Board extended the term of the variance for ten (10) years, expiring November 18, 1985, and amended the resolution to omit required shrubbery from along the northerly and westerly lot lines, on condition that the resolution be complied with in all respects and a new certificate of occupancy be obtained; and

WHEREAS, February 24, 1976, under the subject calendar number, the Board amended the variance to permit the accessory use of minor adjustment or repair of motor vehicles with hand tools only in the automotive service station building, on condition that the resolution be otherwise complied with in all respects, and a new certificate of occupancy be obtained within one (1) year from the date of the amended resolution; and

WHEREAS, on January 19, 1988, under the subject calendar number, the Board extended the term of the variance for ten (10) years, expiring November 18, 1995, for the gasoline service station only, and amended the resolution to rectify the Board's record in order to show a change in the former use of the westerly portion of lot 140 (50 feet by 75 feet) from stores and residential dwellings to parking and storage of more than five (5) motor vehicles, on condition that there be no parking of vehicles on the sidewalk or in such a manner as to obstruct pedestrian or vehicular traffic; the resolution otherwise be complied with in all respects; and a new certificate of occupancy be obtained within one (1) year from the date of the amended resolution; and

WHEREAS, on October 4, 1988, under BSA Cal. No. 452-88-A, the Board granted an appeal of the Borough

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Superintendent's decision and permitted the proposed use of self-service gasoline pumps, contrary to Section 27-4081(b) of the Administrative Code, on condition that the permit to operate the station be limited to a term expiring on November 18, 1990; a trained attendant who possesses a Certificate of Fitness for the dispensing of gasoline or diesel fuel for motor fuel be on duty at all times to monitor the operation of the pumps and have no other duties while any self-service pump is in operation and be located in an enclosure separated from all other activities by partitions not less than seven (7) feet in height; 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; it be the attendant's duty to prevent the dispensing of gasoline, diesel, or other motor vehicle fuel into portable containers; signs reading "NO SMOKING," "STOP YOUR ENGINE," "IT IS UNLAWFUL TO DISPENSE GASOLINE, DIESEL OR OTHER MOTOR VEHICLE FUEL INTO PORTABLE CONTAINERS," and "THE DISPENSING OF GASOLINE SHALL BE DONE BY A PERSON HOLDING A VALID DRIVERS LICENSE OR A PERSON 18 YEARS OF AGE OR OLDER," be conspicuously posted in clear view of the customer at the dispensing island; portable fire extinguishers be provided and, in type, quantity and location acceptable to the Fire Commissioner; all dispensing devices and fire suppression systems be approved by the Board and be installed in accordance with the requirements of the testing laboratory upon which the approval is based; the suppression system be arranged in a manner so as to cover an area around each pump encompassed by a circle having a radius equal to the maximum extendable length of the hose and nozzle of said pump and the gauges for the tanks serving the fire suppression system be positioned so as to be easily readable; the installation and use of coin-operated dispensing devices for fuel be prohibited; there be constant contact between the attendant in the control booth and the dispensing island by means of a voice intercommunication system maintained in a proper operating condition at all times; all controls, devices, fire suppression systems, and firefighting equipment be maintained in good operating order at all times; a maintenance log be kept on the premises as per direction of the Fire Commissioner; all dispensing nozzles be of the automatic closing type without hold open latches; a list of emergency procedures and instructions be conspicuously posted in the immediate vicinity of the attendant's principal control location, and said instructions be at the direction of the Fire Commissioner; the dispensing areas, at all times, be well lit for complete visual control; all of the conditions set forth in this resolution be conspicuously posted in the attendant's booth; there be no servicing or repair of motor vehicles on the premises; mirrors be provided which ensure that the person with the Certificate of Fitness in the control booth can readily see the people operating any of the self-service devices; manual switches be provided which actuate the fire suppression system and electrically disconnect the pumps, and that these switches be

located adjacent to each other and within five (5) feet of the console which controls the self-service operation; the gasoline station be operated in such a manner which minimizes traffic congestion; the windows and the glass panels of the control booth remain clear and unobstructed at all times; the building, equipment, devices, and controls substantially conform to plans filed with the application; substantial construction be completed within one (1) year from the date of the resolution; and all applicable laws, rules, and regulations be complied with; and

WHEREAS, also on October 4, 1988, under the subject calendar number, the Board amended the prior variance resolution, in accordance with the conditions of the resolution granted under BSA Cal. No. 452-88-A, to permit the erection of a new 28 feet by 90 feet steel canopy over three (3) new gasoline pump islands with new "MPD" self-service pumps; to demolish the existing building and erect a new seven (7) feet eight (8) inch by 15 feet eight (8) inch kiosk on the new center island; to install a three (3) by twelve (12) foot vending cabinet for three (3) vending machines; to eliminate all uses other than gasoline service station; to install a new ten (10) by ten (10) foot trash enclosure; to eliminate the parking lot thereby increasing the size of the gasoline service station and to eliminate the two (2) curb cuts located at the southwest corner of the premises, all in accordance with the revised plans of the proposed conditions submitted to the Board on condition that the two (2) parking spaces as shown on plan be for employees only; there be no parking of vehicles on the sidewalk or in such a manner as to obstruct pedestrian or vehicular traffic; substantial construction be completed within one (1) year from the date of the amended resolution; and other than as herein amended, the resolution shall be complied with in all respects; and

WHEREAS, on June 23, 1992, under the subject calendar number, the Board amended the resolution to permit the erection of a one (1) story and cellar class 1C building (30 feet by 24 feet) with 720 square feet to be occupied as a convenience store on condition that the building conform to proposed conditions plans filed with the application; on condition that the resolution otherwise be complied with in all respects; and a certificate of occupancy be obtained within one (1) year from the date of the amended resolution; and

WHEREAS, on January 25, 1994, under the subject calendar number, the Board amended the resolution to permit the sub-division of a zoning lot, previously before the Board, by reducing the size of the gasoline service station on condition that the chain link fence and guard rail along the property line be installed and adequately maintained in compliance with the proposed plans submitted with the application; on condition that the resolution be complied with in all respects; and a new certificate of occupancy be obtained within one (1) year from the date of the amended resolution; and

WHEREAS, on May 20, 1997, under the subject calendar number, the Board waived its Rules of Practice and

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Procedure and extended the term of the variance for ten (10) years, expiring November 18, 2005, on condition that the guardrail along the property line, fencing, and trash enclosure be maintained in accordance with the BSA approved plans; the signs be in accordance with the BSA approved plans; the premises be maintained in substantial compliance with the existing and proposed plans submitted with the application; the resolution otherwise be complied with in all respects; and a new certificate of occupancy be obtained within one (1) year from the date of the amended resolution; and

WHEREAS, on October 31, 2006, under the subject calendar number, the Board again waived its Rules of Practice and Procedure, extended the term of the variance for ten (10) years, expiring November 18, 2015, and amended the resolution to legalize modifications to the previously approved signage at the site on condition that the use substantially conform to plans filed with the application; accessory parking at the site be limited to two cars; there be no car sales at the site; a permanent fence without any opening be maintained between the site and tax lot 141 as indicated on the BSA approved plans; all conditions from prior resolutions not specifically waived by the Board remain in effect; the approval be limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and the Department of Buildings ensures 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; and

WHEREAS, the prior term having expired, the applicant now seeks an extension of the term of the variance, first issued in 1950, pursuant to ZR § 11-411; and

WHEREAS, ZR § 11-411 states:

Where no limitation as to the duration of the *use*2 was imposed at the time of [the variance authorized by the Board of Standards and Appeals pursuant to the 1916 Zoning Resolution], such *use* may be continued. Where such *use* was authorized subject to a term of years, such *use* may be continued until the expiration of the term, and thereafter, the agency which originally authorized such *use* may, in appropriate cases, extend the period of continuance for one or more terms or not more than 10 years each. The agency may prescribe appropriate conditions and safeguards to minimize adverse effects of such *use* on the character of the neighborhood;

WHEREAS, the Board notes that the use of the

westerly portion of the subject lot for storage and a parking lot was first permitted pursuant to an amendment to the subject variance on January 19, 1988, and though a public parking lot with a capacity of 150 spaces or less is now permitted at the subject site as-of-right pursuant to ZR § 32-17, it remains on the same zoning lot as the gasoline service station use (a use that is still not permitted at the subject site as-of-right pursuant to ZR § 32-25 and requires the extension of the term of the subject variance to continue operating), remains subject to the Board's jurisdiction and, thus, the Board maintains an interest in ensuring its satisfactory maintenance and compliance with all applicable laws and regulations; and

WHEREAS, several hearing dates on this application were adjourned to provide sufficient time for the applicant to explore subdividing the westerly portion of the lot onto its own zoning lot, thereby reducing the size of the zoning lot under the Board's jurisdiction under the subject calendar number, but the applicant ultimately decided to not pursue a zoning lot subdivision; and

WHEREAS, therefore, in response to concerns regarding the maintenance of the portion of the subject site utilized as a public parking lot, its compliance with conditions set forth in prior resolutions and the absence of the use on the subject site's certificate of occupancy (Certificate of Occupancy No. 200993826F, issued on June 17, 2009), the applicant installed landscaping at the site, removed graffiti, repaired the fencing surrounding this portion of the zoning lot, obtained a renewed Parking Lot License from the New York City Department of Consumer Affairs and provided evidence of having filed a Schedule A with the New York City Department of Buildings (Alteration Type I; DOB Job No. 220652817) to include "public parking for more than (5) cars," Use Group 8, on the site's certificate of occupancy; and

WHEREAS, in response to concerns from neighbors regarding potential open spills at the site, Board staff reviewed the subject site's spill history and provided the Board with a New York State Department of Environmental Conservation ("DEC") Spill Report (Spill No. 0109779) indicating that a spill occurred at the subject site on January 9, 2002, and that such spill was closed in or around August 10, 2017 (the "Spill Report"); and

WHEREAS, specifically, DEC's Spill Report states: Spill closed due to: natural attenuation of residual groundwater contamination evidences by reduction in on-site concentrations as well as minimal groundwater contamination across street from site in wells MW-7 and MW-12; removal of source USTs and piping, cleanup to the extent 'feasible' including cost effectiveness as per CP-51 guidance as undulating bedrock geology makes investigational and remedial activities to residual groundwater contamination not cost effective considering future use of site; site will remain a commercial gas station; inclusion on residual contamination cautionary close in Spill

1 There is no New York City Department of Finance tax map evidencing the existence of a tax lot 141 on the subject block and such reference is likely to the westerly portion of the subject lot utilized as a public parking lot.

2 Words in *italics* are defined in Section 12-10 of the Zoning Resolution.

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Closure letter; site is not a 'threat to the wider community' as per DEC Central office guidance; and

WHEREAS, by letter dated July 27, 2018, the Fire Department stated that it had no objection to this application; and

WHEREAS, based upon its review of the record, the Board has determined that the extension of the term of the variance are appropriate with certain conditions as set forth below; and

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby, pursuant to ZR § 11-411, *reopens* and *amends* a previously-granted variance to permit, on a site located within an R7-1 (C2-4) zoning district, the operation of a gasoline service station and lawful uses accessory thereto *on condition* that all work and site conditions shall conform to plans filed with this application marked "Received December 21, 2017"-Six (6) sheets; and *on further condition*:

THAT this grant shall be limited to a term of ten (10) years, to expire on November 18, 2025;

THAT a revised certificate of occupancy indicating both Use Group 16B (automotive service station and attendants' booth (no repairs of any kind) and Use Group 8 (public parking for more than five (5) cars) uses at the site shall be obtained within one (1) year of the issuance of this resolution;

THAT accessory parking on the Use Group 16B portion of the site shall be limited to two (2) cars;

THAT there shall be no car sales at the site;

THAT a permanent fence without any openings shall be maintained between the two uses on the site;

THAT the site shall be cleaned and maintained;

THAT the placement and size of all signs shall be as indicated on the BSA-approved plans;

THAT all conditions from prior resolutions, including those issued under BSA Cal. No. 452-88-A, not specifically waived by the Board remain in effect;

THAT the above conditions shall appear on the certificate of occupancy;

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 27, 2018.

240-55-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for DLC Properties, owner.

SUBJECT – Application January 24, 2018 – Request for a Re-Hearing pursuant to § 1-12.5 of the Board's Rules for an application which was dismissed for lack of prosecution on November 21, 2017. The application seeks 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 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 – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, Commissioner Scibetta4

Negative: Chair Perlmutter1

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, pursuant to ZR § 11-413, 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, specifically, the applicant seeks to change the use of the site from Use Group 16 automotive repair to Use Group 9 automobile and waivers, pursuant to § 1-14.2 of the Board's Rules of Practice Procedure, 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, 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 dismissal on November 21, 2017, for lack of prosecution; and

WHEREAS, after the Board's decision on November 21, 2017, the applicant pursued an appeal pursuant to New York Civil Practice Laws and Rules Article 78 ("Article 78") to annul the Board's decision (DLC Properties LLC v. Perlmutter, Sup Ct, Queens County (Index No. 668/2018)); and

WHEREAS, pursuant to a stipulation signed by the applicant and the City, dated March 16, 2018, the

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application was remanded to the Board for a review of its decision, pursuant to § 1-12.6 of the Board's Rules of Practice and Procedure; 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; firefighting 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 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 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

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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 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, which was dismissed by the Board for lack of prosecution on November 21, 2017; and

WHEREAS, a public hearing was held for the review of the Board's decision on June 19, 2018, with continued hearings on July 17, 2018, and September 27, 2018, and then to decision on September 27, 2018; and

WHEREAS, the applicant submitted additional information for the Board's consideration of its decision in this application, including forms from several residents of 45th Road consenting to the change in use at the site proposed herein and the re-establishment of a curb cut on 45th Road; and

WHEREAS, the applicant proposes the following hours of operation: Monday to Thursday, 9:00 a.m. to 9:00 p.m., Friday, 9:00 a.m. to 7:00 p.m., Saturday 9:00 a.m. to 6:00 p.m., and Sunday, noon to 5:00 p.m.; and

WHEREAS, the use of the curb cut located on 45th Road was of significant concern to the Board as evidenced by prior resolutions, which have included as conditions restrictions on the subject site's use of 45th Road, but also due in part to Community Board 11, Queens', March 8, 2016, letter recommending 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, the Board was also in receipt of a November 7, 2016, letter from Community Board 11, Queens stating that the Community Board agreed that an operational plan presented by the applicant for test drives out of the facility utilizing the 45th Road curb cut was preferable to driving cars through a showroom onto

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Northern Boulevard; and

WHEREAS, member of the Board notes that the proposal is to change the use at the site to a less onerous use and that there are other auto-related businesses in the immediate area utilizing 45th Road for, among other things, the delivery of goods and the operational plan provided by the applicant states that the subject site would utilize the 45th Road curb cut for only three to five test drives a day; and

WHEREAS, another member of the Board expressed concerns about the utilization of 45th Road, located in a residential district, for the subject auto-related use and the applicant's representation that re-establishing the curb cut at 45th road is the only feasible option for facilitating test drives at the site when the property owner has voluntarily abandoned and fenced off other existing curb cuts at the site; and

WHEREAS, a majority of the Board finds that the relief requested herein pursuant to ZR §§ 11-411 and 11-413 is appropriate under certain conditions and safeguards to minimize any adverse effects upon the character of the surrounding area.

Therefore, it is Resolved, that the Board of Standards and Appeals waives §§ 1-07.3(d)(2) and § 1-07.3(b)(2) of the Board's Rules of Practice and Procedure, reopens and amends the resolution, dated December 13, 1955, as amended through April 1, 2014, so that as amended this portion of the resolution reads: "to grant a change in use from Use Group 16 automotive repair to Use Group 9 automotive sales, a ten (10) year extension of the term of the variance, expiring November 3, 2028, and a one (1) year extension of time to obtain a certificate of occupancy, expiring January 9, 2020; on condition that the use and operation of the site shall substantially conform to plans filed with this application marked "Received September 5, 2018"-Three (3) sheets; and on further condition:

THAT the term of the grant shall expire on November 3, 2028;

THAT no vehicles shall be parked on the sidewalk;

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

THAT all lighting shall be directed away from residential uses;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also indicating this approval and calendar number ("BSA Cal No 240-55-BZ"), shall be obtained by January 9, 2020;

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

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

Adopted by the Board of Standards and Appeals,

September 27, 2018.

170-96-BZ

APPLICANT – Eric Palatnik, P.C., for 8501 Flatlands Avenue Realty Corp., owner.

SUBJECT – Application March 23, 2018 – Extension of Term of a previously approved Variance (§72-21) which permitted the operation of an Automotive Repair Facility (UG 16B) expiring on April 21, 2018. C2-3/R5D zoning district.

PREMISES AFFECTED – 8501 Flatlands Avenue, Block 8006, Lot 7, 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, Commissioner Sheta and Commissioner Scibetta.....5

Negative:0

THE RESOLUTION –

WHEREAS, this is an application for an extension of the term of a variance, previously granted by the Board, which expired on April 21, 2018; and

WHEREAS, a public hearing was held on this application on July 24, 2018, after due notice by publication in *The City Record*, with a continued hearing on September 27, 2018 and then to decision on that date; and

WHEREAS, 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 northeast corner of the intersection of Flatlands Avenue and East 85th Street, in an R5D (C2-3) zoning district, in Brooklyn; and

WHEREAS, the site is comprised of two contiguous tax lots (tax lots 6 and 7) with approximately 90 feet of total frontage along Flatlands Avenue, tax lot 7 has approximately 100 feet of frontage along East 85th Street, the lots have 9,432 square feet of combined lot area and are occupied by a one-story plus mezzanine automobile repair facility (Use Group 16); and

WHEREAS, the Board has exercised jurisdiction over tax lot 7 (then tax lots 7 and 9) since October 13, 1948, when, under BSA Cal. No. 300-48-BZ, the Board granted a variance for a term of ten (10) years, expiring October 13, 1958, to permit, in a business use district, the erection and maintenance of a gasoline service station, automobile repair shop, lubritorium, and auto laundry on the same lot as an existing one-family frame dwelling and four-car concrete block garage on condition that the portion of the plot proposed for the gasoline service station be leveled to the grade of Flatlands Avenue; the accessory building comply with the Building Code requirements; any pumps erected be not nearer than ten (10) feet to the street building line; the balance of the plot where not occupied by the gasoline

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station and existing four-car garage be paved with concrete or tarvia; a block of concrete, which may be segmental in shape, be erected within the building line near the intersection and extend for a distance of approximately five (5) feet from the intersection along either street and not less than 12 inches in height; the building on the premises be continued for residential use only and the garage in the rear not be occupied in connection with the gasoline station and be separated from the proposed accessory building by a masonry wall; the building and occupancy comply in all other respects with all laws, rules and regulations applicable thereto, including the requirements of the Zoning Resolution as to the area; no window be erected on the rear wall of the accessory building; the number of gasoline storage tanks be restricted to three (3) as proposed; signs be restricted to the requirements of the Zoning Resolution and limited to a permanent sign on the accessory building's façade below the parapet line and to the illuminated globes of the pumps, excluding all temporary signs and roof signs, but permitting within the building line at the intersection a post standard for supporting a sign, which may be illuminated, advertising only the brand of gasoline on sale and permitting it to extend beyond the building line for a distance of not more than four (4) feet; curb cuts be restricted to the existing 11 foot curb cut and a new 20 foot curb cut as shown to Flatlands Avenue and one (1) curb cut to East 85th Street be installed when the curbs are constructed; sidewalks be reconstructed to the satisfaction of the Borough President and curbs be constructed as he or she may require both along Flatlands Avenue and East 85th Street for the frontage of the premises; portable fire-fighting appliances be installed as the fire commissioner directs; minor repairs be by hand tools only; any equipment requiring a pit or lift for work or lubrication, when installed, be either of the hydraulic type or, if a pit is installed, be ventilated through the roof by a vent duct connected to an exhaust fan at the bottom of the pit; suitable fencing or walls be erected on the interior lot lines to the east between the accessory garage and the present building; and all permits required be obtained and all work completed within one (1) year from the date of the resolution; and

WHEREAS, on May 3, 1949, under BSA Cal. No. 300-48-BZ, the Board amended the variance to require the accessory building comply with the requirements of the Building Code and be arranged as proposed on the revised plans filed with the application, provided no closure doors be placed at the opening; and the greasing pit be ventilated by means of an exhaust fan approved for explosive occupancies with a duct through the roof; and

WHEREAS, on July 6, 1949, under BSA Cal. No. 300-48-BZ, the Board amended the variance, specifically a previous condition of the resolution regarding pits or lifts, to permit any equipment requiring a pit or lift for the work of lubrication, when installed, to be either of the hydraulic type or, if a pit is installed, be ventilated through the roof by vent ducts connected to an exhaust fan at the bottom of the pit and, in either event, to permit closure doors to be

constructed as indicated on revised plans filed with the application; on further condition that the existing exterior wall of the present four-car garage at the west be maintained as a separation between such four-car garage and the accessory building; and

WHEREAS, on January 24, 1950, under BSA Cal. No. 300-48-BZ, the Board amended the variance to permit the installation of three (3) additional 550-gallon gasoline storage tanks, as indicated on the revised plan, on condition that the resolution, as amended, be complied with in all other respects; and

WHEREAS, on May 29, 1951, under BSA Cal. No. 300-48-BZ, the Board amended the variance to restrict the number of gasoline storage tanks to eight (8) 550-gallon gasoline storage tanks; and

WHEREAS, on October 28, 1958, under BSA Cal. No. 300-48-BZ, the Board extended the term of the variance for a term of ten (10) years from the date of the amended resolution, expiring October 28, 1968; on condition that all permits, including a new certificate of occupancy, be obtained and all work completed within three (3) months of the amended resolution; and

WHEREAS, on June 23, 1959, under BSA Cal. No. 300-48-BZ, the Board extended the time to obtain a certificate of occupancy; and

WHEREAS, on March 13, 1962, under BSA Cal. No. 300-48-BZ, the Board granted an additional variance for a term of twenty (20) years, expiring March 13, 1982, to permit the erection of an extension to the existing gasoline service station accessory building; the installation of two gas pumps and accessory uses to include lubrication, minor auto repairs with hand tools only, storage room, office and sales, non-automatic car washing, and parking of motor vehicles awaiting service, on condition that the work be done in accordance with approved plans filed with this application; all laws, rules and regulations applicable be complied with; and permit be obtained, work done, and a certificate of occupancy obtained within one (1) year; and

WHEREAS, on May 11, 1982, under BSA Cal. No. 300-48-BZ, the Board amended the variance and extended the term for ten (10) years, expiring March 13, 1992, on condition that a five-foot six-inch high woven fence be installed along the easterly lot line as previously approved; there be no parking of motor vehicles on the sidewalk area and the station be operated at all times in such a fashion so as to minimize traffic congestion; the amended resolution be complied with in all respects; and a certificate of occupancy be obtained within one (1) year; and

WHEREAS, on July 6, 1983, under BSA Cal. No. 111-83-BZ, the Board permitted the enlargement of the existing gasoline service station through the addition of tax lot 6, on condition that all work substantially conform to approved plans filed with this application; all laws, rules and regulations applicable be complied with; and substantial construction be completed within four (4) years; and

WHEREAS, on April 21, 1998, under the subject calendar number, the Board granted a variance to permit a

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change of use of the site to an automotive repair establishment (Use Group 16) limited to transmission repairs with no body nor fender work, and renovation and enlargement of the existing building for such use, on condition that all work substantially conform to approved plans filed with the application; the variance be limited to a term of ten (10) years to expire April 21, 2008; landscaping be provided and maintained in accordance with the BSA approved plans; the hours of operation for the automobile repair establishment be limited to 7:30 a.m. to 6:30 p.m. Monday through Saturday, closed on Sunday; the premises be maintained graffiti-free at all times; the curb cut along East 85th Street and the middle curb cut along Flatlands Avenue be eliminated; the above conditions appear on the certificate of occupancy; the development, as approved, be subject to verification by the Department of Buildings for compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under the jurisdiction of the Department; and substantial construction be completed within four (4) years;

WHEREAS, on November 18, 2008, under the subject calendar number, the Board amended the variance to permit the addition of office space in a mezzanine, and extended the term for ten (10) years to expire on April 21, 2018, on condition that all work substantially conform to the approved plans; all conditions from prior resolutions not specifically waived by the Board remain in effect; the site be maintained free of debris and graffiti; the above conditions appear on the certificate of occupancy; all signage comply with C1 zoning regulations; the approval be limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdictional objection(s); and the Department of Buildings 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; and

WHEREAS, the term of the variance having expired, the applicant seeks a twenty (20) year extension of the term of the variance; and

WHEREAS, pursuant to ZR §§ 72-01 and 72-22, the Board may, in appropriate cases, permit an extension of a term of the variance; and

WHEREAS, at the hearing, the Board expressed concerns regarding the illegal parking of vehicles on and around the subject site; and

WHEREAS, in response, the applicant represented that a security camera with 24-hour surveillance is currently monitoring the sidewalks; a “no parking” sign has been installed to indicate that parking is not permitted on the sidewalk; and an employee has been designated to monitor the sidewalk and ensure that there is no parking; and

WHEREAS, by letter dated September 20, 2018, the Fire Department stated that it had no objection to this application; and

Therefore, it is Resolved, that the Board of Standards and Appeals, *reopens* and *amends* the resolution, dated

April 21, 1998, 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 twenty (20) years from the date of this amended resolution, to expire on September 27, 2038; and *on condition* that all work and site conditions shall conform to drawings filed with this application marked “Received July 6, 2018”-Four (4) sheets and *on further condition*:

THAT a security camera shall be installed and maintained with 24-hour surveillance to monitor the sidewalk;

THAT “No Parking” signs shall be installed and maintained on the exterior of the sidewalk fence;

THAT an employee shall be designated to ensure that motor vehicles do not park on the sidewalks at the site;

THAT the hours of operation for the automobile repair establishment shall be limited to 7:30 a.m. to 6:30 p.m. Monday through Saturday, closed on Sunday;

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

THAT all signage shall comply with C1 zoning regulations;

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 September 27, 2019; and

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

Adopted by the Board of Standards and Appeals, September 27, 2018.

272-07-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Amsterdam & 76th Associates LLC, owner; Equinox 76th Street, Inc., lessee.

SUBJECT – Application September 27, 2018 – 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 second floors and (Pure Yoga Facility) on the cellar level of a mixed-use building which expires on May 13, 2018. C2-7A (EC-2) and C4-6A (EC-3) zoning districts.

PREMISES AFFECTED – 344 Amsterdam Avenue, Block 1168, Lot 7501, 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, Commissioner Sheta and Commissioner Scibetta.....5

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Negative:0

THE RESOLUTION –

WHEREAS, this is an application for an extension of term of a previously granted special permit for a physical culture establishment (“PCE”), which expired on May 13, 2018; and

WHEREAS, a public hearing was held on this application on September 27, 2018, after due notice by publication in *The City Record*, and then to decision on the same date; and

WHEREAS, Commissioner Ottley-Brown and Commissioner Scibetta 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 west side of Amsterdam Avenue, bound by West 77th Street to the north and West 76th Street to the south, partially located within a C2-7A zoning district and the Special Enhanced Commercial District 2 (EC-2) and partially located within a C4-6A zoning district and the Special Enhanced Commercial District 3 (EC-3), in Manhattan; and

WHEREAS, the site has approximately 179 feet of frontage along Amsterdam Avenue, 115 feet of frontage along West 77th Street, 100 feet of frontage along West 76th Street, and 28,863 square feet of lot area; and

WHEREAS, the site is occupied by a mixed-use residential and commercial building that rises to four stories, plus cellar and sub-cellar, and splits into a 13-story building (“Tower 1”) located on the northeastern most portion of the subject site and an 18-story building (“Tower 2”) located on the southwestern most portion of the site; and

WHEREAS, the subject PCE is located within portions of the cellar (20,116 square feet of floor space) and first and second floors (28,311 square feet of floor area) of the subject development; and

WHEREAS, the Board has exercised jurisdiction over the subject site since May 13, 2008, when, under the subject calendar number, the Board granted a special permit, pursuant to ZR § 73-36, to permit the establishment of a physical culture establishment, operated by Equinox Fitness located on portions of the cellar, first and second floors of the then-proposed 13- and 18- story mixed-use residential and commercial development at the subject site for a term of ten (10) years, expiring May 13, 2018, on condition that there be no change in ownership or operating control of the PCE without prior application to and approval from the Board; all massages be performed by New York State licensed massage therapists; a maximum interior noise level of 45 dBA be maintained between the PCE and adjacent residential use; the above conditions appear on the certificate of occupancy; Local Law 58/87 compliance be as reviewed and approved by DOB; fire safety measures be installed and/or maintained as shown on the Board-approved plans; prior to the issuance of any permits, DOB review the floor area and location of the PCE for compliance with all relevant commercial use regulations; sound attenuation

measures be installed and maintained in accordance with the approved plans; the approved plan be considered approved only for the portions related to the specific relief granted; and the Department of Buildings 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; and

WHEREAS, on October 20, 2009, under the subject calendar number, the Board amended the resolution to permit extensions of the PCE use at the cellar and first floor, on condition that the use and operation of the site substantially conform to the approved plans filed with the application; there be no change in ownership or operating control of the PCE without prior application to and approval from the Board and that all conditions from prior resolutions not specifically waived by the Board remain in effect; and

WHEREAS, the previous term of the special permit having expired, the applicant requests the subject relief; and

WHEREAS, the applicant represents that there has been no change in ownership or operator since the 2008 resolution and that Equinox continues to operate the subject PCE, that the cellar level contains the entirety of the Pure Yoga space, men’s and women’s locker areas, yoga studio, reception areas and a lounge, as well as the women’s area, kids’ area, and treatment rooms for the Equinox facility; the first floor contains the entrances to both Equinox and Pure Yoga; and the second floor contains the Equinox exercise areas and men’s locker area; and

WHEREAS, the applicant submits that the Pure Yoga and Equinox facilities are operated separately with separate staffs, but have the same principals, which are the same as they were when the special permit was originally granted in 2008; that there has been no changes in the hours of operation, which were approved in 2008 to 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, 7:00 a.m. to 9:00 p.m., but not incorporated as a condition to the resolution; and that massage services continue to be provided by New York State-licensed massage therapists; and

WHEREAS, by letter dated September 26, 2018, the Fire Department stated that it had no objection to the application and confirmed that all FDNY permits for the fire alarm system and fire suppression system are current; and

WHEREAS, pursuant to ZR § 73-03(f), 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 May 13, 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 May 13, 2028, *on condition* that all work and site conditions shall conform to

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drawings filed with this application marked “Received June 28, 2018”-Six (6) sheets; and *on further condition*:

THAT the term of this grant shall expire on May 13, 2028;

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 a maximum interior noise level of 45 dBA shall be maintained between the PCE and adjacent residential use;

THAT minimum three (3) foot wide exit pathways to required exits shall always be maintained unobstructed, including that from any gymnasium equipment;

THAT sprinklers and interior fire alarm system – including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms, connection of the interior fire alarm and sprinklers to a FDNY-approved central station – shall be maintained throughout the PCE space as indicated on the Board-approved plans;

THAT Local Law 58/87 compliance 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 one (1) year, by September 27, 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 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, September 27, 2018.

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 – Granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:0

THE RESOLUTION –

WHEREAS, the decision on behalf of the Brooklyn Borough Commissioner, dated September 9, 2016, acting on Department of Buildings (“DOB”) Application No. 321431349 reads in pertinent part:

Proposed vertical enlargement to existing single-family house in R3-1 zoning district is non-compliant in regards to:

1. Proposed floor area ratio (FAR) 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 minimum side yard is contrary to ZR 23-461;
5. Proposed total side yards are contrary to ZR 23-461;
6. Proposed rear yard is contrary to ZR 23-47; and

Accordingly, project has to be referred to the Board of Standards and Appeals for a special permit review pursuant to ZR 73-622; and

WHEREAS, this is an application under ZR § 73-622 to permit, in an R3-1 zoning district, the enlargement of a detached one-family dwelling 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(a) and 23-47; and

WHEREAS, a public hearing was held on this application on October 17, 2017, after due notice by publication in *The City Record*, with a continued hearing on September 27, 2018, 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 15, Brooklyn, recommends approval of this application; and

WHEREAS, the Board was also in receipt of three form letters in support of this application; and

WHEREAS, the subject site is located on the east side of Ocean Avenue, between Shore Boulevard and Hampton Avenue, in an R3-1 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 30 feet of frontage, a depth of 104 feet, 3,120 square feet of lot area and is occupied by a detached two-story one-family dwelling having 2,063 square feet of floor area, a floor area ratio (“FAR”) of 0.66, 39 percent lot coverage, 61 percent open space, two 5 foot wide side yards, a 27.8’ rear yard, and a garage located 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-*

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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, *inter alia*, ZR §§ 73-01 through 73-04; and

WHEREAS, as a threshold matter, the Board notes that this application located within an area in which the special permit is available; and

WHEREAS, the Board notes further that the subject application seeks to enlarge the detached one-family residence, as contemplated by ZR § 73-622; and

WHEREAS, the applicant proposes to legalize a prior enlargement and further enlarge the existing detached dwelling by demolishing the garage roof access bridge, steps, and landing, extending the second floor, and constructing a new third floor, resulting in a dwelling with 2,840 square feet of floor area (0.91 FAR), but that will maintain 39 percent lot coverage, 61 percent open space, two 5 foot side yards and a 27.8' rear yard; and

WHEREAS, in addition, the applicant proposes to maintain the existing garage, but eliminate a swimming pool located in the rear yard; and

WHEREAS, the proposed enlargement includes a vertical and horizontal extension of the existing non-complying 5 foot side yards and the applicant has submitted a 1950 Sanborn map of the immediate area, including the subject site, demonstrating that the subject site was developed with a two-story semi-detached dwelling in approximately the same orientation as the site is occupied today and, thus, the non-complying side yards predated the 1961 Zoning Resolution and are legal non-compliances; and

WHEREAS, at the subject site, a maximum floor area ratio of 0.50 and maximum lot coverage of 35 percent are permitted and a minimum open space of 65 percent is required pursuant to ZR § 23-142; two side yards, each with a minimum required width of 5 feet and a minimum required total width of 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 provided an analysis of single- or two-family dwellings located within 400 feet of the subject premises within an R3-1 zoning district (the "Study Area") concluding that, of the 66 qualifying residences, 36 residences (55 percent) have an FAR of greater than 0.50, ranging from 0.51 to 0.91, including the property immediately at the rear and to the south of the subject site, which has an FAR of 0.91; and 16 (24 percent) residences have lot coverage greater than 35 percent; and

WHEREAS, with regards to the proposed rear yard, the

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applicant provided an analysis of the rear yard conditions on the subject block demonstrating that, of the 18 other lots on the subject block occupied by single- or two-family dwellings, 8 lots (44 percent) have rear yards with a depth of less than 30 feet, with rear yards ranging in depth from 15 feet to 26 feet, and that all of the lots contiguous to the subject site also have accessory garages located in their rear yards, including the lot directly adjacent and to the south of the subject lot, which provides a 26 foot rear yard that is further obstructed by an accessory garage; and

WHEREAS, the applicant submitted a Construction Code Determination Form (Control Number 55042, the “CCD1”) and a Zoning Resolution Determination Form (Control Number 55043, the “ZRD1”) confirming compliance of the subject proposal with Appendix G of the NYC Building Code and ZR §§ 64-00 and 64-11; and

WHEREAS, the CCD1 and ZRD1 were approved by DOB on July 25, 2018, on condition that no work be performed in the existing cellar, the cellar area under the rear extension portion of the building to be legalized be backfilled to grade level, the total enlargement of floor area not be more than 1,112 square feet, and the proposed work complies with all other applicable sections of resolutions, codes, rules, regulations and laws; and

WHEREAS, the Board has made no findings as to whether the subject proposal complies with the CCD1 or ZRD1 and defers to the DOB with regards to the legal size of the subject enlargement; and

WHEREAS, the Board also defers to DOB with regards to whether the proposed exterior wall thickness and roof thickness are permitted obstructions in compliance with ZR § 23-621 and makes clear that it grants no waivers to excuse any non-compliance; 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; 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 the required findings under ZR § 73-622 to permit, in an R3-1 zoning district, the enlargement of a one-family detached dwelling that does not comply with the zoning requirements with regards to floor area ratio, lot coverage, open space, side yards, and rear yards, contrary to ZR § 23-142, 23-461(a) and 23-47; *on condition* that all work shall substantially conform to drawings as they apply to the objection above-noted, filed with this application and marked “Received September 27, 2018”—Twenty-eight (28) sheets; and *on further condition:*

THAT the following shall be the bulk parameters of the building: a maximum floor area ratio of 0.91 (2,840 square feet of floor area); a maximum of 39 percent lot coverage; a minimum of 61 percent open space; two side yards, each with a minimum width of 5 feet, and a rear yard with a minimum depth of 27.8’, as illustrated on the Board-approved plans;

THAT this approval does not take a position with

respect to compliance of the proposed plans with the CCD1 (Control Number 55042) or ZRD1 (Control Number 55043) conditionally approved by DOB on July 25, 2018, and the Board defers to DOB to determine compliance of such plans;

THAT the removal of exterior walls and/or joists in excess of those indicated on the BSA-approved plans is prohibited and 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, September 27, 2018.

197-05-BZ

APPLICANT – Law Offices of Marvin B. Mitzner LLC, for Broadway Realty LLC, owner.

SUBJECT – Application April 27, 2018 – Amendment of a previously approved variance (§72-21) which permitted the construction of an 11-story mixed-use building with ground floor commercial. The amendment seeking to permit a 4’9” by 28’ bump out at the rear of the building; Extension of Time to Complete construction which expires on April 29, 2019. C6-1/R7 zoning district.

PREMISES AFFECTED – 813 Broadway, Block 563, Lot(s) 33 & 34, Borough of Manhattan.

COMMUNITY BOARD #2M

THE VOTE TO CLOSE HEARING –

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

ACTION OF THE BOARD – Laid over to October 30, 2018, at 10 A.M., for decision, hearing closed.

177-06-BZ

APPLICANT – Law Office of Steven Simicich, for 1840 EMAB, LLC, owner.

SUBJECT – Application September 27, 2018 – Extension of Term (§11-411) to permit the continued operation of an Automotive Repair Facility (UG 16B) with the sale of cars which expired on April 10, 2017; Amendment to permit the conversion of accessory storage area into an additional automotive service bay and changes to on-site planting; Waiver of the Board’s Rules. C2-2R3-2 zoning district.

PREMISES AFFECTED – 1840 Richmond Terrace, Block 201, Lot 32, Borough of Staten Island.

COMMUNITY BOARD #1SI

MINUTES

ACTION OF THE BOARD – Laid over to December 4, 2018, at 10 A.M., for continued hearing.

247-09-BZ

APPLICANT – Kramer Levin Naftalis & Frankel, LLP, for Central Synagogue, owner.

SUBJECT – Application July 11, 2018 – Extension of Time to complete construction of a previously approved variance (§72-21) for the expansion of a UG4 community use facility (Central Synagogue), which expired on June 10, 2018. C5-2 & C5-2.5 (MiD) zoning district.

PREMISES AFFECTED – 123 East 55th Street, Block 1310, Lot 10, Borough of Manhattan.

COMMUNITY BOARD #5M

ACTION OF THE BOARD – Laid over to January 29, 2019, at 10 A.M., for continued hearing.

16-12-BZ

APPLICANT – Eric Palatnik, P.C., for Congregation Adas Yereim, owner.

SUBJECT – Application April 2, 2015 – Amendment of a previously approved Special Permit (§73-19) permitting a school (*Congregation Adas Yereim*) contrary to use regulations (§42-00). The amendment seeks changes to the interior, an increase in the height of the building. M1-2 zoning district.

PREMISES AFFECTED – 184 Nostrand Avenue, northwest corner of Nostrand Avenue and Willoughby Avenue, Block 01753, Lot 0042, Borough of Brooklyn.

COMMUNITY BOARD #3BK

THE VOTE TO CLOSE HEARING –

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

ACTION OF THE BOARD – Laid over to October 30, 2018, at 10 A.M., for decision, hearing closed.

231-14-BZ

APPLICANT – Bryan Cave Leighton Paisner, for Orangetheory Fitness, owner; OTF Man One LLC c/o dba Orange Theory Fitness, lessee.

SUBJECT – Application May 11, 2018 – Extension of Term of a previously approved Special Permit (§73-36) which permitted the operation of a physical culture establishment (Orangetheory Fitness) within a portion of an existing commercial building which expired on April 12, 2018. C6-3X zoning district.

PREMISES AFFECTED – 124 West 23rd Street, Block 798, Lot 7507, Borough of Manhattan.

COMMUNITY BOARD #4M

ACTION OF THE BOARD – Laid over to December 4, 2018, at 10 A.M., for continued hearing.

APPEALS CALENDAR

257-15-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for ESL8 Properties LLC, owner.

SUBJECT – Application November 18, 2015 – Proposed construction within the bed of a mapped street is contrary to Article 3 Section 35 of the General City Law and related bulk waivers under ZR 72-01-(g). R3-2(NA-1) zoning district.

PREMISES AFFECTED – 1221 Forest Hill Road, Block 1965, Lot 59, Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Application withdrawn.

THE VOTE TO WITHDRAW –

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

Adopted by the Board of Standards and Appeals, September 27, 2018.

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 December 4, 2018, at 10 A.M., for continued hearing.

2016-4142-A thru 2016-4146-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Cunard/SI Associates LLC, owners.

SUBJECT – Application March 17, 2016 – To permit the proposed development consisting of five one family homes contrary Article 3 Section 36 of the General City Law. R3A (HS) zoning district.

PREMISES AFFECTED – 70/72/74/76/78 Cunard Avenue, Block 623, Lot(s) 10, 9, 8, 95, 93, Borough of Staten Island.

COMMUNITY BOARD #1SI

ACTION OF THE BOARD – Laid over to December 11, 2018, at 10 A.M., for continued hearing.

MINUTES

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 11, 2018, at 10 A.M., for adjourned hearing.

2017-68-A thru 2017-96-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Joline Estates, LLC, owner.

SUBJECT – Applications March 27, 2017 – Proposed construction of twenty-nine (29) two-family residences, not fronting on a legally mapped street, contrary to General City Law 36. R3-X (SRD) zoning district.

PREMISES AFFECTED – 7 to 49 Torrice Loop and 11 to 16 Frosinone Lane, Block 7577, Various Lots, Borough of Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Laid over to October 23, 2018, at 10 A.M. for adjourned hearing.

2017-16-A thru 2017-19-A

APPLICANT – Gerald J. Caliendo, RA, AIA, for Mario Ferazzoli, owner.

SUBJECT – Application January 18, 2017 – 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.

PREMISES AFFECTED – 15-58/62 Clintonville Street, 150-93/95 Clintonville Court, Block 4699, Lot(s) 20, 21, 23 & 24, Borough of Queens.

COMMUNITY BOARD #7Q

ACTION OF THE BOARD – Laid over to December 4, 2018, at 10 A.M., for continued hearing.

2017-323-A

APPLICANT – Marianne Russo, for Kadri Capri, owner.

SUBJECT – Application December 20, 2017 – Proposed development of a one-family dwelling not fronting on a mapped street contrary to General City Law §36. R1-2 zoning district.

PREMISES AFFECTED – 108 Croak Avenue, Block 692, Lot 217, Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Laid over to January 29, 2019, at 10 A.M., for adjourned hearing.

2018-105-A

APPLICANT – Gerald J. Caliendo, RA, AIA, for Mario Ferazzoli, owner.

SUBJECT – Application July 3, 2018 – 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.

PREMISES AFFECTED – 150-87 Clintonville Court, Block 4699, Lot(s) 22, Borough of Queens.

COMMUNITY BOARD #7Q

ACTION OF THE BOARD – Laid over to December 4, 2018, at 10 A.M., for continued hearing.

ZONING CALENDAR

2017-9-BZ

APPLICANT – Law Office of Jay Goldstein, for SL Utica LLC, owner; All My Children Daycare, Lessee.

SUBJECT – Application January 12, 2017 – 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.

PREMISES AFFECTED – 561-565 Utica Avenue, Block 4604, Lot 69, 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, Commissioner Sheta and Commissioner Scibetta.....5
Negative:0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated December 13, 2016, acting on Department of Buildings (“DOB”) Application No. 321462323 reads in pertinent part:

Proposed Use Group 3 school is not permitted in C8-2 zoning district, contrary to ZR 32-10 and requires a special permit from the Board of Standards and Appeals pursuant to ZR 73-19; and

WHEREAS, this is an application for a special permit, pursuant to ZR § 73-19, to permit, on a zoning lot located in a C8-2 zoning district, the operation of a Use Group (“UG”) 3 school for 147 children between the ages of six months and five years, contrary to ZR § 32-10, et seq.; and

WHEREAS, this application is filed on behalf of All My Children Daycare, a non-profit corporation that operates 14 day care and nurse school facilities in Manhattan, Queens and Brooklyn (the “Applicant”); and

WHEREAS, a public hearing was held on this application on May 1, 2018, after due notice by publication in *The City Record*, with a continued hearing on July 24, 2018, and then to decision on September 27, 2018; and

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

WHEREAS, Community Board 17, Brooklyn, recommends disapproval of the subject application citing concerns regarding the safety of small children in a building simultaneously occupied by adults with disabilities; environmental concerns due to the presence of an AutoZone immediately adjacent to the subject; the proximity of the subject site to a hotel believed to be converted to a homeless shelter and high traffic along Utica Avenue at the subject site; and

WHEREAS, the Board was also in receipt of two letters in support of the subject application and one letter in opposition, echoing similar concerns as Community Board 17, Brooklyn; and

WHEREAS, the subject site is located on the east side of Utica Avenue, between Rutland Road and Winthrop Street, in a C8-2 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 100 feet of frontage, a depth of 100 feet, 10,000 square feet of lot area and is occupied by a two-story commercial building; and

WHEREAS, the Applicant proposes to renovate the first floor to accommodate a total of six classrooms, bathrooms, a warming kitchen, administrative offices and a refrigerated trash storage area to be occupied by a day care center; and

WHEREAS, UG 3 schools are not permitted within C8-2 zoning districts as-of-right, pursuant to ZR § 32-10, et seq.; and

WHEREAS, accordingly, the Applicant seeks the subject relief; 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 guided by, *inter alia*, ZR §§ 73-01 through 73-04; and

WHEREAS, a “school” is defined in ZR § 12-10 to include, in relevant part, “a child care service operating under a permit issued pursuant to Section 47.03 of the New York City Health Code”; and

WHEREAS, as a threshold matter, the Board notes that the subject site is located in a zoning district in which a special permit pursuant to ZR § 73-19 is available; and

WHEREAS, the Applicant represents that they are a child care service provider operating under a permit issued pursuant to Section 47.03 of the New York City Health Code and, in support of that contention, submitted permits issued by the New York City Department of Health and Mental Hygiene (“DHMH”) naming the Applicant as a permittee for pre-school programs conducted at 317 Rogers Avenue, Brooklyn (Permit No. 24878), 420 Lefferts Avenue, Brooklyn (Permit No. 25377), 739 East New York Avenue, Brooklyn (Permit No. 27477), 169-07 Jewel Avenue, Queens (Permit No. 6094), 83-10 188 Street, Queens (Permit No. 25177), 66-05 108 Street, Queens (Permit No. 27238), 110-15 164 Place, Jamaica (Permit No. 25917), 117-16 Sutphin Boulevard, Queens (Permit No. 25997), 97-30 Queens Boulevard, Rego Park (Permit No. 73958) and 101 West 85 Street, Manhattan (Permit No. 104018); and

WHEREAS, the Applicant represents that they are unable to provide a DHMH permit for the subject premises because, in order to obtain a permit, the building in which the school is located must have a CO indicating occupancy by a UG 3 school and the subject approval is a prerequisite to obtaining such CO because UG 3 schools are not permitted as-of-right at the subject site; and

WHEREAS, however, with regards to the subject site, the Applicant did provide an Inter-Departmental Memorandum from the DHMH Bureau of Child Care to the Deputy Brooklyn Borough Superintendent of DOB stating that, based on review of the first floor plan, the preschool program for 49 children ages from 24 months to 5 years old and infant/toddler program for 98 children ages from 6 months to 24 months appears to meet basic NYC Health Department, Health Code Requirements and shall be required to comply with article 47.03, 47.07 and 47.09; and

WHEREAS, with regards to ZR § 73-19(a), the Applicant states that they searched for sites having at least

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8,000 square feet of lot area within the area to be served by the subject day care location—specifically, the area bounded by Eastern Parkway, Troy Avenue, Linden Boulevard, Kings Highway and Howard Avenue located in R7-1, R6, R5 and R4 zoning districts—and asserts that each of the 27 sites identified are occupied by active uses that preclude the location of the subject school program; and

WHEREAS, the Applicant represents that the rear lot line of the subject site is coincident with a district boundary line separating a C8-2 zoning district and a R6 zoning district, where a UG 3 school is permitted as-of-right, and submits that the subject site is, therefore, located not more than 400 feet from the boundary of district wherein a school is permitted as-of-right in satisfaction of ZR § 73-19(b); and

WHEREAS, the Applicant submits that the proposed UG 3 school is adequately separated from noise, traffic and other adverse effects of the surrounding commercial district; and

WHEREAS, the applicant conducted a noise analysis concluding that, due to the predominant source of noise being vehicular traffic along Utica Avenue, the windows at the front of the building must have noise attenuation of at least 31 dBA, that no noise attenuation is required at the rear windows, and that alternate means of ventilation should be provided to allow for a closed-window condition; and

WHEREAS, the applicant additionally submits that an outdoor play area proposed in the rear yard of the building, adjacent to the R6 zoning district boundary line, will be outfitted with two layers of acoustic fencing, will operate from 10 am to 4 pm on school days (while the school itself is proposed to operate from 8 am to 6 pm) and will not feature any lights or amplified noise; and

WHEREAS, with regards to ZR § 73-19(d), the Applicant submits that the arrival and dismissal of students at the site will be staggered, with 17 students arriving between 8 am and 9 am, 120 students arriving between 9 am and 10 am, 10 students arriving between 10 am and 11 am, 15 students will be dismissed between 12 pm and 1 pm, 15 students will be dismissed between 1 and 2 pm, 30 students will be dismissed between 2 pm and 3 pm, 30 students will be dismissed between 3 pm and 4 pm, 30 students will be dismissed between 4 pm and 5 pm and 27 students will be dismissed between 5 pm and 6 pm; and

WHEREAS, the Applicant estimates that approximately 50 percent of the children enrolled at the subject site will arrive at the site by foot with a parent or guardian, 10 percent of children will arrive by private transportation and 40 percent of children will arrive via two school buses; and

WHEREAS, additionally, the Applicant proposes to request a No Standing Zone from the New York City Department of Transportation (“DOT”) along the entirety of the subject building’s 100-foot frontage in order for private vehicles and the two school buses to park directly in front of the facility and not interfere with traffic and to have staff members stationed at the front of the building during arrivals and dismissals to monitor traffic, ensure the safe transfer of students into the school building and prohibit vehicles from

blocking traffic; and

WHEREAS, by letter dated May 14, 2018, DOT states that because the proposed school will have less than 250 students, it does not fall within School Safety’s jurisdiction, but requested that once the center is ready to begin operations, they should coordinate with the DOT Brooklyn Borough Engineer to determine if a loading zone is warranted; and

WHEREAS, in satisfaction of ZR § 73-03(a), the Applicant submits that, under the conditions and safeguard imposed, the hazards or disadvantages to the community at large of this special permit at this particular site are outweighed by the advantages to be derived by the community by the granting of such special permit because it will provide a new day care facility for the community, the use will be within an existing building and that the limited proposed hours of use of the play area will limit its impacts on the quiet and privacy of residential neighbors; and, in accordance with ZR § 73-03(b), that the subject proposal will not interfere with any public improvement project 1; and

WHEREAS, in response to the Community Board’s concerns, the Applicant confirms that the second floor of the subject building is occupied by an adult day care center, but that such use is accessed from a separate dedicated entrance and, thus, there will be no inadvertent co-mingling of children in the proposed day care center and adults attending or visiting the building’s second floor, but nevertheless revised the plans to relocate the primary entrance to the school to the opposite end of the building from the entrance for the second floor of the subject building; that the school will operate in a closed window condition with mechanical ventilation and that safeguards sufficient to protect the children from the high traffic volume present on Utica Avenue will be implemented by the school in the course of its operations; and

WHEREAS, in light of the foregoing, the Board determines 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 (“EAS”) CEQR No. 17-BSA-063K, received September 26, 2018; and

WHEREAS, the EAS documents that the project, as

1 Subsections (c) through (g) of ZR § 73-03 are inapplicable to the subject application because there is no requirement under ZR § 73-19 for the Board to determine whether the special permit use is appropriately located in relation to the street system, as contemplated by ZR § 73-03(c); ZR § 73-19 is not one of the sections expressly named in ZR § 73-03(d); there is no term of years specified in ZR § 73-19 that would render ZR § 73-03(e) applicable; the subject application is not for a renewal of a special permit, as discussed in ZR § 73-03(f); and the subject application is not for an enlargement or extension of an existing use, as described in ZR § 73-03(g).

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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 September 18, 2018, the New York City Department of Environmental Preservation (“DEP”) states that they have analyzed the Air Quality and Noise analyses prepared by the Applicant’s consultant and determined that the proposed project would not result in potential significant air quality impacts and, by letter dated September 20, 2018, DEP states that the proposed project would not result in potential significant adverse noise impacts; and

WHEREAS, by letter dated September 26, 2018, DEP states that they have reviewed the June 2018 Phase II Environmental Site Investigation and the September 2018 Remedial Action Plan (“RAP”) and Construction Health and Safety Plan (“CHASP”) prepared by the Applicant’s consultant and, based on their review of the submitted documentation, recommend that the Applicant be instructed that the handling, transportation and off-site disposal of all soil/fill material should be performed in accordance with all applicable New York State Department of Environmental Conservation (“NYSDEC”) regulations and that, as long as this information is incorporated into the RAP, DEP finds the September 2018 RAP and CHASP to be acceptable and requests that at the completion of the project, a Professional Engineer certified Remedial Closure Report—indicating that all remedial requirements have been properly implemented (i.e., installation of vapor barriers and SSDS, capping of rear yard, and transportation/disposal manifests for removal and disposal of soil in accordance with NYSDEC regulations)—be submitted to DEP for review and approval; and

WHEREAS, the Applicant submitted a revised RAP incorporating the recommendation contained in DEP’s September 26 letter; and

WHEREAS, by letter dated September 17, 2018, the Fire Department recommends that the first floor be fully sprinklered and that, because the premises currently has a fire alarm system designed for mercantile use, either a new fire alarm system should be installed, or the existing system should be upgraded for institutional use; and

WHEREAS, the Applicant has agreed to install an approved interior fire alarm—including a manual and automatic fire alarm system that activates the occupant notification system, an automatic smoke detection system, manual pull stations at each required exit, local audible and visual alarms and connection of the manual and automatic fire alarm system to an FDNY-approved central office connection—and automatic sprinkler system throughout the entire first floor and has included notes to that effect on the Board-approved plans; 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, 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 73-19 to permit, on a site located in a C8-2 zoning district, a Use Group 3 school contrary to ZR § 32-10, et seq.; *on condition* that all work shall substantially conform to drawings as they apply to the objections above noted and filed with this application marked “Received September 27, 2018”-Four (4) sheets; and *on further condition*:

THAT the handling, transportation and off-site disposal of all soil/fill material should be performed in accordance with all applicable New York State Department of Environmental Conservation (“NYSDEC”) regulations;

THAT, upon completion of the project, a Professional Engineer certified Remedial Closure Report—indicating that all remedial requirements have been properly implemented (i.e., installation of vapor barriers and SSDS, capping of rear yard, and transportation/disposal manifests for removal and disposal of soil in accordance with NYSDEC regulations)—be submitted to DEP for review and approval;

THAT an approved interior fire alarm—including a manual and automatic fire alarm system that activates the occupant notification system, an automatic smoke detection system, manual pull stations at each required exit, local audible and visual alarms and connection of the manual and automatic fire alarm system to an FDNY-approved central office connection—and automatic sprinkler system shall be installed throughout the entire first floor, as indicated on the Board-approved plans; and

THAT the rear yard fence shall have acoustic barriers consisting of two layers of acoustic fencing, as indicated on the Board-approved plans;

THAT panic hardware shall be installed on emergency doors to ensure emergency use only and proper separation between day care and upper floor;

THAT a minimum 31 dBA window wall noise attenuation shall be installed on the Utica Avenue ground floor façade;

THAT an alternative means of ventilation shall be provided to maintain a closed-window condition;

THAT a vapor barrier consisting of a 46 and 30-mil grace pre-pruf vapor barrier membrane (or equivalent) shall be installed in accordance with the specifications and locations detailed in the Remedial Action Plan;

THAT once the premises are ready to begin operations as a day care center, the Applicant shall coordinate with the

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DOT Brooklyn Borough Engineer to determine if a loading zone is warranted;

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

THAT a certificate of occupancy shall be obtained within four (4) years, by September 27, 2022, and shall cross-reference the subject calendar number (“BSA Cal. No. 2017-9-BZ”);

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, September 27, 2018.

89-15-BZ

APPLICANT – Law Office of Jay Goldstein, for G & W Enterprises Inc., owner.

SUBJECT – Application April 21, 2015 – Variance (§72-21) to permit the construction of a 4-story, 4-family home contrary to §42-11. M1-1 zoning district.

PREMISES AFFECTED – 92 Walworth Street, Block 1735, Lot 16, Borough of Brooklyn.

COMMUNITY BOARD #3BK

THE VOTE TO CLOSE HEARING –

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

ACTION OF THE BOARD – Laid over to October 30, 2018, at 10 A.M., for decision, hearing closed.

2016-4127-BZ

APPLICANT – Dennis D. Dell’Angelo, for 1547 East 26th 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 26th Street, Block 6773, Lot 77, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to January 29, 2019, at 10 A.M., for adjourned hearing.

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 December 11, 2018, at 10 A.M., for continued hearing.

2017-20-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for GTO Holding LLC, owner; Harbor Fitness Park Slope, Inc., lessee.

SUBJECT – Application January 20, 2017 – 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.

PREMISES AFFECTED – 550 5th Avenue, Block 1041, Lot 7501, Borough of Brooklyn.

COMMUNITY BOARD #6BK

ACTION OF THE BOARD – Laid over to January 8, 2019, at 10 A.M., for adjourned hearing.

2017-149-BZ

APPLICANT – Sheldon Lobel, P.C., for Willard J. Price Associates LLC, owner.

SUBJECT – Application May 15, 2017 – 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.

PREMISES AFFECTED – 510 Quincy Street & 651-671 Gates Avenue, Block 1811, Lot 19, Borough of Brooklyn.

COMMUNITY BOARD #3BK

THE VOTE TO CLOSE HEARING –

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

ACTION OF THE BOARD – Laid over to October 11, 2018, at 10 A.M., for decision, hearing closed.

MINUTES

2017-192-BZ

APPLICANT – Greenberg Traurig, LLP, for Fort Hamilton, LLC, owner.

SUBJECT – Application May 26, 2017 – 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.

PREMISES AFFECTED – 5402-5414 Fort Hamilton Parkway/1002-1006 54th Street, Block 5673, Lot(s) 42 & 50, Borough of Brooklyn.

COMMUNITY BOARD #12BK

ACTION OF THE BOARD – Laid over to December 11, 2018, at 10 A.M., for continued hearing.

2017-267-BZ

APPLICANT – Law Offices of Vincent L. Petraro, PLLC, for Harbor Lights Enterprises, Inc., owner.

SUBJECT – Application September 13, 2017– 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.

PREMISES AFFECTED – 129-18 Newport Avenue, Block 16211, Lot 47 Borough of Queens.

COMMUNITY BOARD #14Q

ACTION OF THE BOARD – Laid over to October 11, 2018, at 10 A.M., for continued hearing.

2018-18-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Garichi LLC, owner.

SUBJECT – Application February 7, 2018 – Re-instatement (§11-411) of a previously approved variance permitted retail uses which expired on June 18, 2001; Amendment (§11-411) to permit the enlargement of one of the existing buildings; Waiver of the Board’s Rules. R5 zoning district.

COMMUNITY BOARD #5BK

ACTION OF THE BOARD – Laid over to December 11, 2018, at 10 A.M. for continued hearing.

REGULAR MEETING SEPTEMBER 27, 2018, 1:00 P.M.

Present: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.

ZONING CALENDAR

2016-4465-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Anderson Bay LLC, owner.

SUBJECT – Application December 13, 2016 – Variance (§72-21) to permit the construction of a two-story, two-family detached dwelling contrary to ZR (§23-142) required lot coverage and open space; ZR (§23-142(b)) floor area ratio; ZR (§23-32) required lot width; ZR (§23-45) required front yard; ZR (§23-461(a)) required side yard and ZR (§25-22) required parking space. R3A zoning district.

PREMISES AFFECTED – 129 Anderson Street, Block 2848, Lot 79, Borough of Staten Island.

COMMUNITY BOARD #1SI

ACTION OF THE BOARD – Laid over to January 8, 2019, at 10 A.M. for continued hearing.

2017-306-BZ

APPLICANT – Law Office of Lyra J. Altman, for Stella Alfaks and Devi Alfaks, owners.

SUBJECT – Application November 27, 2017 – Special Permit (§73-622) to permit the enlargement of the existing single family home contrary to ZR §23-47 (rear yard) and §23-461(a) (side yard). R5 zoning district.

PREMISES AFFECTED – 1977 East 14th Street, Block 7293, Lot 56, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to December 4, 2018, at 10 A.M. for continued hearing.

2018-46-BZ

APPLICANT – Law Office of Lyra J. Altman, for Jack Saideh, owner.

SUBJECT – Application March 27, 2018 – Special Permit (§73-622) to permit the enlargement of an existing single-family home, contrary to side yard requirements (§§23-461(c)) and creates non-compliance with respect to the wall height (§23-631(b)). R4 (Special Ocean Parkway Sub-District).

PREMISES AFFECTED – 2205 East 2nd Street, Block 7129, Lot 52, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to October 11, 2018, at 10 A.M. for continued hearing.

MINUTES

2018-49-BZ

APPLICANT – Law Office of Lyra J. Altman, for Solomon S. Salem, owner.

SUBJECT – Application April 2, 2018 – Special Permit (§73-622) to permit the enlargement of an existing single-family home, contrary to floor area, lot coverage and open space (ZR §23-142) and wall height (ZR §23-631-(b)) R2X (Special Ocean Parkway) zoning district.

PREMISES AFFECTED – 1919 East 5th Street, Block 6681, Lot 492, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to October 11, 2018, at 10 A.M. for continued hearing.

Carlo Costanza, Executive Director

BULLETIN

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October 21, 2018

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**MINUTES of Regular Meetings,
Thursday, October 11, 2018**

Morning Calendar717

Affecting Calendar Numbers:

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498-83-BZ	2131 Hylan Boulevard, Staten Island
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2017-260-BZ	2672 East 12 th Street, Brooklyn
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Affecting Calendar Numbers:

2017-232-A	1632 Richmond Terrace, Staten Island
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DOCKETS

New Case Filed Up to October 11, 2018

2018-153-A

158 West 58th Street, Located on West 58th Street between 6th Avenue and 7th Avenue, Block 1010, Lot(s) 0055, Borough of **Manhattan, Community Board: 5**. Appeal of a Department of Buildings issuance of a Temporary Certificate of Occupancy. C5-1 district.

2018-154-BZ

966 East 24th Street, located on the west side of East 24th Street between Avenues I and J., Block 07587, Lot(s) 74, Borough of **Brooklyn, Community Board: 14**. Special Permit (§73-622) to permit the enlargement of a single-family residence contrary to ZR §23-141 (FAR and Open Space Ratio); ZR §23-461 (Side Yard) and ZR §23-47 (Rear Yard). R2 zoning district. R2 district.

2018-155-BZ

1123 East 27th Street, Located on the east side of East 27th Street between Avenue K and Avenue L, Block 7627, Lot(s) 0035, Borough of **Brooklyn, Community Board: 14**. Special Permit (§73-622) to permit the enlargement of a single-family residence contrary to ZR §23-141 (FAR and Open Space Ratio); ZR §23-461(A) (Side Yard) and ZR §23-47 (Rear Yard). R2 zoning district. R2 district.

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

CALENDAR

REGULAR MEETING NOVEMBER 8, 2018, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Thursday morning, November 8, 2018, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

SPECIAL ORDER CALENDAR

429-29-BZ

APPLICANT – Davidoff Hutcher & Citron LLP, for 4801 Kings Highway Realty LLC, owner.
SUBJECT – Application March 26, 2018 – Amendment (§11-412) of a previously approved variance which permitted the operation of an Automotive Service Station (UG 16B) with accessory uses. The amendment seeks to change the configuration of the existing gasoline dispensing pumps; the addition of a canopy; conversion and enlargement of the accessory building from an accessory lubritorium to an accessory convenience store with a drive-thru. R4 zoning district.
PREMISES AFFECTED – 4801 Kings Highway, Block 7732, Lot 8, Borough of Brooklyn.
COMMUNITY BOARD #8BK

81-74-BZ

APPLICANT – Gerald J. Caliendo, RA, AIA, for 57 Avenue Market Inc., owner.
SUBJECT – Application December 30, 2016 – Extension of Term /amendment of a previously approved variance which permitted the operation of a supermarket (UG 6) which expires on February 27, 2017. C1-2/R6A & R6B zoning district.
PREMISES AFFECTED – 97-27 57th Avenue, Block 1906, Lot 1, Borough of Queens.
COMMUNITY BOARD #4Q

APPEALS CALENDAR

2017-249-A

APPLICANT – Tarter Krinsky & Drogin LLP, for New York Central Line, owner; Outfront Media, LLC, lessee.
SUBJECT – Application August 28, 2017 – 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.
PREMISES AFFECTED – Major Deegan Expressway and S/O Van Cortland, Block 3269, Lot(s) 70/118, Borough of

Bronx. COMMUNITY BOARD #8BX

2017-310-A

APPLICANT – Department of Buildings, for FMA Farragut Road LLC, owner; CMW Industries LLC, lessee.
SUBJECT – Application December 1, 2017 – 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.
PREMISES AFFECTED – 10002 Farragut Road, Block 8169, Lot 31, Borough of Brooklyn.
COMMUNITY BOARD #18BK

REGULAR MEETING NOVEMBER 8, 2018, 1:00 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Thursday afternoon, November 8, 2018, 1:00 P.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

ZONING CALENDAR

2017-313-BZ

APPLICANT – Moshe M. Friedman, P.E., for 853 Kent Avenue LLC, owner.
SUBJECT – Application December 11, 2017 – Variance (§72-21) to permit the development of a 2-family dwelling contrary to ZR §42-10. M1-1 zoning district.
PREMISES AFFECTED – 853 Kent Avenue, Block 1898, Lot 7, Borough of Brooklyn.
COMMUNITY BOARD #3BK

2018-33-BZ

APPLICANT – Arthur Yellin, for Luisa E. McLennan Benedy, owner.
SUBJECT – Application March 5, 2018 – Variance (§72-21) to permit the construction of a two-family home contrary to ZR §22-00 (building with no side yards); ZR §23-32 (required minimum lot area or width for residences); ZR §23-461(a) (side yards); ZR §23-142 (open space and FAR) and ZR §25-22(a) (parking). R4-1 zoning district.
PREMISES AFFECTED – 31-41 97th Street, Block 1409, Lot 48, Borough of Queens.
COMMUNITY BOARD #3Q

CALENDAR

2018-51-BZ

APPLICANT – Eric Palatnik, P.C., for Abraham Tannenbaum, owner.

SUBJECT – Application April 11, 2018 – Variance (§72-21) to permit the construction of a two-story single-family home with an attic that does not provide the required lot area and lot width, front yard, side yard, setback distance and sky exposure plane, contrary to ZR §§ 23-32, 23-45, 23-461(a) and 23-631(d). R5 zoning district.

PREMISES AFFECTED – 11-01 Plainview Avenue, Block 15618, Lot 8, Borough of Queens.

COMMUNITY BOARD #14Q

Carlo Costanza, Executive Director

2018-101-BZ

APPLICANT – Kenneth K. Lowenstein, for Riverside Center Parcel 2 BIT Associates, LLC., owner; Central Rock Gym, lessee.

SUBJECT – Application June 27, 2018 – Special Permit (§73-36) to permit the operation of a Physical Culture Establishment (Central Rock Gym) to occupy portions of the cellar and ground floor of an existing 45-story condominium building contrary to ZR §32-10. C4-7 zoning district.

PREMISES AFFECTED – 21 West End Avenue, Block 1171, Lot 164, Borough of Manhattan.

COMMUNITY BOARD #7M

2018-128-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for North 10th Lofts LLC, owner; Unknown Baths LLC, lessee.

SUBJECT – Application August 2, 2018 – Special Permit (§73-36) to permit the operation of a physical culture establishment (*The Bathhouse Spa*) on a portion of the cellar and first floor of an existing mixed use commercial and residential building contrary to ZR §42-10. M1-2/R6A (MX-8) zoning district.

PREMISES AFFECTED – 103 North 10th Street, Block 2296, Lot 7501, Borough of Brooklyn.

COMMUNITY BOARD #1BK

2018-169-BZ

APPLICANT – NYC Mayor’s Office of Housing Recovery Operation.

SUBJECT – Application October 30, 2018 – Special Permit (§64-92) to waive bulk requirements for the reconstruction of homes damaged/destroyed by Hurricane Sandy for a property registered in the NYC Build it Back Program. Waiver of minimum required side yard (ZR 23-461), waterfront yard (62-332), planting requirement (23-451), visual mitigation (64-61). R3A Special Coastal Risk zoning district.

PREMISES AFFECTED – 43 West 12th Road, Block 15316, Lot 66, Borough of Queens.

COMMUNITY BOARD #

MINUTES

**REGULAR MEETING
THURSDAY MORNING, OCTOBER 11, 2018
10:00 A.M.**

Present: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.

SPECIAL ORDER CALENDAR

124-13-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for 95-97 Grattan Street, LLC, owner.

SUBJECT – Application July 17, 2018 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) to allow for a new seven-family residential development, contrary to use regulation ZR §42-00 which expired on June 24, 2018. M1-1 zoning district.

PREMISES AFFECTED – 95 Grattan Street, Block 3004, Lot 39, Borough of Brooklyn.

COMMUNITY BOARD #1BK

ACTION OF THE BOARD – Granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:0

THE RESOLUTION –

WHEREAS, this is an application for an extension of time to complete construction pursuant to a previously granted variance, which expired on June 24, 2018; and

WHEREAS, a public hearing was held on this application on October 11, 2018, after due notice by publication in *The City Record* and then to decision on that date; and

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

WHEREAS, the subject site is located on the north side of Grattan Street, between Knickerbocker Avenue and Porter Avenue, in an M1-1 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 25 feet of frontage along Grattan Street, a depth of 100 feet, 2,500 square feet of lot area, and is vacant; and

WHEREAS, the Board has exercised jurisdiction over the subject site since June 24, 2014, when, under the subject calendar number, the Board granted a variance, pursuant to ZR § 72-21, to permit the construction of a Use Group 2 four-story plus cellar, seven unit multiple dwelling building

contrary to ZR § 42-00, on condition that the bulk parameters of the proposed building be as follows: a maximum floor area of 4,838 square feet (1.94 FAR), a maximum lot coverage of 54 percent, seven dwelling units, a minimum rear yard depth of 30'-0", and a maximum building height of 40'-0", as indicated on the approved plans filed with the application; the applicant submit to DEP a Remedial Closure Report consistent with the requirements identified in DEP's June 23, 2014, letter; DEP approve the Remedial Closure Report prior to the applicant obtaining a Certificate of Occupancy; substantial construction be completed within four (4) years, by June 24, 2018; the approval be limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdictional objections; the approved plans be considered approved only for the portions related to the specific relief granted; and DOB 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; and

WHEREAS, by letter dated March 16, 2018, the Board accepted changes to the proposed plans—specifically a reconfiguration of the interior of the building to provide side-by-side floor through apartments, as opposed to front and back units, a reduction in cellar space, the relocation of a portion of the mechanical space from the cellar to the first floor, and a new proposed exterior design, with no change to floor area, the number of units, or the building envelope—as substantially compliant with the 2014 resolution; and

WHEREAS, pursuant to ZR § 72-23, a variance granted under the provisions of the Zoning Resolution automatically lapses if substantial construction, in accordance with the plans for which such variance was granted, has not been completed within four years from the date of granting such variance by the Board of Standards and Appeals; and

WHEREAS, accordingly, the time to substantially complete construction pursuant to the 2014 variance grant expired on June 24, 2018; and

WHEREAS, the time for substantial construction to have been completed having expired, the applicant seeks the subject relief; and

WHEREAS, the applicant represents that the commencement of construction at the site has been delayed by a change in ownership of the property resulting in the hiring of a new architect and a redesign of the proposed building, but represents that construction would begin at the site immediately upon the Board's grant of this application, pursuant to weather conditions; and

WHEREAS, in addition, the applicant represented that construction could be completed within two to two and a

MINUTES

half years from the date of grant; and

WHEREAS, at the hearing, members of the Board expressed concerns regarding the reason for the delay, whether any excavation had occurred, and whether there had been any soil disturbance; and

WHEREAS, the applicant stated the reasons for the delay in construction, and represented that no excavation had yet occurred at the site; 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 June 24, 2014, so that, as amended, this portion of the resolution reads: “to grant a four (4) year extension of time to complete construction to June 14, 2022; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area of 4,838 square feet (1.94 FAR), maximum lot coverage of 54 percent, a maximum of seven dwelling units, a minimum rear yard depth of 30’-0”, and a maximum building height of 40’-0”, as indicated on the approved plans dated March 16, 2018;

THAT the applicant shall submit to DEP a Remedial Closure Report consistent with the requirements identified in DEP’s June 23, 2014 letter;

THAT DEP shall approve the Remedial Closure Report prior to obtaining a 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;

THAT substantial construction shall be completed by June 14, 2022, as evidenced by an inspection and determination 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 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, October 11, 2018.

125-13-BZ

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for 95-97 Grattan Street, LLC, owner.

SUBJECT – Application July 17, 2018 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) to allow for a new seven-family residential development, contrary to use regulation ZR §42-00 which expired on June 24, 2018. M1-1 zoning district.

PREMISES AFFECTED – 97 Grattan Street, Block 3004, Lot 38, Borough of Brooklyn.

COMMUNITY BOARD #1BK

ACTION OF THE BOARD – Granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:0

THE RESOLUTION –

WHEREAS, this is an application for an extension of time to complete construction pursuant to a previously granted variance, which expired on June 24, 2018; and

WHEREAS, a public hearing was held on this application on October 11, 2018, after due notice by publication in *The City Record* and then to decision on that date; and

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

WHEREAS, the subject site is located on the north side of Grattan Street, between Knickerbocker Avenue and Porter Avenue, in an M1-1 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 25 feet of frontage along Grattan Street, a depth of 100 feet, 2,500 square feet of lot area, and is vacant; and

WHEREAS, the Board has exercised jurisdiction over the subject site since June 24, 2014, when, under the subject calendar number, the Board granted a variance, pursuant to ZR § 72-21, to permit the construction of a Use Group 2 four-story plus cellar, seven unit multiple dwelling building contrary to ZR § 42-00, on condition that the bulk parameters of the proposed building be as follows: a maximum floor area of 4,838 square feet (1.94 FAR), a maximum lot coverage of 54 percent, seven dwelling units, a minimum rear yard depth of 30’-0”, and a maximum building height of 40’-0”, as indicated on the approved plans filed with the application; the applicant submit to DEP a Remedial Closure Report consistent with the requirements identified in DEP’s June 23, 2014, letter; DEP approve the Remedial Closure Report prior to the applicant obtaining a Certificate of Occupancy; substantial construction be completed within four (4) years, by June 24, 2018; the approval be limited to the relief granted by the Board in

MINUTES

response to specifically cited and filed DOB/other jurisdictional objections; the approved plans be considered approved only for the portions related to the specific relief granted; and DOB 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; and

WHEREAS, by letter dated March 16, 2018, the Board accepted changes to the proposed plans—specifically, a reconfiguration of the interior of the building to provide side-by-side floor through apartments, as opposed to front and back units, a reduction in cellar space, the relocation of a portion of the mechanical space from the cellar to the first floor, and a new proposed exterior design, with no change to floor area, the number of units, or the building envelope—as substantially compliant with the 2014 resolution; and

WHEREAS, pursuant to ZR § 72-23, a variance granted under the provisions of the Zoning Resolution automatically lapses if substantial construction, in accordance with the plans for which such variance was granted, has not been completed within four years from the date of granting such variance by the Board of Standards and Appeals; and

WHEREAS, accordingly, the time to substantially complete construction pursuant to the 2014 variance grant expired on June 24, 2018; and

WHEREAS, the time for substantial construction to have been completed having expired, the applicant seeks the subject relief; and

WHEREAS, the applicant represents that the commencement of construction at the site has been delayed by a change in ownership of the property resulting in the hiring of a new architect and a redesign of the proposed building, but represents that construction would begin at the site immediately upon the Board’s grant of this application, pursuant to weather conditions; and

WHEREAS, in addition, the applicant represented that construction could be completed within two to two and a half years from the date of grant; and

WHEREAS, at the hearing, members of the Board expressed concerns regarding the reason for the delay, whether any excavation had occurred, and whether there had been any soil disturbance; and

WHEREAS, the applicant stated the reasons for the delay in construction, and represented that no excavation had yet occurred at the site; 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 June 24, 2014, so that, as amended, this portion of the resolution reads: “to grant a four (4) year extension of time to complete construction to June 14, 2022; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area of 4,740 square feet (1.9 FAR), a maximum of seven dwelling units, a minimum rear yard depth of 30’-0”, and a maximum building height of 40’-0”, as indicated on the approved plans dated March 16, 2018;

THAT the applicant shall submit to DEP a Remedial Closure Report consistent with the requirements identified in DEP’s June 23, 2014 letter;

THAT DEP shall approve the Remedial Closure Report prior to obtaining a 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;

THAT substantial construction shall be completed by June 14, 2022, as evidenced by an inspection and determination 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 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, October 11, 2018.

498-83-BZ

APPLICANT – Rampulla Associates Architects, for 2131 Hylan Holding, Ilc, owner.

SUBJECT – Application June 16, 2017 – Amendment of a previously approved Variance (§72-21) which permitted the enlargement of a then existing banquet hall into the residential portion of the lot and permitted accessory parking within the residential portion of the lot. The amendment seeks to demolish the existing building to permit the development of an As-of-Right commercial building retaining the accessory parking on the residential portion of the lot; Extension of Time to Obtain a Certificate of Occupancy; Waiver of the Rules.

C8-1 & R3X (Lower Density Growth Management Area)

PREMISES AFFECTED – 2131 Hylan Boulevard,

MINUTES

Block 3589, Lot 63, Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Laid over to January 29, 2019, at 10 A.M., for adjourned hearing.

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 3rd Avenue, Block 980, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #6BK

ACTION OF THE BOARD – Laid over to December 4, 2018, at 10 A.M., for continued hearing.

18-09-BZ

APPLICANT – Klein Slowik PLLC, for West 54th Street LLC c/o ZAR Property, owner; Crunch LLC, lessee.

SUBJECT – Application August 28, 2017 – Extension of Term of a special permit (§73-36) for the continued operation of a physical culture establishment (*Crunch Fitness*) which expires on November 21, 2021; Amendment to permit the change in operator; Waiver of the Rules. C6-5 and C6-7 zoning district.

PREMISES AFFECTED – 250 West 54th Street, Block 1025, Lot 54, Borough of Manhattan.

COMMUNITY BOARD #5M

ACTION OF THE BOARD – Laid over to December 11, 2018, at 10 A.M., for adjourned hearing.

62-13-BZ

APPLICANT – Sheldon Lobel, P.C., for 2703 East Tremont LLC, owner; BXC Gates, LLC, lessee.

SUBJECT – Application March 23, 2018 – Extension of Term of a previously approved Special Permit (§73-243) which permitted the legalization of an eating and drinking establishment (*Wendy's*) with an accessory drive-through facility which expires on July 9, 2018. C1-2/R6 zoning district.

PREMISES AFFECTED – 2703 East Tremont Avenue, Blok 4076, Lot 12, Borough of Bronx.

COMMUNITY BOARD #10BX

ACTION OF THE BOARD – Laid over to December 11, 2018, at 10 A.M., for continued hearing.

APPEALS CALENDAR

2018-22-A

APPLICANT – NYC Department of Buildings, for Eighteen Properties, LLC, owner.

SUBJECT – Application February 14, 2018 – Request for a revocation, by the New York City Building's Department, of Certificate of Occupancy No. 301016898F issued for a four-story walk-up apartment building. R6B zoning district.

PREMISES AFFECTED – 255 18th Street, Block 873, Lot 69, Borough of Brooklyn.

COMMUNITY BOARD #7BK

ACTION OF THE BOARD – Laid over to November 20, 2018, at 10 A.M., for continued hearing.

2017-318-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Blue Print Metals, Inc., owner.

SUBJECT – Application October 11, 2018 – Proposed development of a one-story warehouse building (UG 16B) to be divided into six separate units not fronting on a mapped street contrary to General City Law §36. M3-1 (Special Richmond District).

PREMISES AFFECTED – 155 Johnson Street, Block 7207, Lot 283, Borough of Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Laid over to January 15, 2019, at 10 A.M., for continued hearing.

ZONING CALENDAR

2017-149-BZ

CEQR #17-BSA-122K

APPLICANT – Sheldon Lobel, P.C., for Willard J. Price Associates LLC, owner.

SUBJECT – Application May 15, 2017 – 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.

PREMISES AFFECTED – 510 Quincy Street & 651-671 Gates Avenue, Block 1811, Lot 19, Borough of Brooklyn.

COMMUNITY BOARD #3BK

ACTION OF THE BOARD – Granted on condition.

THE VOTE TO GRANT –

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

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WHEREAS, the decision on behalf of the Brooklyn Borough Commissioner, dated April 27, 2017, acting on Department of Buildings (“DOB”) Application No. 321195586 reads in pertinent part:

ZR 25-25, ZR 73-433: The proposed reduction of existing parking in both buildings on lot 19 block 1811 from 106 . . . parking spaces shall not be permitted unless approved by the Board of Standards and Appeals per section 25-25 and 73-43; and

WHEREAS, this is an application under ZR §§ 73-433 and 73-03 to permit, on a site located partially within an R6A zoning district, partially within an R6A (C2-4) zoning district, partially within an R6B zoning district and partially within an R6B (C2-4) zoning district, the waiver of 106 accessory off-street parking spaces required for two buildings located on the zoning lot containing income-restricted housing units, contrary to ZR § 25-25, et seq.; and

WHEREAS, a public hearing was held on this application on May 15, 2018, after due notice by publication in *The City Record*, with continued hearings on July 24, 2018, September 27, 2018, and then to decision on October 11, 2018; and

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

WHEREAS, Community Board 3, Brooklyn, recommends approval of this application based on the low to moderate income-restricted units proposed herein; and

WHEREAS, the applicant also provided a letter from City Councilmember Robert Cornegy to the Commissioner of the New York City Department of Housing Preservation and Development (“HPD”) dated June 14, 2018, expressing his support for the subject development; and

WHEREAS, the subject site is bound by Quincy Street to the north, Marcus Garvey Boulevard to the east and Gates Avenue to the south, partially within an R6A zoning district, partially within an R6A (C2-4) zoning district, partially within an R6B zoning district and partially within an R6B (C2-4) zoning district, in Brooklyn; and

WHEREAS, the site has approximately 400 feet of frontage along Quincy Street, 200 feet of frontage along Marcus Garvey Boulevard, 625 feet of frontage along Gates Avenue, 102,500 square feet of lot area and is occupied by two six-story mixed-use buildings—the building located at 639-693 Gates Avenue is a residential and commercial building with 96 residential units and the building located at 504-534 Quincy Street is a residential and community facility building with 96 residential units

(the “Existing Buildings”)—and 106 accessory off-street parking spaces; and

WHEREAS, the applicant proposes to develop the accessory parking lot with a six-story residential building with 95 dwelling units that will be developed pursuant to a regulatory agreement with HPD following HPD’s Mixed Middle Income Program and made available to households earning between 40 percent and 100 percent of the area median income (“AMI”), one caretaker’s unit and 28 accessory off-street parking spaces (the “Proposed Development”); 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 Board notes that the subject site is located within the “Transit Zone,” as defined in ZR § 12-10 and illustrated in Appendix I of the Zoning Resolution; and

WHEREAS, the applicant submits that the Existing Buildings located on the zoning lot contain “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

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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, Certificate of Occupancy No. 21301280316F, issued November 1, 2006, reflects a six-story mixed-use community facility and residential building containing 96 dwelling units and open parking for 53 cars at 510 Quincy Street and Certificate of Occupancy No. 301278409T006, issued October 21, 2015, reflects a six-story mixed-use commercial and residential building containing 96 dwelling units and 53 parking spaces at 671 Gates Avenue 1; and

WHEREAS, the applicant submits that the 53 parking spaces provided for each of the Existing Buildings, a total of 106 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”), which required parking for 55 percent of public-assisted dwelling units; and

WHEREAS, accordingly, the Board finds that the subject site qualifies, as a threshold matter, for the requested relief; and

WHEREAS, with regards to ZR § 73-433(a), the applicant submits that the waiver requested herein will facilitate an improved site plan by replacing a largely underutilized surface parking lot—in which none of the current tenants of the zoning lot rent a space—with a more productive use, to wit, a six-story residential building with 95 units of income-restricted affordable dwelling units; 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 the finding set forth in ZR § 73-433(b), the applicant represents that the Proposed Development will facilitate the creation of affordable housing because it will, in fact, increase the number of income-restricted housing units on the subject zoning lot, and that it will also facilitate the preservation of the income-restricted units located in the Existing Buildings by eliminating the costs associated with maintaining the surface parking lot; and

WHEREAS, the applicant submits that the proposed affordability breakdown of the units in the Proposed Development will follow HPD’s Mixed Middle Income Program, resulting in 3 units for tenants earning up to 40 percent of the area median income (“AMI”), 16 units for

tenants earning up to 50 percent AMI, 29 units for tenants earning up to 80 percent AMI and 47 units for tenants earning up to 100 percent AMI and that, should the development be financed accordingly, the Proposed Development would be subject to two regulatory agreements, an New York City Housing Development Corporation (“HDC”)/HPD Tax Credit Regulatory Agreement, which would restrict the range of affordability of the dwelling units as set forth above for a minimum of 30 years, and an HPD Article XI Regulatory Agreement, which would similarly restrict the range of affordability for a similar term; and

WHEREAS, at hearing, the Board noted the absence of an executed regulatory agreement mandating development of income-restricted units as described by the applicant and expressed concerns regarding the degree to which it could be certain that the Proposed Development would, indeed, provide income-restricted units; accordingly, the Board requested the execution and recordation of a restrictive declaration obligating the declarant to enter into a regulatory agreement with HPD and/or HDC prior to and as a condition of obtaining a certificate of occupancy, temporary or final, for the Proposed Development; and

WHEREAS, ZR § 73-433 specifically, and ZR §§ 73-01, 73-03, 73-04 generally, permit the Board to impose conditions and safeguards to the grant of a special permit to minimize any adverse effects on other property and the community at large; and

WHEREAS, with regards to the instant application, the Board notes that tenants of income-restricted dwelling units have lower rates of car ownership than tenants of market rate dwelling units and expressed concern that, should there be no regulatory agreement requiring the provision of income-restricted units, the 28 total parking spaces proposed at the site will prove wholly inadequate for its parking demand, resulting in more cars parking on surrounding streets; and

WHEREAS, in response to the Board’s request, the applicant provided the following draft restrictive declaration to record against the subject premise:

THIS DECLARATION OF RESTRICTIVE COVENANTS (the “Declaration”), dated this ___ day of ____, 2018, is entered into by WILLARD J. PRICE ASSOCIATES, LLC (the “Declarant”) a New York limited liability company having an office at c/o Proto Property Services LLC, 3441 Kingsbridge Avenue, 2nd Floor, Bronx, New York 10463.

WHEREAS, the Declarant is the fee owner of certain land located in the City and State of New York, Borough of Brooklyn, being known and designated as Block 1811, Lot 19 on the Tax Map of the City of New York, and more

1 A final certificate of occupancy (No. 301278409F), issued for the building located at 671 Gates Avenue on October 18, 2016, similarly reflects 96 dwelling units and 53 accessory parking spaces.

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particularly described in Exhibit A annexed hereto and made a part hereof (the “Premises”); and

WHEREAS, the Premises are improved with two (2) six-story buildings (the “Existing Buildings”) containing one hundred nine-two (192) units of “publicly assisted housing”, as such term was defined in Section 25-25 of the New York City Zoning Resolution (“ZR”) in effect at the time the Existing Buildings were constructed, a surface parking lot containing one hundred six (106) accessory parking spaces (the “Existing Accessory Parking”) for the Existing Building in satisfaction of the parking requirements of ZR Section 25-25 in effect at the time the Existing Buildings were constructed, and other relevant improvements; and

WHEREAS, the Declarant desires to subdivide and convey a portion of the Premises, to be known and designated as Block 1811, Lot 70 on the Tax Map of the City of New York, and more particularly described in Exhibit B annexed hereto and made a part hereof (the “New Project Parcel”), to HP Astra Housing Development Fund Company, Inc., a New York not-for-profit corporation formed pursuant to Article XI of the New York Private Housing Finance Law (the “Nominee”), as nominee for The Astra At Gates Avenue, LLC, a New York limited liability company and affiliate of the Declarant (the “Company”, and together with the Nominee, the “New Project Owner”), which Company will own all beneficial right, title and interest in and to the New Project Parcel, as shall be more particularly set forth in a Declaration of Interest and Nominee Agreement (the “Nominee Agreement”) by and between the Nominee and the Company intended to be executed and recorded in the Office of the City Register of the City of New York (“City Register’s Office”) subsequent to this Declaration; and

WHEREAS, the Company intends to develop, construct, own, maintain and operate on the New Project Parcel an affordable multi-family apartment complex consisting of one (1) six-story building containing ninety-five (95) residential units for low and moderate income individuals and families (the “New Affordable Units”) plus one (1) superintendent’s unit, a surface parking lot containing twenty-eight (28) accessory parking spaces (the “New Accessory Parking”) and other related improvements (collectively, the “New Project”); and

WHEREAS, it is anticipated that the New York City Housing Development Corporation (“HDC”) and the New York City Department of Housing Preservation and Development (“HPD”) will provide a substantial portion for the construction and permanent financing for the New Project, and as a condition thereto HDC and HPD will require the New Project Owner to execute and record a Regulatory Agreement (the “Regulatory Agreement”) against the New Project Parcel imposing certain marketing, occupancy, and operating requirements on the New Project for a term of at least forty (40) years, including, without limitation, (A) rental restrictions ensuring that: (i) forty-eight (48) of the New Affordable Units will be affordable to tenants whose annual income is at or below eighty percent (80%) of the area median income for the New York metropolitan area, as determined from time to time, and as adjusted for family size (“AMI”); (ii) forty-seven (47) of the New Affordable Units will be affordable to tenants whose annual income is at or below one hundred percent (100%) of AMI; (iii) rent for the New Affordable Units will not exceed thirty percent (30%) of the AMI limitation for the applicable unit, except to the extent of any such unit receives HDC and HPD approved rental subsidy (including, without limitation, federal rental subsidy pursuant to the Section 8 housing choice voucher program, the Section 8 rental certificate program, the Section 8 project-based rental assistance program, or any successor programs under the United States Housing Act of 1937, as amended), in which case the rent shall not exceed the permitted rent under the applicable rent subsidy program; and (B) income restrictions limiting occupancy of the New Affordable Units to eligible tenants whose annual income, upon initial occupancy, does not exceed applicable HDC and HPD requirements (collectively, the “New Project Affordability Restrictions”); and

WHEREAS, the Existing Accessory Parking is situated on the New Project Parcel, prompting the Declarant to request, by application assigned BSA Cal. 2017-149-BZ, that the New York City Board of Standards and Appeals (the “Board”) grant a special permit pursuant to its authority under ZR Section 73-433, reducing the required accessory parking spaces for the Existing Building to zero (0) and permitting the demolition of the Existing Accessory Parking, in

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order to facilitate the development of the New Project (the “Special Permit”); and

WHEREAS, in granting the Special Permit, the Board determines that: (1) the grant of the Special Permit is necessary to facilitate the Company’s development of the New Project on the New Project Parcel; and (2) the New Accessory Parking will satisfy the parking requirements applicable to the New Project; and

WHEREAS, the Board requires Declarant to execute and record this Declaration as a condition precedent to its grant of the Special Permit;

NOW THEREFORE, in consideration of the Board’s grant of the Special Permit, Declarant does hereby declare as follows:

1. The New Project Owner shall enter into the Regulatory Agreement on or before the date of “commencement of construction” (i.e., the date upon which excavation and construction of initial footings and foundations commenced in good faith) of the New Project, and shall provide to the Board a copy of the fully executed Regulatory Agreement, along with a State of Construction Affidavit, the form of which is attached hereto as Exhibit C, signed and sealed by the architect or engineer for the project.
2. Subject to, and in accordance with, the terms and conditions of the Regulatory Agreement, including without limitation, the New Project Affordability Restrictions, the New Affordable Units shall remain affordable for a period of forty (40) years from the Effective Date of this Declaration (as defined herein).
3. This Declaration shall take effect as of the date on which the Board grants the Special Permit (the “Effective Date”).
4. This Declaration may not be modified, amended or terminated without the prior written consent of the Board, except as otherwise expressly set forth herein.
5. The covenants and restrictions set forth herein shall run with the land and be binding upon and inure to the benefit of the Declarant, the New Project Owner, the Board 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

for the New Project, as well as any authorization or waiver granted by the Board, including, without limitation, the Special Permit. Provided, however, that any failure to comply and resulting right to revoke or terminate under this Section 6 shall be subject, in all respects, to (i) the notice and cure rights set forth in the Regulatory Agreement, and (ii) any other rights provided by HDC and/or HPD to (a) the Company, (b) each mortgagee holding a mortgage against the New Project Parcel, and/or (c) any credit enhancer of such mortgage loan(s) to remedy and cure any defaults under the Regulatory Agreement.

7. This Declaration shall be recorded at the City Register’s Office against the Premises and the New Project Parcel and the City Register file number (CRFN) and title of this Declaration shall be set forth on each temporary and permanent certificate of occupancy hereafter issued to any buildings located on the Premises and the New Project Parcel, and in any deed for the conveyance thereof.
8. In the event that either the Company or the Declarant, with the prior written consent of (a) the other, (b) each mortgagee holding a mortgage against the New Project Parcel or the Premises, and (c) any credit enhancer of such mortgage loan(s), elects to abandon the Special Permit, this Declaration may be cancelled by the recordation of a Notice of Cancellation at the City Register’s Office against the Premises and the New Project Parcel, and upon the filing of such Notice of Cancellation, this Declaration shall automatically cease, extinguish and be void and of no further force or effect; and

WHEREAS, a copy of the executed restrictive declaration was subsequently provided to the Board; 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 in satisfaction of ZR § 73-433(b); and

WHEREAS, with regards to ZR § 73-433(c) and (d), the applicant submits that the elimination of 106 parking spaces at the site will neither cause traffic congestion nor adversely affect residents, businesses or community facilities in the surrounding area because the site is particularly well served by public transportation; approximately 18 percent of low-income households within

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the Transit Zone own cars; the existing surface parking lot is significantly underutilized and, based on a parking survey and analysis of photographs of the premises over time, the current demand for parking on the site by the Existing Buildings is a maximum of 5 spaces; the Zoning Resolution only requires the provision of 24 parking spaces in association with the Proposed Development, pursuant to ZR §§ 25-23 and 25-251, for the 47 units available to tenants earning up to 100 percent AMI and the Proposed Development provides 28 parking spaces; and surveys of available on-street parking spaces revealed that more than one hundred parking spaces are available within walking distance of the site on both weekends and weekdays; and

WHEREAS, accordingly, the Board finds that the requested waiver will not cause traffic congestion in accordance with ZR § 73-433(c) and will not adversely affect residents, businesses or community facilities in the surrounding area in accordance with ZR § 73-433(d); and

WHEREAS, finally, with regards to the findings of ZR § 73-03 (a) and (b)2, the applicant states that, with regards to ZR § 73-03(a), the redevelopment of an underutilized parking lot, creation of 95 income-restricted dwelling units in its place and preservation of the 192 income-restricted dwelling units in the Existing Buildings are advantages to be derived from the special permit that outweigh the hazards or disadvantage of the community at large of the proposed waiver of off-street accessory parking spaces; with regards to ZR § 73-03(b), the applicant affirms that there are no public improvement projects with which the Proposed Development will interfere; 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 §§ 73-433 and 73-03; and

WHEREAS, the subject 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

2 Subsections (c) through (g) of ZR § 73-03 are inapplicable to the subject application because there is no requirement under ZR § 73-433 for the Board to determine whether the special permit use is appropriately located in relation to the street system, as contemplated by ZR § 73-03(c); ZR § 73-433 is not one of the sections expressly named in ZR § 73-03(d); there is no term of years specified in ZR § 73-433 that would render ZR § 73-433(e) applicable; the subject application is not for a renewal of a special permit, as discussed in ZR § 73-03(f); and the subject application is not for an enlargement or extension of an existing use, as described in ZR § 73-03(g).

No. 17BSA122K, dated September 7, 2018; 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 Sanitary Services; Energy; Transportation; Air Quality; Greenhouse Gas Emissions; Noise; Public Health; Neighborhood Character; or Construction; and

WHEREAS, by letter dated February 13, 2018, the New York City Department of Environmental Protection (“DEP”) states that, with the proposed stack location of the HVAC system, the proposed project would not result in significant air quality impacts; and

WHEREAS, by letter dated April 27, 2018, DEP states that it has reviewed the February 2017 Environmental Assessment Statement, the January 2017 Phase I Environmental Site Assessment and the April 2018 Phase II Environmental Site Assessment Work Plan (“Work Plan”) and Health and Safety Plan (“HASP”) for the subject project submitted by the applicant’s consultant, recommends that Figure 2 in the Work Plan be revised to individually label the proposed sampling locations and that the name and phone number for an Alternate Site Health and Safety Officer be included in the HASP and that DEP finds the April 2018 Work Plan and HASP acceptable so long as the recommended information is incorporated and, further, that upon completion of investigation activities at the site, the applicant should submit a detailed Phase II report—including, at a minimum, an executive summary, narrative of the field activities, laboratory data and conclusions, comparison of soil, groundwater and soil vapor analytical results (i.e., New York State Department of Environmental Conservation (NYSDEC) 6 NYCRR Part 375, NYSDEC Water Quality Regulations and the New York State Department of Health’s October 2006 Guidance for Evaluating Soil Vapor Intrusion in the State of New York) 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 Work Plan and HASP incorporating the recommendations contained in DEP’s April letter; and

WHEREAS, by letter dated August 3, 2018, DEP states that it has reviewed the January 2018 Environmental Assessment Statement, the June 2018 Remedial Investigation Report (“Phase II”) and July 2018 Remedial Action Workplan (“RAP”) and Construction Health and Safety Plan (“CHASP”), recommends that for all areas, which will be landscaped or covered with grass (not capped), a minimum of two (2) feet of DEP approved clean

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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, the clean fill/top soil be segregated at the source/facility, have qualified environmental personnel collect representative samples at a frequency of one (1) sample for every 250 cubic yards, analyze the samples for TCL VOCs by EPA Method 8260, SVOC's by EPA Method 8270, pesticides by EPA Method 8081, PCBs by EPA Method 8082, and TAL metals by a New York State Department of Health Environmental Laboratory Approval Program certified laboratory, compared to NYSDEC 6 NYCRR Part 375 Environmental Remediation Programs, upon completion of the clean fill/top soil 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 (i.e., NYSDEC 6 NYCRR Part 375 Environmental Remediation Programs)—to DEP for review and approval prior to importation and placement on-site; 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 the handling, transportation, and off-site disposal of all soil/fill material be performed in accordance with all applicable NYSDEC regulations; the dust suppression must be maintained by the contractor during the excavating and grading activities at the site; that if de-watering into New York City storm/sewer rains will occur during the proposed construction, a New York City Department of Environmental Protection Sewer Discharge Permit must be obtained prior to the start of any de-watering activities at the site; and that DEP finds the June 2018 RAP and CHASP acceptable as long as the aforementioned information is incorporated into the RAP and 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 (i.e. installation of vapor barrier, transportation/disposal manifests for removal and disposal of soil in accordance with NYSDEC regulations; and two feet of DEP approved certified clean fill/top soil capping requirement in any landscaped/grass covered areas not capped with concrete/asphalt, etc.)—should be submitted to DEP for review and approval for the proposed project; and

WHEREAS, the applicant subsequently submitted a revised RAP incorporating the recommendations contained in DEP's August letter; 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, 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 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 §§ 73-03 and 73-433 to permit, on a site located partially within an R6A zoning district, partially within an R6A (C2-4) zoning district, partially within an R6B zoning district and partially within an R6B (C2-4) zoning district, the waiver of 106 accessory off-street parking spaces required for two buildings located on the zoning lot containing income-restricted housing units, contrary to ZR § 25-25, et seq.; *on condition* that all work shall substantially conform to drawings as they apply to the objections above noted filed with this application marked "Received October 10, 2018"--forty-four (44) sheets; and *on further condition*:

THAT income-restricted dwelling units shall be provided and retained in the Proposed Development as described in the restrictive declaration and pursuant to a regulatory agreement with HPD;

THAT the applicant shall enter into a Regulatory Agreement, as defined in the restrictive declaration, on or before the date of "commencement of construction" (i.e., the date upon which excavation and construction of initial footings and foundations commenced in good faith) of the Proposed Development, and shall provide to the Board a copy of the fully executed Regulatory Agreement, along with a State of Construction Affidavit, the form of which is attached to the Regulatory Agreement as Exhibit C, signed and sealed by the architect or engineer for the project;

THAT subject to, and in accordance with, the terms and conditions of the Regulatory Agreement, including without limitation, restrictions regarding the acceptable range of affordability, the income-restricted units located in the Proposed Development shall remain affordable for a period of forty (40) years from the Effective Date of the restrictive declaration;

THAT the City Register file number (CRFN) and title of the restrictive declaration shall be set forth on each temporary and permanent certificate of occupancy hereafter

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issued to any building located on the subject premises, and in any deed for the conveyance thereof;

THAT for all areas, which will be landscaped or covered with grass (not capped), a minimum of two (2) feet of DEP approved 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, the clean fill/top soil be segregated at the source/facility, have qualified environmental personnel collect representative samples at a frequency of one (1) sample for every 250 cubic yards, analyze the samples for TCL VOCs by EPA Method 8260, SVOC's by EPA Method 8270, pesticides by EPA Method 8081, PCBs by EPA Method 8082, and TAL metals by a New York State Department of Health Environmental Laboratory Approval Program certified laboratory, compared to NYSDEC 6 NYCRR Part 375 Environmental Remediation Programs, upon completion of the clean fill/top soil 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 (i.e., NYSDEC 6 NYCRR Part 375 Environmental Remediation Programs)—to DEP for review and approval prior to importation and placement on-site;

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 the handling, transportation, and off-site disposal of all soil/fill material be performed in accordance with all applicable NYSDEC regulations;

THAT dust suppression must be maintained by the contractor during the excavating and grading activities at the site;

THAT if de-watering into New York City storm/sewer rains will occur during the proposed construction, a New York City Department of Environmental Protection Sewer Discharge Permit must be obtained prior to the start of any de-watering activities at the site;

THAT at the completion of the project, the applicant shall submit a Professional Engineer (P.E.) certified Remedial Closure Report—indicating that all remedial requirements have been properly implemented (i.e. installation of vapor barrier, transportation/disposal manifests for removal and disposal of soil in accordance with NYSDEC regulations; and two feet of DEP approved certified clean fill/top soil capping requirement in any landscaped/grass covered areas not capped with concrete/asphalt, etc.)—to DEP for review and approval for the proposed project;

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, October 11, 2018.

2017-260-BZ

CEQR #18-BSA-028K

APPLICANT – Law Office of Lyra J. Altman, for BIF Realty LLC by Jak Farhi, owner.

SUBJECT – Application September 1, 2017 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area, open space and lot coverage (ZR §23-142); less than the required rear yard (ZR §23-47); and less than the required side yards (ZR §23-461). R4 zoning district.

PREMISES AFFECTED – 2672 East 12th Street, Block 7455, Lot 87, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated August 1, 2017, acting on Alteration Application No. 321509480, reads in pertinent part:

1. Proposed plans are contrary to Zoning Resolution Section 23-142 in that the proposed floor area ratio exceeds the maximum permitted.
2. Proposed plans are contrary to Zoning Resolution Section 23-142 in that the proposed open space is less than the minimum required.
3. Proposed plans are contrary to Zoning Resolution Section 23-142 in that the proposed lot coverage exceeds the

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- maximum permitted,
4. Proposed plans are contrary to Zoning Resolution Section 23-461 in that the proposed side yards are 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, this is an application under ZR §§ 73-622 and 73-03 to permit, in an R4 zoning district, the enlargement of an existing single-family detached residence that does not comply with zoning regulations for floor area, open space, lot coverage, 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 August 7, 2018, after due notice by publication in *The City Record*, and then to decision on October 11, 2018; 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 west side of East 12th Street, between Gilmore Court and Shore Parkway, in an R4 zoning district, in Brooklyn; and

WHEREAS, the subject site has approximately 24 feet of frontage along East 12th Street, 70 feet of depth, 1,645 square feet of lot area and is occupied by an existing 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 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
- (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

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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, in response to questions from the Board at hearing about the retention of existing building material, the applicant revised the drawings to reflect that adequate amounts of exterior walls will be retained at the exterior of the subject building and that adequate amount of floor joists will be retained; and

WHEREAS, the applicant proposes to enlarge the existing residence from 976 square feet of floor area (0.59 FAR) to 2,254 square feet of floor area (1.36 FAR), reduce open space from 61 percent to 48 percent, increase lot coverage from 39 percent to 52 percent, maintain side yards with depths of ¾" to the north and 4'-10" to the south and reduce the rear yard from 33'-2" of depth to 20'-0" of depth; and

WHEREAS, the applicant states that, at the subject site, floor area may not exceed 1,481 square feet (0.90 FAR) under ZR § 23-142, open space must be at least 55 percent under ZR § 23-142, lot coverage may not exceed 45 percent under ZR § 23-142, side yards must have minimum depths of 5 feet under ZR § 23-461 and rear yards must have a minimum depth of 30 feet under ZR § 23-47; and

WHEREAS, the applicant represents that the proposed building as enlarged is consistent with the built character of the neighborhood; and

WHEREAS, in support of this contention, the applicant surveyed single- and two-family residences in the surrounding area, finding that there are 24 residences with more than 1.0 FAR, of which 11 have more than 1.30 FAR, that 14 residences have lot coverage equal to or greater than 52 percent and that there are six residences on the subject block with rear-yard depths less than 20 feet, including adjacent residences, while 10 residences also have garages or sheds obstructing their rear yards; and

WHEREAS, the applicant also submitted a photographic streetscape montage, a contextual streetscape illustration and a photographic neighborhood study demonstrating that the proposed building will fit in with the built conditions of the surrounding area; and

WHEREAS, based upon its review of the record and

inspections of the subject site and surrounding neighborhood, the Board finds that the proposed building as enlarged will not alter the essential character of the neighborhood or district in which the subject building is located, nor impair the future use or development of the surrounding area; and

WHEREAS, in response to questions from the Board at hearing about the effect of the enlarged building on residences nearby, the applicant reduced the proposed building's decreased the proposed floor area; and

WHEREAS, by determination dated May 25, 2018, DOB represents that it has no objection to the proposed building with respect to compliance with applicable flood regulations on condition that the subject structure be provided with wet flood proofed construction to at or above Design Flood Elevation with necessary notes for wet flood proofed construction to be added to the drawings; that crawl space below Design Flood Elevation be provided with flood vents to allow automatic entry and exit of flood water; and that the height of the building be measured from the Design Flood Elevation under ZR § 64-131; 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 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. 18BSA028K, dated September 1, 2017; and

WHEREAS, the Board finds that the evidence in the record supports the findings required to be made under ZR §§ 73-622 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion.

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 §§ 73-622 and 73-03 to *permit*, in an R4 zoning district, the enlargement of an existing single-family detached residence that does not comply with zoning regulations for floor area, open space, lot coverage, side yards and rear yards, contrary to ZR §§ 23-142, 23-461 and 23-47; *on condition* that all work and site conditions shall conform to drawings filed with

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this application marked “Received October 11, 2018”-Fifteen (15) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: there shall be a maximum of 2,254 square feet of floor area (1.36 FAR), there shall be a minimum of 48 percent open space, there shall be a maximum of 52 percent lot coverage, side yards shall have minimum depths of ¾” to the north and 4’-10” to the south and the rear yard shall have a minimum depth of 20’-0”, as illustrated on the Board-approved plans;

THAT removal of existing joists or perimeter walls in excess of that shown on the Board-approved drawings shall void the special permit;

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 11, 2022;

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 11, 2018.

2017-267-BZ

CEQR #18-BSA-033Q

APPLICANT – Law Offices of Vincent L. Petraro, PLLC, for Harbor Lights Enterprises, Inc., owner.

SUBJECT – Application September 13, 2017– Variance (§72-21) to permit the legalization of a three-story mixed-use 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.

PREMISES AFFECTED – 129-18 Newport Avenue, Block 16211, Lot 47 Borough of Queens.

COMMUNITY BOARD #14Q

ACTION OF THE BOARD – Granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated August 16, 2017, acting on New Building Application No. 420840335, reads in pertinent part:

“The increase in the degree of non-compliance is contrary to Section ZR 52-41 ‘Increase floor area is an increase in the non-conformance use at proposed extensions at first floor.’”

“The proposed extension in the front yard is contrary to Section ZR 23-44 ‘Proposed extension is not a permitted obstruction in the front yard (Beach 130th Street)’.”

“The proposed extension in the front yard is contrary to Section ZR 23-45 ‘Minimum Required front yard is 15’-0” (Beach 130th Street).’”

“The proposed extensions are contrary to Section ZR 54-31, ‘Proposed extension in the front yard of commercial establishment in an R2 district creates new non-compliance in floor area.’”

“The proposed extensions . . . decrease the required open space, also the floor area created is contrary to Section ZR 23-14.’”; and

WHEREAS, this is an application under ZR § 72-21 to permit, in an R2 zoning district, the development of a three-story mixed-use commercial and residential building that does not comply with zoning regulations for non-conforming uses, front yards, floor area and open space, contrary to ZR §§ 52-41, 23-44, 23-45, 54-31 and 23-14; and

WHEREAS, a public hearing was held on this application on June 19, 2018, after due notice by publication in *The City Record*, with continued hearings on August 14, 2018, September 27, 2018, and then to decision on October 11, 2018; and

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

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

WHEREAS, Queens Borough President Melinda Katz submitted testimony in support of this application; and

WHEREAS, City Council Member Eric Ulrich submitted testimony in support of this application; and

WHEREAS, the subject site is located on the northeast corner of Newport Avenue and Beach 130th Street, in an R2 zoning district, in Queens; and

WHEREAS, the subject site has approximately 100 feet of frontage along Newport Avenue, 100 feet of

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frontage along Beach 130th Street, 10,000 square feet of lot area and is occupied by a three-story, with cellar, mixed-use residential and commercial building; and

WHEREAS, the applicant proposes a three-story, with cellar, mixed-use building for use as an eating or drinking establishment on the first floor and in the cellar with dwelling units on the second and third floors that has 8,217 square feet of floor area (0.82 FAR), 6,478 square feet of open space (0.79 OSR) and a front yard with a depth of 12 feet along Beach 130th Street; and

WHEREAS, the applicant represents that, at the subject site, the proposed uses and extensions are not permitted under ZR §§ 52-41 and 54-31, that front yards must have a minimum depth of 15 feet with specified permitted obstructions allowed under ZR §§ 23-45 and 23-44, that floor area may not exceed 5,000 square feet (0.5 FAR) under ZR § 23-14 and that open space must be a minimum of 7,500 square feet (150.0 OSR) under ZR § 23-14; and

WHEREAS, the applicant represents that there are unique physical conditions peculiar to and inherent in the subject site, including existing site improvements and the unique history of development, that create practical difficulties or unnecessary hardship in complying with applicable zoning regulations; and

WHEREAS, the applicant represents that, at the subject site, there was a building constructed as a boarding house and inn in 1918 and converted to a transient hotel and eating or drinking establishment by 1926, that rooming units in said building were converted to dwelling units by 1970, that said building was occupied continuously for use as an eating or drinking establishment until it was destroyed by Superstorm Sandy and subsequently reconstructed as the subject building, and that, because of the unique history of development, the subject building can no longer be used as an eating or drinking establishment because the active operation of substantially all the non-conforming uses at the subject site have been discontinued for more than two years and the conversion would create non-compliances at the subject site; and

WHEREAS, the applicant represents that complying with applicable zoning regulations would result in a single-family residence at the subject site but that, because of said unique physical conditions, it is impracticable to convert the subject building to such purpose; and

WHEREAS, the Board finds that the above unique physical conditions create practical difficulties or unnecessary hardship in complying strictly with applicable zoning regulations that are not created by general circumstances in the neighborhood or district; and

WHEREAS, the applicant represents that, because of the above unique physical conditions, there is no

reasonable possibility that development would result in a reasonable return; and

WHEREAS, in support of this contention, the applicant supplied a financial feasibility study demonstrating that an as-of-right development—consisting of a non-complying three-story, with cellar, single-family detached residence with 7,549 square feet of floor area (0.75 FAR)—would result in a substantial loss on investment but that the proposed mixed-use building would yield a modest return; and

WHEREAS, the Board finds that, because of the above unique physical conditions, there is no reasonable possibility that development in strict conformity with applicable zoning regulations would bring a reasonable return; and

WHEREAS, the applicant represents that the proposed variance would not alter the essential character of the neighborhood; and

WHEREAS, in support of this contention, the applicant surveyed the surrounding area, finding that there are a number of commercial establishments, multiple dwellings and two-family residences in the vicinity; and

WHEREAS, the applicant further submitted a floor-area study, a front-yard study, an open-space study, a photographic streetscape montage and maps indicating that the subject building is in keeping with the built conditions of the surrounding area; and

WHEREAS, the applicant states that, because the subject site is located in a flood zone, the subject building as proposed will comply with applicable flood regulations; and

WHEREAS, based upon its review of the record and inspections of the subject site and surrounding neighborhood, the Board finds that the proposed variance will not alter the essential character of the neighborhood or district in which the subject site is located; 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 above practical difficulties or unnecessary hardship do not constitute a self-created hardship; and

WHEREAS, the Board finds that the above practical difficulties or unnecessary hardship have not been created by the owner or by a predecessor in title; and

WHEREAS, the applicant represents that the proposed variance is the minimum necessary to permit a productive use of the site, as reflected in the financial feasibility study; and

WHEREAS, the Board finds that the proposed variance is the minimum necessary to afford relief within the intent and purposes of the Zoning Resolution; and

WHEREAS, the project is classified as an Unlisted

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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. 18-BSA-033Q, dated October 10, 2018; 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 October 10, 2018, the 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, 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 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 of discretion.

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 R2 zoning district, the development of a three-story mixed-use commercial and residential building that does not comply with zoning regulations for non-conforming uses, front yards, floor area and open space, contrary to ZR §§ 52-41, 23-44, 23-45, 54-31 and 23-14; *on condition* that all work, operations and site conditions shall conform to drawings filed with this application marked “Received “September 7, 2018”-Fifteen (15) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: a maximum of 8,217 square feet of floor area (0.82 FAR), a minimum of 6,478 square feet of open space (0.79 OSR) and a front yard with a minimum depth

of 12 feet along Beach 130th Street, as illustrated on the Board-approved drawings;

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 11, 2022;

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 drawings 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 11, 2018.

2018-46-BZ

APPLICANT – Law Office of Lyra J. Altman, for Jack Saideh, owner.

SUBJECT – Application March 27, 2018 – Special Permit (§73-622) to permit the enlargement of an existing single-family home, contrary to side yard requirements (§§23-461(c)) and creates non-compliance with respect to the wall height (§23-631(b)). R4 (Special Ocean Parkway Sub-District).

PREMISES AFFECTED – 2205 East 2nd Street, Block 7129, Lot 52, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:0

THE RESOLUTION –

WHEREAS, the decision on behalf of the Brooklyn Borough Commissioner, dated March 2, 2018, acting on Department of Buildings (“DOB”) Application No. 321636119 reads in pertinent part:

The proposed enlargement of an existing one family residence in an R4 SOPD Subdistrict) zoning district:

1. Creates non-compliance with respect to the side yard and by not meeting the minimum requirements of section 23-461(c) of the zoning resolution;
2. Creates non-compliance with respect to the wall height and is contrary to section 23-

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631(b) of the Zoning Resolution; and

WHEREAS, this is an application under ZR § 73-622 to permit, in an R4 zoning district and the Special Ocean Parkway Sub-District, the enlargement of a detached one-family dwelling that does not comply with the zoning requirements for side yards and wall height, contrary to ZR §§ 23-461(c) and 23-631(b), which are made applicable to the subject site by ZR §§ 113-543 and 113-55 respectively; and

WHEREAS, a public hearing was held on this application on September 27, 2018, after due notice by publication in *The City Record*, with a continued hearing on October 11, 2018, 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, Community Board 15, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the east side of East 2nd Street, between Avenue U and Avenue V, in an R4 zoning district, in the Special Ocean Parkway Sub-District, in Brooklyn; and

WHEREAS, the site has approximately 40 feet of frontage, a depth of 100 feet, 4,000 square feet of lot area and is occupied by a detached one and one-half-story one-family dwelling containing 1,525 square feet of floor area, a floor area ratio ("FAR") of 0.38, side yards 3'-2.5" inches and 11'-6", a rear yard of 48' 9.5" feet, a perimeter wall height of 14'-6", building height of 19'-3", and a garage located 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 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

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guided by, *inter alia*, ZR §§ 73-01 through 73-04; and
WHEREAS, as a threshold matter, the Board notes that this application located within an area in which the special permit is available; and

WHEREAS, the Board notes further that the subject application seeks to enlarge the a detached one-family residence, as contemplated by ZR § 73-622; and

WHEREAS, the applicant proposes to enlarge the existing detached dwelling by extending the dwelling into the rear yard, raising the floor beams on the second floor, and demolishing the existing garage and replacing it with a parking pad, resulting in a two-story dwelling with 5,075 square feet of floor area (1.27 FAR), a 20-foot rear yard, a perimeter wall height of 23'-6", and a total building height of 34'-11"; and

WHEREAS, the applicant proposes to maintain the 3'-2.5" northern side yard and reduce the southern side yard to 8 feet; and

WHEREAS, at the subject site, an open area of at least eight feet between buildings containing residences is required pursuant to ZR § 23-461(c) and the perimeter wall height is restricted to a maximum of 21 feet pursuant to ZR § 23-631(b); and

WHEREAS, the applicant provided an analysis of single- or two-family detached or zero lot line dwellings located within 400 feet of the subject premises within an R4 zoning district (the "Study Area") concluding that, of the 31 qualifying residences, 19 residences (61 percent) do not provide open space less of at least eight feet between buildings containing residences, including 8 residences (26 percent) that provide open space of three feet in width or less between buildings containing residences; and

WHEREAS, pursuant to ZR § 73-622(c)(3), an enlargement resulting in a non-complying perimeter wall height is permitted at the subject site if it is adjacent to a single- or two-family detached or semi-detached residence with an existing non-complying perimeter wall facing the street; and

WHEREAS, accordingly, the applicant represents that the heights of the perimeter walls facing the street of the two-family detached residence located immediately north of the subject site on tax lot 53 (2201 East 2nd Street) and the semi-detached two-family dwelling located immediately to the south of the subject site on tax lot 51 (2207 East 2nd Street) are 30'-1" and 24'-10" respectively, thus, the proposed perimeter wall height of 23'-6" is less than the height of each of the adjacent buildings' non-complying perimeter walls facing the street; 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; 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 the required findings under ZR § 73-622 to permit, in an R4 zoning district and the Special Ocean Parkway Sub-District, the enlargement of a one-family detached dwelling that does not comply with the zoning requirements with regards to side yards and perimeter wall height contrary to ZR §§ 23-461(c) and 23-631(b); *on condition* that all work shall substantially conform to drawings as they apply to the objection above-noted, filed with this application and marked "Received October 2, 2018"— Fifteen (15) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a northern side yard with a width of 3'-2.5"; a southern side yard with a width of 8 feet; a perimeter wall height of 23'-6";

THAT the removal of exterior walls and/or joists in excess of those indicated on the BSA-approved plans is prohibited and shall void the special permit;

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 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, October 11, 2018.

2018-49-BZ

APPLICANT – Law Office of Lyra J. Altman, for Solomon S. Salem, owner.

SUBJECT – Application April 2, 2018 – Special Permit (§73-622) to permit the enlargement of an existing single-family home, contrary to floor area, lot coverage and open space (ZR §23-142) and wall height (ZR §23-631-(b)) R2X (Special Ocean Parkway) zoning district.

PREMISES AFFECTED – 1919 East 5th Street, Block 6681, Lot 492, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

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Negative:0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated March 2, 2018, acting on Department of Buildings (“DOB”) Application No. 321636057 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 23-142 of the Zoning Resolution;
2. [. . .]
3. [. . .]
4. Creates non-compliance with respect to perimeter wall height of building and is contrary to Section 23-631(b) of the Zoning Resolution; and

WHEREAS, this is an application under ZR § 73-622 to permit, in an R2X zoning district and the Special Ocean Parkway District, the enlargement of a detached one-family dwelling that does not comply with the zoning requirements for floor area ratio and perimeter wall height contrary to ZR §§ 23-142 and 23-631(b); and

WHEREAS, a public hearing was held on this application on September 27, 2018 after due notice by publication in *The City Record*, with a continued hearing on October 11, 2018, and then to decision on that same date; 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 Board was in receipt of one form letter in support of this application; and

WHEREAS, the subject site is located on the west side of East 5th Street, between Avenue R and Avenue S, in an R2X zoning district and the Special Ocean Parkway District, in Brooklyn; and

WHEREAS, the site has approximately 40 feet of frontage along East 5th Street, a depth of 100 feet, 4,000 square feet of lot area and is occupied by a detached one and one-half story plus cellar one-family dwelling containing 2,369 square feet of floor area, a floor area ratio (“FAR”) of 0.59, a front yard of 23’-7.5”, a rear yard of 19’-3”, side yards of 3’-10.25” and 8’-0.5”, a perimeter wall height of 13’-8”, building height of 28 feet, and a detached garage located 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 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

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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 this application located within an area in which the special permit is available; and

WHEREAS, the Board notes further that the subject application seeks to enlarge the detached one-family residence, as contemplated by ZR § 73-622; and

WHEREAS, the applicant proposes to enlarge the existing detached dwelling by extending the dwelling into the rear yard and front yard, constructing a greenhouse on the first floor in the rear yard, and demolishing the existing garage and replacing it with a parking pad, resulting in a two-story plus attic and cellar dwelling with 5,108 square feet of floor area (1.28 FAR), a 20-foot rear yard, a 15-foot front yard, side yards with widths of 6'-2.75" and 3'-10.25", a perimeter wall height of 24 feet, and a total building height of 34'-11"; and

WHEREAS, at the subject site, a maximum of 0.85 FAR (3,400 square feet of floor area) or 1.02 FAR (4,080 square feet of floor area), including an increase in the permissible floor area ratio by 20 percent if such increase in floor area is located directly under a sloping roof that rises at least three and one half inches in vertical distance for each foot of horizontal distance and the structural headroom of such floor area is between five and eight feet, is permitted pursuant to ZR § 23-142 and a maximum perimeter wall height of 21 feet is permitted pursuant to ZR § 23-631(b); and

WHEREAS, the applicant provided an analysis of single- or two-family dwellings located within 400 feet of the subject premises within an R2X zoning district (the "Study Area") concluding that, of the 52 qualifying residences, 10 residences (19 percent) have an FAR greater than 1.02, ranging from 1.02 to 1.32, including the

residence located immediately to the south of the subject site, which has an FAR of 1.27; and

WHEREAS, with regards to the perimeter wall height, the applicant provided measurements of the properties located immediately adjacent to the subject premises demonstrating that the property located to the immediate south on tax lot 490, 1925 East 5th Street, is a single- or two-family detached residence with an existing non-complying perimeter wall facing the street with a height of 24 feet; and

WHEREAS, the Board notes that the subject application did not receive an objection with regards to the rear yard and, therefore, the Board has made no findings or granted any waivers with regards to the rear yard regulations applicable at the subject site; and

WHEREAS, in addition, the Board notes that the DOB shall determine whether the greenhouse proposed within the proposed 20 foot rear yard is permitted at the subject site as-of-right; 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; 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 the required findings under ZR § 73-622 to permit, in an R2X zoning district and the Special Ocean Parkway District, the enlargement of a one-family detached dwelling that does not comply with the zoning requirements with regards to floor area ratio and perimeter wall height contrary to ZR §§ 23-142 and 23-631(b); *on condition* that all work shall substantially conform to drawings as they apply to the objection above-noted, filed with this application and marked "October 11, 2018"—Fifteen (15) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area ratio of 1.28 (4,080 square feet of floor area), a perimeter wall height of 24 feet, as illustrated on BSA-approved plans;

THAT the removal of exterior walls and/or joists in excess of those indicated on the BSA-approved plans is prohibited and shall void the special permit;

THAT DOB shall determine whether the greenhouse indicated on the BSA-approved plans is a permitted obstruction in the rear yard;

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

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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, October 11, 2018.

252-06-BZ

APPLICANT – Sheldon Lobel, P.C., for MHSP Walton Owner LLC, owner.

SUBJECT – Application October 27, 2017 – Amendment of a previously approved Variance (§72-21) which permitted the construction of a four-story Use Group 4 community center facility contrary to underlying bulk regulations. The amendment seeks to allow for a modified design of the gymnasium building approved in the original variance. R8 zoning district. (Companion Case 2017-289-BZ)

PREMISES AFFECTED – 1761 Walton Avenue, Block 2850, Lot(s) 34, 38, 63 & 160, Borough of Bronx.

COMMUNITY BOARD #5BX

ACTION OF THE BOARD – Laid over to December 4, 2018, at 10 A.M., for continued hearing.

2017-289-BZ

APPLICANT – Sheldon Lobel, P.C., for MHSP Walton Owner LLC, owner.

SUBJECT – Application October 27, 2017 – 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 under BSA Cal. No. 252-06-BZ.

PREMISES AFFECTED – 1761 Walton Avenue, Block 2850, Lot(s) 34, 38, 63 & 160, Borough of Bronx.

COMMUNITY BOARD #5BX

ACTION OF THE BOARD – Laid over to December 4, 2018, at 10 A.M., for continued hearing.

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 February 5, 2019, at 10 A.M., for continued hearing.

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 29, 2019, at 10 A.M., for continued hearing.

2016-4274-BZ

APPLICANT – Pryor Cashman LLP, for Ahron & Sons Realty LLC, owner; Bnos Zion of Bobov, lessee.

SUBJECT – Application October 27, 20167 – 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 39th Avenue, Block 5347, Lot(s) 13 & 71, Borough of Brooklyn.

COMMUNITY BOARD #2BK

ACTION OF THE BOARD – Laid over to December 11, 2018, at 10 A.M., for adjourned 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 14th Avenue, Block 5649, Lot(s) 44, 46, Borough of Brooklyn.

COMMUNITY BOARD #12BK

ACTION OF THE BOARD – Laid over to December 11, 2018, at 10 A.M., for adjourned hearing.

2017-8-BZ

APPLICANT – Sheldon Lobel, P.C., for Academic Leadership Charter School, owner.

SUBJECT – Application January 9, 2017 – 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.

PREMISES AFFECTED – 356-362 East 139th Street, Block 2301, Lot(s) 12, 13, 14, 15, Borough of Bronx.

COMMUNITY BOARD #1BX

ACTION OF THE BOARD – Laid over to January 8, 2019, at 10 A.M., for continued hearing.

2017-56-BZ

APPLICANT – Rampulla Associates Architects, LLP, for Block 853, LLC, owner.

SUBJECT – Application February 24, 2017 – 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. R1-2 zoning district. R1-2 Lower Density Growth Management Area.

PREMISES AFFECTED – 1321 Richmond Road, Block 853, Lot(s) 91 & 93, Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Laid over to January 8, 2019, at 10 A.M., for adjourned hearing.

2017-246-BZ

APPLICANT – Seyfarth Shaw LLP, for 6163 Crosby Street, Inc., owner.

SUBJECT – Application August 18, 2017 – 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).

PREMISES AFFECTED – 61/63 Crosby Street, Block 482, Lot 13, Borough of Manhattan.

COMMUNITY BOARD #2M

ACTION OF THE BOARD – Laid over to January 8, 2019, at 10 A.M., for continued hearing.

2017-277-BZ

APPLICANT – Law Office of Lyra J. Altman, for Freddi Baranoff & Edward Baranoff, owners.

SUBJECT – Application October 12, 2017 – 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.

PREMISES AFFECTED – 1022 East 23rd Street, Block 7604, Lot 52, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Laid over to January 15, 2019, at 10 A.M., for adjourned hearing.

2018-20-BZ

APPLICANT – Jay Goldstein, Esq., for Jeffrey Ackerman, owner.

SUBJECT – Application February 9, 2018 – Special Permit (§73-622) to permit the enlargement of an existing single-family home contrary to ZR §23-141 (floor area and open space) and ZR §23-461(1) (required side yard). R2 zoning district.

PREMISES AFFECTED – 2801 Avenue M, Block 7646, Lot 7, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Laid over to January 15, 2019, at 10 A.M., for continued hearing.

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REGULAR MEETING

THURSDAY AFTERNOON, OCTOBER 11, 2018
1:00 P.M.

Present: Chair Perlmutter, Vice-Chair Chanda,
Commissioner Ottley-Brown, Commissioner Sheta and
Commissioner Scibetta.

ZONING CALENDAR

2016-1-BZ

CEQR #16-BSA-063M

APPLICANT – Akerman, LLP, for Union Square Associates, LLC, owner; CrossFit Union Square, LLC, lessee.

SUBJECT – Application January 4, 2016 – Special Permit (§73-36) to permit a physical culture establishment (fitness center) on a portion of an existing building's ground and cellar floors. C6-1/C6-4 (Special Union Square District) zoning district.

PREMISES AFFECTED – 1 Union Square West, Block 842, Lot 21, Borough of Manhattan.

COMMUNITY BOARD #2M

ACTION OF THE BOARD – Granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated December 2, 2015, acting on Alteration Application No. 121186260, reads in pertinent part:

“Proposed change of partial cellar use to a physical cultural or health establishment as defined by ZR 12-10 is contrary to ZR 32-10”;
and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to permit, partially in a C6-1 zoning district and partially in a C6-4 zoning district, in the Special Union Square District, the legalization of a physical culture establishment on a portion of the first floor and in the cellar of a nine-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on October 11, 2018, after due notice by publication in *The City Record*, and then to decision on October 11, 2018; and

WHEREAS, Commissioner Ottley-Brown and Commissioner Scibetta 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 northwest corner of Union Square West and East 14th Street, partially in a C6-1 zoning district and partially in a C6-4 zoning district, in the Special Union Square District, in Manhattan; and

WHEREAS, the subject site has approximately 52 feet of frontage along Union Square West, 117 feet of frontage along East 14th Street, 6,032 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

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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 6,950 square feet of floor space as follows: 390 square feet of floor area on the first floor, used as an entrance, and 6,560 square feet of floor space in the cellar, including a reception area, fitness area with climbing ropes, pull-up bars and gymnastic rings, restrooms, recovery room and storage; and

WHEREAS, the PCE has been in operation as Reebok CrossFit Union Square since January 1, 2015, with the following hours of operation: Monday to Friday, 5:00 a.m. to 9:00 p.m., Saturday, 9:00 a.m. to 12:00 p.m., and closed Sunday; and

WHEREAS, the applicant represents that the PCE use is consistent with the vibrant mixed-use area in which it is located, that the PCE use is fully contained within the envelope of an existing building and that the subject site has pedestrian access to rapid transit facilities within the vicinity; and

WHEREAS, in addition, the applicant submits that sound attenuation measures, including one-inch thick acoustic board ceiling and floors constructed of ¾-inch rubber matting, two layers of ¾-inch plywood, ¾-inch resilient plastic and 3 inches of memory foam, have been provided within the space so as to not disturb other tenants in the building; and

WHEREAS, the applicant further notes that an operational plan has been implemented to supervise patrons' use of weights and provide instructions on permissible weight use to negate sound impacts; and

WHEREAS, the Board finds that the PCE use is so located as not to 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 and instruction 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 submitted evidence 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 October 5, 2018, the Fire Department states that it has no objection to this application so long as a Public Assembly application be filed with the Department of Buildings prior to occupancy of the space, should the PCE be used for public assembly; 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 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-063M, dated January 4, 2016; and

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WHEREAS, on April 9, 2014, the New York City Landmarks Preservation Commission issued a Certificate of No Effect approving interior alterations at the first floor, including the construction of nonbearing partitions, fixtures and finishes and plumbing work; and

WHEREAS, the Board finds that the evidence in the record supports the findings required to be made under ZR §§ 73-36 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion; 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 without a special permit.

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 §§ 73-36 and 73-03 to *permit*, partially in a C6-1 zoning district and partially in a C6-4 zoning district, in the Special Union Square District, the legalization of a physical culture establishment on a portion of the first floor and in the cellar of a nine-story commercial building, contrary to ZR § 32-10; *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked “Received May 31, 2018”-Five (5) sheets; and *on further condition*:

THAT this grant shall be limited to a term of ten (10) years, expiring January 1, 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 minimum 3’-0” wide exit pathways shall be maintained 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 drawings;

THAT sound attenuation shall be maintained in the PCE, as indicated on the Board-approved drawings;

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 11, 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 drawings 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 drawings or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 11, 2018.

2017-286-BZ CEQR #18-BSA-047Q

APPLICANT – Eric Palatnik, P.C., for Ditmars 31st Associates LLC, owner; KCOR Ditmas LLC, lessee.

SUBJECT – Application October 27, 2017 – 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.

PREMISES AFFECTED – 22-06 31st Street, Block 844, Lot 40, Borough of Queens.

COMMUNITY BOARD #1Q

ACTION OF THE BOARD – Granted on condition.

THE VOTE TO GRANT –

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

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated October 12, 2017, acting on New Building Application No. 421318586, reads in pertinent part:

“Respectfully request this application be referred to the Board of Standards and Appeals for approval of a physical culture establishment as per ZR 32-31, and special permit pursuant to ZR 73.36”; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to permit, in an R5D (C4-2A) zoning district, the operation of a physical culture establishment on a portion of the first floor and cellar of a three-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on October 11, 2018, after due notice by publication in *The City Record*, and then to decision on the same date; and

WHEREAS, Community Board 1, Queens,

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recommends approval of this application; and

WHEREAS, the subject site is located on the north side of 31st Street, between 23rd Avenue and Ditmars Boulevard, in an R5D (C4-2A) zoning district, in Queens; and

WHEREAS, the subject site has approximately 125 feet of frontage along 31st Street, between 175 feet and 145 feet of depth, 35,217 square feet of lot area and is occupied by a one-story commercial building and 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 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 12,623 square feet of floor space as follows: 1,072 square feet of floor area on the first floor, including an entrance and common lobby, and 11,551 square feet of floor space in the cellar, including a juice bar, gymnasium, locker rooms and restrooms; and

WHEREAS, the PCE will operate as The Rock Health and Fitness with the following hours of operation: Monday to Friday, 24 hours per day, and Saturday and Sunday, 6:00 a.m. to 10:00 p.m.; and

WHEREAS, the applicant represents that the PCE use is consistent with the vibrant commercial area in which it is located and that the PCE use is fully contained within the envelope of an existing building; and

WHEREAS, in addition, the applicant submits that sound attenuation measures, including 15-inch thermal and acoustical insulation and lightweight concrete, will be provided within the space so as to not disturb other tenants in the building; and

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

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WHEREAS, the applicant states that the PCE will provide facilities for classes, instruction and programs for physical improvement and weight reduction; 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 will be 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—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 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 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. 18-BSA-047Q, dated October 30, 2017; and

WHEREAS, the Board finds that the evidence in the record supports the findings required to be made under ZR §§ 73-36 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion.

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 §§ 73-36 and 73-03 to *permit*, in an R5D (C4-2A) zoning district, the operation of a physical culture establishment on a portion of the first floor and cellar of a three-story commercial building, contrary to ZR § 32-10; *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked “Received June 22, 2018”-Four (4) sheets; and *on further condition*:

THAT this grant shall be limited to a term of ten (10) years, expiring October 11, 2028;

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 drawings;

THAT sound attenuation shall be installed in the PCE, as indicated on the Board-approved drawings;

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 11, 2022;

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 drawings 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 11, 2018.

2018-57-BZ CEQR #18-BSA-127M

APPLICANT – Jay Goldstein, Esq., for 24 West 40th Associates LLC, owner; CorePower Yoga, lessee.

SUBJECT – Application April 24, 2018 – Special Permit (§73-36) to permit the operation of a physical cultural establishment (*Core Power Yoga*) located on the second floor of an existing building contrary to ZR §32-10. C5-3 (MID) district.

PREMISES AFFECTED – 24 West 40th Street, Block 841, Lot 7502, Borough of Manhattan.

COMMUNITY BOARD #5M

ACTION OF THE BOARD – Granted on condition.

THE VOTE TO GRANT –

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

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THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated March 27, 2018, acting on Alteration Application No. 123177374, reads in pertinent part:

“Proposed ‘Physical Culture Establishment’ 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 a C5-3 zoning district and the Special Midtown District, the legalization of a physical culture establishment on a portion of the second floor of a 17-story commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on October 11, 2018, after due notice by publication in *The City Record*, and then to decision on the same date; and

WHEREAS, Vice-Chair Chanda 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 West 40th Street, between Sixth Avenue and Fifth Avenue, in a C5-3 zoning district and the Special Midtown District, in Manhattan; and

WHEREAS, the subject site has approximately 53 feet of frontage along the south side of West 40th Street, 99 feet of depth, 5,184 square feet of lot area and is occupied by a 17-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 3,878 square

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feet of floor area on the second floor as follows: a lobby and reception area, two yoga studios, a locker area and restrooms with showers; and

WHEREAS, the PCE has been in operation as CorePower Yoga since July 2018, with the following hours of operation: 5:30 a.m. to 10:00 p.m., daily; and

WHEREAS, the applicant represents that the PCE use is consistent with the vibrant mixed-use area in which it is located, that the PCE use is fully contained within the envelope of an existing commercial building and that the subject site has pedestrian access to rapid transit facilities within the vicinity; and

WHEREAS, in addition, the applicant submits that sound attenuation measures, including partitions isolated from adjacent structures with one layer of 5/8" sheetrock with glue and 3" sound attenuated batt insulation, flooring of 2-3/4" isolated mat subfloor panels with rubber isolators and mineral wool insulation, perimeter isolation boards at all edges, acoustically isolated ceilings using unibody molded rubber and steel bracket suspension clips with two layers of 5/8" sheetrock and 3" sound attenuated batt insulation, have been provided within the space so as to not disturb other tenants in the building; and

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

WHEREAS, the applicant states that the PCE provides group exercise rooms 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 submitted evidence 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 October 6, 2018, the Fire Department states that it has no objection to this application on condition that the Schedule A be amended to reflect the occupancy of the space and that a Public Assembly application be filed, if necessary; 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 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. 18-BSA-127M, dated April 24, 2018; and

WHEREAS, the Board finds that the evidence in the record supports the findings required to be made under ZR §§ 73-36 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion; 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 without a special permit.

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 §§ 73-36 and 73-03 *permit*, in a C5-3 zoning district and the Special Midtown District, the legalization of a physical culture establishment on a portion of the second floor of a 17-story commercial building, contrary to ZR § 32-10; *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked "Received October 10, 2018"-Five (5) sheets; and *on further condition*:

THAT this grant shall be limited to a term of ten (10) years, expiring July 31, 2028;

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 maintained 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 remain fully sprinklered, as indicated on the Board-approved drawings;

THAT sound attenuation shall be maintained in the PCE, as indicated on the Board-approved drawings;

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

THAT the above conditions shall appear on the certificate of occupancy;

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THAT a certificate of occupancy shall be obtained within one (1) year, by October 11, 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 drawings 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 drawings or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 11, 2018.

2016-4238-BZ

APPLICANT – Qiang Su Ra, for 388 Broadway Owners LLC, owner; Eden Day Spa, lessee.

SUBJECT – Application August 10, 2016 – Special Permit (§73-36) to operate a physical culture establishment (*Eden Day Spa*) within an existing building. C6-2A zoning district within the Tribeca East Historic District.

PREMISES AFFECTED – 388 Broadway, Block 195, Lot 3, Borough of Manhattan.

COMMUNITY BOARD #1M

ACTION OF THE BOARD – Laid over to December 4, 2018, at 10 A.M., for postponed hearing.

2017-33-BZ

APPLICANT – Philip L. Rampulla, for Dorothy Lasiello, owner.

SUBJECT – Application February 3, 2017 – 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).

PREMISES AFFECTED – 398 Lenevar Avenue, Block 6949, Lot 26, Borough of Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Laid over to January 29, 2019, at 10 A.M., for continued hearing.

2018-10-BZ

APPLICANT – Sheldon Lobel, P.C., for Gershon Klein, owner.

SUBJECT – Application January 26, 2018 – Special Permit (§73-622) to permit the enlargement of a detached single-family home contrary to ZR §23-141 (FAR and open space ratio); ZR §23-631 (front yard sky exposure plane) and ZR §23-632 (rear yard and side yards). R2 zoning district.

PREMISES AFFECTED – 1238 East 26th Street, Block 7643, Lot 60, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Laid over to December 11, 2018, at 10 A.M., for continued hearing.

Carlo Costanza, Executive Director

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***CORRECTION**

This resolution adopted on July 17, 2018, under Calendar No. 2017-232-A and printed in Volume 103, Bulletin Nos. 28-30, is hereby corrected to read as follows:

2017-232-A

APPLICANT – Land Planning & Engineering, for Neil Simon SHS Richmond Terrace, LLC, owner.

SUBJECT – Application August 4, 2017 – 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

PREMISES AFFECTED – 1632 Richmond Terrace, Block 187, Lot 42, 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, Commissioner Sheta and Commissioner Scibetta.....5

Negative:0

THE RESOLUTION –

WHEREAS, the decision of the Deputy Borough Commissioner, dated July 21, 2017, acting on Department of Buildings Application No. 520304616 reads in pertinent part:

GCL 36; BC 501.3.1: 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 three-story plus cellar Use Group 16 storage facility with frontage solely on Richmond Terrace, an improved street not duly placed on the official New York City map, contrary to General City Law (“GCL”) § 36; and

WHEREAS, a public hearing was held on this application on May 1, 2018, after due notice in *The City Record*, with a continued hearing on June 26, 2018, and then to decision on July 17, 2018; and

WHEREAS, Commissioner Ottley-Brown performed an inspection of the site and the surrounding area; and

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

WHEREAS, the subject site is located on the east side of Richmond Terrace, between Tompkins Court and Alaska Street, in an M1-1 zoning district, on Staten Island; and

WHEREAS, the site has approximately 198 feet of frontage along Richmond Terrace, 13 feet of frontage along Tompkins Court, 46,634 square feet of lot are and is occupied by a two-story Use Group 6 commercial building that is proposed to be enlarged, both horizontally and vertically, and converted to a three-story plus cellar Use Group 16 storage facility; and

WHEREAS, the applicant submits that the proposed enlargement and conversion will comply with all zoning regulations applicable at the subject site, including those relating to required parking spaces and loading berths, and that the building will be fully sprinklered; and

WHEREAS, by letter dated November 30, 2017, the Office of the Borough President of Staten Island states that an Opinion of Dedication, dated June 6, 1944, was issued for Richmond Terrace between Arlington Avenue and Broadway, which includes the subject portion of Richmond Terrace, declaring that Richmond Terrace between those boundaries has been dedicated to the use of the public at widths varying from about 41.25 feet to 80 feet; and

WHEREAS, a survey of the site submitted by the applicant represents that Richmond Terrace is paved and has an average width of approximately 29 feet along the frontage of the subject site; and

WHEREAS, by letter dated September 26, 2017, the New York City Department of Environmental Protection (“DEP”) states that, based on DEP maps, there are 10-inch and 24-inch diameter City water main, an 8-inch diameter sanitary sewer and 84-inch diameter interceptor sewer in Richmond Terrace between Tompkins Court and Alaska Street; that the Latest Drainage Plan No: PRD-E, Sheet 3 of 3, dated May 1973, shows two 10-inch diameter sanitary sewers, a 24/30-inch diameter storm sewer and an 84-inch diameter interceptor sewer in the bed of Richmond Terrace fronting the subject site; that the proposed internal sanitary and storm pipes will be constructed as per Site Connection Proposal ID#5659, approved on September 15, 2017; that the applicant has submitted a plan showing the proposed extension of the existing development; that the owner will maintain the sewer and water connections and they will not be maintained by the City of New York; and that based on the above, DEP has no objections to the subject application; and

WHEREAS, in addition, at the request of the Fire Department, the applicant proposed a 12-foot gate along the portion of the subject site fronting Tompkins Court for emergency and Fire Department use only; and

WHEREAS, by letter dated April 30, 2018, the Fire

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Department states that it has no objections to this application on condition that the entire building development be fully sprinklered; that the frontage space located at the main front entrance have roadway markings indicating “NO STANDING ANYTIME-FIRE ZONE”; that all Siamese connection locations be maintained free from all obstructions and have a serviceable hydrant within 100 feet; that an approved sign be posted in the vicinity of the main front entrance indicating the direction and distance to all Siamese locations; and that the internal fire lane indicated on the approved plans have “NO STANDING ANYTIME” signs posted in compliance with New York City Fire Code Section 503.2.7.2.1 and this lane be dedicated exclusively for emergency vehicle access with approved signage posted at both entry points stating, “FDNY USE ONLY”; 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 July 21, 2017, acting on DOB Application No. 520304616, 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 July 17, 2018”- 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 proposed internal sanitary and storm pipes shall be constructed as per Site Connection Proposal ID#5659, approved by the New York City Department of Environmental Protection (“DEP”) on September 15, 2017;

THAT the owner of the subject site shall maintain the sewer and water connections at the subject site, which shall not be maintained by the City of New York;

THAT the entire proposed development shall be fully sprinklered;

THAT the frontage space located at the main front entrance shall have roadway markings indicating “NO STANDING ANYTIME-FIRE ZONE,” as indicated on the BSA-approved plans;

THAT all Siamese connection locations shall be maintained free from all obstructions and have a serviceable hydrant within 100 feet;

THAT an FDNY-approved sign shall be posted in the vicinity of the main front entrance indicating the direction and distance to all Siamese locations;

THAT the internal fire lane indicated on the approved plans shall have “NO STANDING ANYTIME” signs posted in compliance with New York City Fire Code

Section 503.2.7.2.1;

THAT a certificate of occupancy shall be obtained within four (4) years, by July 17, 2022;

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, July 17, 2018.

***The resolution has been Amended. Corrected in Bulletin Nos. 41-42, Vol. 103, dated October 21, 2018.**

BULLETIN

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New Case Filed Up to October 23, 2018

2018-156-BZ

80-97 Cypress Avenue, Located approximately 900' east of the intersection formed by Cooper Avenue and Cypress Avenue, Block 3731, Lot(s) 65/ 54/412, Borough of **Queens, Community Board: 5**. Variance (§72-21) to permit the construction of a six-story plus cellar Use Group 3 non-profit (WellLife Network Inc.) to provide 66 units of low-income affordable and supportive housing with sleeping accommodations contrary to ZR §§ 24-111 (floor area and FAR), 24-34/23-45 (front yard), 24-521/24-551 (height and setback) and 25-31/25-253 (parking). R5 zoning district. R5 district.

2018-157-BZ

59 Andrews Street, Block 3410, Lot(s) 0070, Borough of **Staten Island, Community Board: 5**. 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.

2018-158-BZ

622 Cross Bay Boulevard, Block 15451, Lot(s) 0001, Borough of **Queens, Community Board: 4**. 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.R3A zoning district. R3A district.

2018-159-BZ

110 East 8th Road, Block 15462, Lot(s) 0011, Borough of **Queens, Community Board: 4**. 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.R3A zoning district. R3A district.

2018-160-BZ

33 Roosevelt Walk, Block 16350, Lot(s) 0400, Borough of **Queens, Community Board: 4**. 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.

2018-161-BZ

30 Roosevelt Walk, Block 16350, Lot(s) 300, Borough of **Queens, Community Board: 4**. 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.

2018-162-BZ

70 Bedford Avenue, Block 16350, Lot(s) 0300, Borough of **Queens, Community Board: 4**. 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.

2018-163-BZ

123 East 6th Road, Block 15400, Lot(s) 0005, Borough of **Queens, Community Board: 4**. 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.R3A zoning district. R3A district.

2018-164-BZ

72-71 Kissena Boulevard, Located through lot, with frontages on Kissena Boulevard, 73rd Avenue and Aguilar Avenue, Block 6805, Lot(s) 0045, Borough of **Queens, Community Board: 8**. Special Permit (§73-243) to permit the legalization of an accessory drive-through to an eating and drinking establishment (UG 6) (McDonald's) contrary to ZR §32-15. C1-2/R4 zoning district. C1-2/R4 district.

2018-165-BZ

25 Hudson Street, Located on the southwest corner of Hudson Street and Duane Street, Block 00141, Lot(s) 7504, Borough of **Manhattan, Community Board: 1**. Special Permit (§73-36) to permit the legalization of a Physical Cultural Establishment (CorePower Yoga) on a portion of the first floor on an existing building contrary to ZR §32-10. C6-2A (TMU) Tribeca West Historic District. C6-2A(TMU) district.

2018-166-A

40-31 82nd Street, Bound by 82nd Street to the west and Baxter Street to the east, Roosevelt Avenue to the north, Block 1493, Lot(s) 0015, Borough of **Queens, Community Board: 4**. Interpretative Appeal challenging the Department of Buildings permit issued for the development of a mixed-

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use building. Appeal of DOB permit that classifies the retail space occupied by Target as a UG 6 use. R6, C1-3 Overlay district.

2018-167-BZ

1133 East 22nd Street, Located on East 22nd Street between Avenue J and Avenue K, Block 7604, Lot(s) 0019, Borough of **Brooklyn, Community Board: 14**. Special Permit (§73-622) to permit the enlargement of a single-family detached residence contrary to floor area (ZR § 23-142); open space (ZR § 23-141); rear yard (ZR § 23-47), and side yard regulations (ZR§ 23-461(a)). R2 zoning district. R-2 district.

2018-168-BZ

1769 East 26th Street, Located on the east side of East 26th Street between Quentin Road and Avenue R, Block 6809, Lot(s) 0065, Borough of **Brooklyn, Community Board: 15**. Special Permit (§73-622) to permit the enlargement of a single-family detached residence contrary to floor area (ZR § 23-141); open space and lot coverage (ZR § 23-142); rear yard (ZR § 23-47), and side yard regulations (§§ 23-47 & 23-461)). R3-2 zoning district. R3-2 district.

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

CALENDAR

REGULAR MEETING November 20, 2018, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, November 20, 2018, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

SPECIAL ORDER CALENDAR

539-66-BZ

APPLICANT – Eric Palatnik, P.C., for Arthur Stein of 173-12 Operating Co. Inc., owner.

SUBJECT – Application March 13, 2018 – Amendment of a Variance (§72-21) to permit the reconstruction of a previously approved automotive service station (UG 16B). C2-2/R4 zoning district.

PREMISES AFFECTED – 61-19 Fresh Meadow Lane aka 173-12 Horace Harding Expressway, Block 6902, Lot 18, Borough of Queens.

COMMUNITY BOARD #8Q

APPEALS CALENDAR

2017-253-A

APPLICANT – Tarter Krinsky & Drogin LLP, for New York Central Line, owner; Outfront Media, LLC, lessee.

SUBJECT – Application August 28, 2017 – 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.

PREMISES AFFECTED – Brooklyn Queens Expressway at 34th Avenue, Block 125, Lot 1, Borough of Queens.

COMMUNITY BOARD #2Q

REGULAR MEETING NOVEMBER 20, 2018, 1:00 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, November 20, 2018, 1:00 P.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

ZONING CALENDAR

231-15-BZ

APPLICANT – Mitchell S. Ross, Esq., for Destem Realty and Petra Broadway, LLCs, owner.

SUBJECT – Application September 25, 2015 – Variance (§72-21) Propose nine story, mixed use (residential, community facility and retail building) 120 unit multiple dwelling with UG 4 doctor's office, and UG 6 retail pharmacy, contrary to ZR 22-10 (UG 6 in a Res ZD), ZR 23-145 (Residential Floor Area), ZR 23-22 (Permitted Dwelling Units), and ZR 23-633 (wall height and total height). R6 zoning district.

PREMISES AFFECTED – 5278 Post Road, Block 5835, Lot(s) 3055/3060, Borough of Bronx.

COMMUNITY BOARD #8BX

2017-258-BZ

APPLICANT – Eric Palatnik, P.C., for Aftab Hussain, owner.

SUBJECT – Application September 1, 2017 – 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.

PREMISES AFFECTED – 6161 Broadway, Block 5814, Lot 1182, Borough of Bronx.

COMMUNITY BOARD #8BX

2017-278-BZ

APPLICANT – Law Offices of Marvin B. Mitzner, LLC, for Pacific Fifth Avenue Corporation, owner.

SUBJECT – Application October 12, 2017 – 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.

PREMISES AFFECTED – 400 5th Avenue, Block 838, Lot 7501, Borough of Manhattan.

COMMUNITY BOARD #5M

CALENDAR

2017-305-BZ

APPLICANT – Gerald J. Caliendo, RA, AIA, for Vetrical Industrial Park Assoc., owner; Fit Nation Health Club dba Matrix Sports Club LLC, lessee.

SUBJECT – Application November 21, 2017 – 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. M1-2zoning districts.

PREMISES AFFECTED – 66-26 Metropolitan Avenue, Block 3605, Lot 1, Borough of Queens.

COMMUNITY BOARD #5Q

2018-95-BZ

APPLICANT – Sheldon Lobel, P.C., for HASC Center, Inc., owner.

SUBJECT – Application May 22, 2018 – Variance (§72-21) to permit the development of a four-story educational institution (UG 3) (HASC Center) contrary to ZR §23-142 (floor area and lot coverage), ZR §23-45 (front yard), ZR §23-631 (height and setback), ZR §23-632 (side setback), and ZR §36-21 (parking). C2-3/R5 Special Ocean Parkway District.

PREMISES AFFECTED – 120 Avenue M, Block 6564, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #12BK

2018-133-BZ

APPLICANT – Sahn Ward Coschignano, PLLC, for 450 Partners LLC c/o Brookfield Properties, Inc., owner; Peloton Interactive, Inc., lessee.

SUBJECT – Application August 7, 2018 – Special Permit (§73-36) to permit the operation of a physical culture establishment (fitness facility) on a portion of the first and second floor of an existing building contrary to ZR §32-10. C6-4 Special Hudson Yards District.

PREMISES AFFECTED – 450 West 33rd Street, Block 729, Lot 9001 (aka Lot 1), Borough of Manhattan.

COMMUNITY BOARD #4M

Carlo Costanza, Executive Director

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**REGULAR MEETING
TUESDAY MORNING, OCTOBER 23, 2018
10:00 A.M.**

Present: Chair Perlmutter, Vice-Chair Chanda,
Commissioner Ottley-Brown, Commissioner Sheta and
Commissioner Scibetta.

SPECIAL ORDER CALENDARS

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 – Granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda,
Commissioner Ottley-Brown, Commissioner Sheta and
Commissioner Scibetta.....5

Negative:0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the
Board’s Rules of Practice and Procedure, reopening and an
extension of term to a previously granted variance, which
expired on September 20, 2015; and

WHEREAS, a public hearing was held on this
application on August 8, 2017, after due notice by
publication in *The City Record*, with continued hearings on
October 17, 2017, March 20, 2018, April 17, 2018, and
October 23, 2018, and then to decision on that date; and

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

WHEREAS, Community Board 18, Brooklyn,
recommends disapproval of this application, stating that the
applicant has not been compliant with the terms of the prior
grant; and

WHEREAS, the subject site is located on the southeast
corner of the intersection of Ralph Avenue and Avenue M, in
an R3-2 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 100 feet of
frontage along Ralph Avenue, 110 feet of frontage along
Avenue M, 170 feet of frontage along East 65th Street,
18,706 square feet of area and is occupied by a one-story

automotive service station (Use Group 16B) with
convenience store and accessory automotive repairs; and

WHEREAS, the Board has exercised jurisdiction over
the subject site since July 23, 1957, when, under the subject
calendar number, the Board granted a variance for a term of
15 years, expiring July 23, 1972, to permit, on a premises
located partly in a business use district and partly in a
residential district, the erection and maintenance of a gasoline
service station and store building, as proposed in plans filed
with the application, on condition that the premises be
leveled substantially to the grade of abutting streets and
constructed and maintained as shown on such plans; the store
building comply with the requirements of the Building Code
therefor and occupy the space and location shown with a
space of 18 feet from the front wall of such building to the
building line of East 65th Street; the southerly portion of the
plot proposed to be occupied as a gasoline service station be
arranged as shown on such plans; the accessory building be
in compliance with the requirements of the Building Code,
have no cellar and be faced on all sides with face brick
agreeing with the walls of the store building; pumps be of a
low approved type, erected not nearer than 15 feet to Ralph
Avenue; curb cuts be restricted to two (2), 30 feet in width
each, on Ralph Avenue and one of similar width to Avenue
M, where shown; the number of gasoline storage tanks not
exceed ten (10) 550-gallon approved tanks; on the lot line to
the east from the accessory building to the building line of
Ralph Avenue there be erected a masonry wall not less than
five (5) feet six (6) inches high except it may be reduced to a
height of not less than four (4) feet six (6) inches within ten
(10) feet from the street building line; where not occupied by
accessory building, store and pumps, the premises be paved
with concrete or asphalt; such firefighting appliances be
maintained as the fire commissioner directs; signs for the
gasoline service station be restricted to those attached to the
façade of the accessory building and the illuminated globes of
the pumps, excluding all roof signs and temporary signs, but
permitting the erection at the intersection of Ralph Avenue
and Avenue M of a post standard for supporting a sign, which
may be illuminated, advertising only the brand of gasoline on
sale, which sign may extend not more than four (4) feet
beyond the building line; under section 7f there may be minor
repairing with hand tools only for adjustments maintained
solely within the accessory building; there may be parking of
motor vehicles within the gasoline station portion of the plot
so located as not to interfere with the servicing of the station;
and all permits required be obtained and all work completed
and a certificate of occupancy be obtained within one (1)
year; and

WHEREAS, on July 8, 1958, under the subject
calendar number, the Board granted an extension of time to
obtain permits and complete work and amended the variance
by adding that the accessory building may be changed in

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shape as shown on revised plans submitted with the application, on condition that in all other respects the requirements of the resolution be complied with; all permits be obtained and all work completed by July 8, 1959; and

WHEREAS, on February 3, 1959, under the subject calendar number, the Board amended the variance by adding that in the event the owner desires to make minor changes in the requirements of the resolutions adopted on July 23, 1957, through July 8, 1958, such changes may be permitted only as to the following: there may be two (2) additional 550-gallon gasoline storage tanks, making a total of 12 such tanks; there may be one (1) 30-foot island on the Ralph Avenue frontage with five (5) pumps instead of two (2) islands with two (2) pumps, each as shown on approved plans submitted with the application; and there may be an additional curb cut 30 feet in width to Avenue M, where shown; and

WHEREAS, on November 10, 1959, under the subject calendar number, the Board extended the time to obtain permits, complete construction, and obtain a certificate of occupancy to November 10, 1969; and

WHEREAS, on July 12, 1960, under the subject calendar number, the Board amended the variance to permit the redesign, rearrangement, and construction of the gasoline station substantially as shown on approved plans filed with the application, on condition that the prior resolutions be complied with in all respects; and

WHEREAS, on November 29, 1960, under the subject calendar number, the Board extended the time to obtain permits, complete construction, and obtain a certificate of occupancy to November 29, 1961; and

WHEREAS, on March 13, 1962, under the subject calendar number, the Board extended the time to obtain permits, complete construction, and obtain a certificate of occupancy to March 13, 1962; and

WHEREAS, on April 23, 1963, under the subject calendar number, the Board extended the time to obtain permits and complete construction to April 23, 1964, and required applicant to obtain a certificate of occupancy; and

WHEREAS, on June 4, 1963, under the subject calendar number, the Board amended the variance to permit the installation of an additional pump island with two (2) approved gasoline pumps facing Avenue M, substantially as shown on approved plans submitted with the application, on condition that the amended resolution be otherwise complied with in all respects; and

WHEREAS, on May 23, 1972, under the subject calendar number, the Board granted a ten (10) year extension to the term of the variance, expiring July 23, 1982, on condition that other than as amended the resolution be complied with in all respects, and a new certificate of occupancy be obtained; and

WHEREAS, on September 30, 1980, under BSA Cal. No. 643-80-A, the Board granted an appeal permitting the

use and installation of self-service gasoline dispensing devices on condition that a trained attendant who possesses a Certificate of Fitness, as required by Section C19-73.0.b2 of the Fire Prevention Code, be on duty at all times when the station is open for business; 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; it be the attendant's duty to prevent the dispensing of fuel into portable containers; signs reading "No Smoking," "Stop Your Engine," "It Is Unlawful to Dispense Gasoline Into Portable Containers," and "The Dispensing of Gasoline Shall be by a Person Holding a Valid Drivers License or a Person 18 years of age or older" be conspicuously posted in clear view of the customer at the dispensing island; portable fire extinguishers, acceptable to the Fire Commissioner, be located as indicated on filed plans; all dispensing devices and fire suppression systems be approved by the Board of Standards and Appeals; the suppression system be arranged in a manner so as to cover an area around each pump encompassed by a circle having a radius equal to the maximum extendable length of the hose and nozzle of said pump; the installation and use of coin-operated dispensing devices for fuel be prohibited; there be constant contact between the attendant in the control booth and the dispensing island by means of a voice intercommunication system which shall be maintained in a proper operating condition at all times; all controls, devices, fire suppression systems and fire fighting equipment be maintained in good operating order at all times; a maintenance log be kept on the premises as per direction of the Fire Commissioner; all dispensing nozzles be the automatic closing type without hold open latches; a list of emergency procedures and instructions be conspicuously posted in the immediate vicinity of the attendant's principal control location, said instructions be at the direction of the Fire Commissioner; the dispensing areas, at all times, be well lit for complete visual control; the permit to operate the station be for a term of five (5) years from the date of the approval, expiring September 30, 1985; all of the conditions set forth in the resolution be conspicuously posted in the attendant's booth; full sidewalks be provided along the East 65th Street frontage; screening along East 65th Street comply with Section 25-66(b) of the Zoning Resolution of the City of New York, such screening be maintained in good condition at all times; flood lights be directed down and away from adjoining residential properties; trees be planted along the East 65th Street frontage in accordance with the Department of Parks regulations; automobile repairs be limited to lubrication and minor repairs made with hand tools; parking of vehicles will be limited to those vehicles awaiting repairs; car washing be limited to non-automatic washing; the service station be operated so as to minimize traffic congestion; and full details relating to the building, equipment, devices and

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controls as well as details relating to the conditions enumerated be submitted to the Board before a permit be issued; and

WHEREAS, also on September 30, 1980, under the subject calendar number, the Board extended the term of the variance for five (5) years, expiring September 30, 1985, and amended the variance to permit the construction of a canopy over the pump island and an attendant's booth within the existing office and sales space, and a change in the sale of gasoline to self-service, on condition that a full width sidewalk be installed along East 65th Street frontage, screening along East 65th Street comply with Section 25-66(b) of the Zoning Resolution; such screening be maintained in good condition at all times; flood lights be directed down and away from adjoining residential properties; trees be planted along the East 65th Street frontage in accordance with Department of Parks regulations; automobile repairs be limited to lubrication and repairs be made with hand tools only; parking of vehicles be limited to those automobiles awaiting repairs; car washing be limited to non-automatic washing; the existing structure (accessory building) be repaired and maintained to the condition that existed prior to the abandonment of the property; there be regular disposal of any garbage or debris on the premises; the station be operated in all times in such a fashion to minimize traffic congestion; no permit be issued until a plan is submitted to the Board for approval showing compliance with the resolution; all work be completed within one (1) year from the date of the amended resolution; and other than as amended the resolution be complied with in all respects; and

WHEREAS, on November 17, 1981, under the subject calendar number, the Board extended the time to complete construction to November 17, 1982, on condition that a six-(6) foot-high stockade fence be installed along East 65th Street frontage and the lot be properly maintained free of refuse at all times; and

WHEREAS, on March 1, 1983, under the subject calendar number, the Board reopened and amended the variance, co-terminous with BSA Cal. No. 643-80-A, to expire September 30, 1985, on condition that the station be maintained clean and free of debris at all times and that the station be operated at all times in such a fashion so as to minimize traffic congestion; the resolution be otherwise complied with in all respects; and a new certificate of occupancy be obtained within one (1) year; and

WHEREAS, also on March 5, 1985, under the subject calendar number, the Board reopened and extended the term of the variance for ten (10) years, expiring September 30, 1995, on condition that there be no parking of vehicles on the sidewalk or in such a manner as to obstruct pedestrian or vehicular traffic, that other than as amended the resolution be complied with in all respects, and a new certificate of occupancy be obtained within one (1) year; and

WHEREAS, also on March 5, 1985, under BSA Cal. No. 643-80-A, the Board reopened and extended term of the resolution adopted on September 30, 1980, for five (5) years, expiring on September 30, 1990, on condition that the references in the resolution to the conditions be amended to include the following additional conditions: mirrors be provided which insure that the person with the certificate of fitness in the control booth can readily see the people operating any of the self-service devices; that manual switches be provided which actuate the fire suppression system and electrically disconnect the pumps, and that the switches be located adjacent to each other and within five (5) feet of the console which controls the self-service operation; the gasoline station be operated in such a manner that minimizes traffic congestion; the windows of the control booth remain clear and unobstructed at all times; the resolution be otherwise complied with in all respects; and a new certificate of occupancy be obtained within one (1) year; and

WHEREAS, on February 27, 1996, under the subject calendar number, the Board reopened and extended the term of the variance for ten (10) years, expiring September 30, 2005, on condition that street trees be replaced as necessary to comply with BSA-approved plans, the premises be maintained in substantial compliance with the existing and proposed drawings submitted with the application, that, other than as amended, the resolution be complied with in all respects and a new certificate of occupancy be obtained within one (1) year; and

WHEREAS, on February 28, 2006, under the subject calendar number, the Board reopened and extended the term of the variance for ten (10) years, expiring September 30, 2015, on condition that the use substantially conform to approved drawings submitted with the application; parking on site be for vehicles awaiting service only; the above conditions be listed on the certificate of occupancy; all conditions from prior resolutions not specifically waived by the Board remain in effect; all fencing and landscaping be installed and maintained as per the BSA-approved plans; the approval be limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdictional objection(s) only; and the Department of Buildings 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; and

WHEREAS, the term of the variance having expired, the applicant seeks a ten (10) year extension of the term of the variance, first issued in 1957, pursuant to ZR § 11-411; and

WHEREAS, the applicant additionally requests a waiver, pursuant to § 1-14.2 of the Board's Rules of Practice and

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Procedure, 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, ZR § 11-411 states:

Where no limitation as to the duration of the *use* was imposed at the time of [the variance authorized by the Board of Standards and Appeals pursuant to the 1916 Zoning Resolution], such *use* may be continued. Where such *use* was authorized subject to a term of years, such *use* may be continued until the expiration of the term, and thereafter, the agency which originally authorized such *use* may, in appropriate cases, extend the period of continuance for one or more terms or not more than 10 years each. The agency may prescribe appropriate conditions and safeguards to minimize adverse effects of such *use* on the character of the neighborhood;

WHEREAS, the applicant represents that the accessory service building located at the premises was converted to a convenience store under Department of Buildings (“DOB”) Application No. 320084680; and

WHEREAS, at the hearing, the Board expressed concerns regarding the maintenance of the site, the presence of temporary structures and extraneous signage, status of environmental cleanup at the site, which has an E-designation (R-166), soil disturbance, and the accessory building’s compliance with DOB Technical Policy and Procedure Notice (“TPPN”) 10/99 (“Retail Convenience Stores Accessory to Automotive Service Stations Use Group 16”); and

WHEREAS, in response, the applicant restriped and resurfaced the asphalt at the site, added bumpers to parking spaces, installed new fencing, removed extraneous signage, installed landscaping and provided a New York State Department of Environmental Conservation Spill Closure Report dated May 7, 2018, stating that the July 7, 2008 spill case was closed because either: a) the records and data submitted indicate that the necessary cleanup and removal actions have been completed and no further remedial activities are necessary, or b) the case was closed for administrative reasons; and

WHEREAS, the applicant additionally stated that at 2,268 square feet, the accessory building, which is located on the same zoning lot as the service station, complies with TPPN 10/99; and

WHEREAS, by letter dated October 9, 2018, the Fire Department stated that it had no objection to this application; and

Therefore, it is Resolved, that the Board of Standards

and Appeals, *waives* Rule § 1-07.3(b)(2) of its Rules of Practice and Procedure, *reopens* and *amends* the resolution, dated July 23, 1957, as amended through February 28, 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, to expire on September 30, 2025; and *on condition* that all work and site conditions shall conform to drawings filed with this application marked “Received September 21, 2017”-Two (2) sheets and March 30, 2018”-Two (2) sheets and *on further condition*:

THAT the term of this grant shall expire on September 30, 2025;

THAT the property shall be maintained graffiti-free at all times;

THAT fencing and landscaping shall be maintained as indicated on the Board-approved plans, and repaired and replaced as required so as to be maintained in good condition at all times;

THAT there shall be no signage at the site in excess if that indicated 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 be indicated on the certificate of occupancy;

THAT a revised certificate of occupancy be obtained within one (1) year, by October 23, 2019;

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, October 23, 2018.

340-04-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for WG Staten Island Realty LLC, owner.

SUBJECT – Application February 9, 2018 – Amendment of a previously approved Variance (§72-21) which requested bulk variance to allow the construction of a drug store without the required parking contrary to Z.R. §§33-23(B) and 36-21. The amendment seeks to change the use from a drug store (UG6) PRC-B to a food store (UG 6) PRC-A. C4-1 zoning district.

PREMISES AFFECTED – 1579 Forest Avenue, Block 1053, Lot 149, 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, Commissioner Sheta and

1 Words in *italics* are defined in Section 12-10 of the Zoning Resolution.

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Commissioner Scibetta.....5
Negative:0

THE RESOLUTION –

WHEREAS, the decision of the Deputy Borough Commissioner, dated January 10, 2018, acting on Department of Buildings (“DOB”) Application No. 520320000, reads in pertinent part:

Food stores located in a C4-1 zoning district with 2,000 or more square feet of floor area per establishment (PRC-A in Use Group 6) require 1 space per 100 square feet as per ZR 36-21;

Uses in PRC-B in Use Group 6 located in a C4-1 zoning district (PRC-B in UG 6) require 1 space per 150 square feet as per ZR 36-21;

Provided total number of spaces is contrary to ZR 36-21.

WHEREAS, this is an application to reopen and amend a variance, previously granted by the Board pursuant to ZR § 72-21, to permit a change in use from a Use Group (“UG”) 6 drug store (Parking Requirement Category- (“PRC”) B) to a UG 6 food store (PRC-A); and

WHEREAS, a public hearing was held on this application on August 14, 2018, after due notice by publication in *The City Record*, with a continued hearing on October 23, 2018, and then to decision on that date; and

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

WHEREAS, Community Board 1, Staten Island, recommends approval of this application on condition that the number of ADA-accessible parking spaces provided on the site be increased to three (3), the waiver issued be specific to the applicant-operator and that the refuse area proposed to be adjacent to Forest Avenue be relocated; and

WHEREAS, the site is located on the northeast corner of Forest Avenue and Crystal Avenue, in a C4-1 zoning district, on Staten Island; and

WHEREAS, the site has approximately 151 feet of frontage on Forest Avenue, 23,564 square feet of lot area, and is occupied by a two-story commercial building containing 11,057 square feet of floor area; and

WHEREAS, the Board has exercised jurisdiction over the subject since May 10, 2005, when, under the subject calendar number, the Board granted a variance, pursuant to ZR § 72-21, to permit the construction and maintenance of a UG 6 drugstore without the required parking, contrary to ZR § 36-21, on condition that all work substantially conform to approved drawings filed with the application, and on further condition that the premises be maintained free of debris and graffiti; any graffiti located on the premises be removed within 48 hours; all fencing and landscaping be installed and maintained as shown

on the BSA-approved plans; 381 parking spaces be provided at all times; the above conditions be noted on the certificate of occupancy; the approval be limited to relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; the approved plans be considered approved only for the portions related to the specific relief granted; the DOB 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; and

WHEREAS, the applicant now seeks an amendment to permit a change in use, from a UG 6 drug store (PRC-B) to a UG 6 food store (PRC-A), that results in an increase in the number of required parking spaces from 74 to 103, and therefore, requires an amendment of the previous grant to waive 29 additional parking spaces; and

WHEREAS, the applicant states that the proposed amendment would allow the subject site to be occupied because the site has been vacant since September 2015, when the prior tenant, a drug store, vacated and, other than the proposed grocery store, no other tenants have been identified; and

WHEREAS, the applicant represents that the proposed food store will be operated by “Top Tomato,” and will operate daily from 7:00 a.m. to 8:00 p.m.; and

WHEREAS, the applicant represents that the parking requirements of Top Tomato at the subject site will be satisfied with the existing 38 parking spaces and submits that the parking demands at the subject site are anticipated to be comparable to two (2) other Top Tomato locations, both located on Staten Island, of comparable size (10,975 square feet and 8,017 square feet) and each providing 35 accessory off-street parking spaces; and

WHEREAS, based on the applicant’s submission that the number of accessory off-street parking spaces provided at the subject premises is sufficient based on the operator’s other Staten Island locations, the Board adopts Community Board 1, Staten Island’s condition that the subject amendment be limited to the operation of the premises by Top Tomato; and

WHEREAS, over the course of the hearings, the Board raised concerns regarding sufficient landscaping and, in response to the comments provided by Community Board 1, Staten Island, the number of ADA-accessible parking spaces provided and the location and operation of the refuse staging area; and

WHEREAS, the applicant stated that the creation and

1The resolution incorrectly states that 39 parking spaces were to be provided on-site, but the plans approved in connection with the grant demonstrates the provision of 38 accessory off-street parking spaces at the premises.

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maintenance of three (3), as opposed to two (2), accessible parking spaces would reduce the number of general parking spaces and would contribute to creating more congestion at the subject site; and

WHEREAS, regarding the refuse staging area, the applicant made the requested changes to the drawings in satisfaction of the Board's request demonstrating the proper location of the refuse lift to facilitate the transfer of refrigerated storage from the second floor to the curb at grade; and

WHEREAS, based upon its review of the record, the Board finds that an amendment to the variance to permit a UG 6 food store (PRC-A) 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 10, 2005, so that as amended this portion of the resolution shall read: "to permit a food store (UG 6) PRC-A, *on condition* that any and all work shall substantially conform to drawings as filed with this application, marked 'Received October 22, 2018'-Five (5) sheets and 'October 26, 2018-Two (2) sheets; and *on further condition*:

THAT this grant is specific to the operation of the UG 6 food store by Top Tomato;

THAT there shall be no change in operator of the UG 6 food store without prior application to and approval from the Board;

THAT 38 parking spaces shall be provided at all times;

THAT refuse shall be brought to the exterior refuse staging area immediately prior to pick-up and removal from the site;

THAT the premises shall be maintained free of debris and graffiti at all times;

THAT any graffiti located on the premises shall be removed within 48 hours;

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

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

THAT a revised certificate of occupancy shall be obtained within four (4) years of this amendment, by October 23, 2022;

THAT substantial construction, in accordance with Board-approved plans, shall 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) 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, October 23, 2018.

193-05-BZ

APPLICANT – Patrick W. Jones, P.C., for 32 East 31st Street Corp., owner; Tone House, lessee.

SUBJECT – Application May 24, 2016 – Extension of Term of a previously granted Special Permit (§73-36) for the continued operation of Physical Culture Establishment (*Tone House*) which expired on April 25, 2016. C5-2 zoning district.

PREMISES AFFECTED – 32 East 31st Street, Block 860, 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, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:0

THE RESOLUTION –

WHEREAS, the decision on behalf of the Manhattan Borough Commissioner, dated September 15, 2016, acting on Department of Buildings ("DOB") Application No. 122762073, reads in pertinent part:

Proposed extension of term, change in ownership, and amendment in type of a physical culture establishment must be referred to the Board of Standards and Appeals for approval pursuant to ZR 73-36 (Physical culture or health establishment); and

WHEREAS, this is an application for reopening, an extension of term of a previously granted special permit for a physical culture establishment ("PCE"), which expired on April 25, 2016, and an amendment to the same; and

WHEREAS, a public hearing was held on this application on October 23, 2018, after due notice by publication in *The City Record*, and then to decision on that same date; and

WHEREAS, the Board was in receipt of one (1) letter in support of this application; and

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

WHEREAS, the subject site is located on the south side of East 31st Street between Madison Avenue and Park Avenue South, in a C5-2 zoning district, in Manhattan; and

WHEREAS, the site has approximately 45 feet of frontage along East 31st Street, 98 feet of depth, 4,444 square feet of lot area and is occupied by a 12 story plus cellar

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commercial building; and

WHEREAS, the subject PCE is located on portions of the cellar (1,816 square feet), first floor (2,933 square feet) and mezzanine (563 square feet) of the existing building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since April 25, 2006, when, under the subject calendar number, the Board granted a special permit, pursuant to ZR § 73-36, to permit the legalization of a PCE located on the cellar level, first floor, and first floor mezzanine of an existing ten- (10) story commercial building on condition that all work substantially conform to approved plans filed with the application, and on further condition that the term of the grant be for ten (10) years, expiring April 25, 2016; there be no change in ownership or operating control of the PCE without prior application to and approval from the Board; the hours of operation be limited to 9:00 A.M. to 12:00 A.M., daily; all massages be performed only by New York State licensed massage professionals; the above conditions appear on the Certificate of Occupancy; Local Law 58/87 compliance be as reviewed and approved by DOB; fire safety measures be installed and/or maintained as shown on the Board-approved plans; the approval be limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; the approved plans be considered approved only for the portions related to the specific relief granted; and the DOB 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; and

WHEREAS, the previous term of the special permit having expired, the applicant requests the subject relief; and

WHEREAS, additionally, the applicant seeks an amendment to the PCE's special permit indicating a change to the ownership and operation operator of the subject PCE to "Tone House," a change in the hours of operation, and the elimination of massage services; and

WHEREAS, the applicant notes that it is not proposing to change the area occupied by the PCE within the existing building; and

WHEREAS, the applicant states, the PCE has been operating as "Tone House" since May 16, 2016, with the following hours of operation: Monday through Thursday, 4:30 a.m. to 10:30 p.m.; Friday, 4:30 a.m. to 9:00 p.m.; and, Saturday and Sunday, 7:00 a.m. to 7:00 p.m.; and

WHEREAS, the applicant represents that the PCE contains facilities for the provision of physical fitness with instructor-led classes that utilize mechanical rowers and sandbags, but no weights or powered exercise machines; and

WHEREAS, the applicant submits that, though the first floor of the PCE space is the only fitness area of the PCE and is not adjacent to any commercial spaces, which start on the

mezzanine level and second floor of the subject building, sound mitigation measures, including acoustical barriers, a sound delimiter for music, and padded floors have been installed in the PCE space; specifically: fiberglass insulation, acoustical sealants, gaskets, and caulk, and sound dampening sheet rock are installed in the ceiling, walls, doors, and pipe penetrations between the PCE space and commercial space on the second floor; and

WHEREAS, the applicant represents that an FDNY-approved interior fire alarm system—including area smoke detectors, manual pull stations at each required exist, local audible and visual alarms, and connection of the interior fire alarm to an FDNY-approved central station—will be installed in the PCE space that already is protected by an approved wet sprinkler system; and

WHEREAS, by letter dated June 12, 2018, the Fire Department submitted a letter of no objection to the application and confirmed that the premises have sprinkler and standpipe connections that were inspected and tested satisfactory; and applications for the fire alarm system have been filed and inspected by the Bureau of Fire Prevention, Fire Alarm Inspection Unit; 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, based upon its review of the record, the Board finds that the requested extension of term and amendment reflecting a change in operator, hours of operation, and services provided, 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 April 25, 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 April 25, 2026, *on condition* that all work and site conditions shall conform to drawings filed with this application "April 30, 2018"-Thirteen (13) sheets; and *on further condition*:

THAT the term of this grant shall expire on April 25, 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 three (3) foot wide exit pathways shall always be maintained unobstructed, including that from any gymnasium equipment;

THAT sprinklers and interior fire alarm system – including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms, connection of the interior fire alarm and sprinklers to a FDNY-approved central station – shall be maintained throughout the PCE

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space as indicated on the Board-approved plans;

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 above conditions shall appear on the certificate of occupancy;

THAT a revised certificate of occupancy shall be obtained within one (1) year, by October 23, 2019;

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, October 23, 2018.

177-14-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP for MADDD Properties LLC, owner; CF Flatbush LLC, lessee. SUBJECT – Application January 4, 2018 – Amendment of a previously approved Special Permit (§73-36) permitting the operation of a physical culture establishment (*Crossfit*) within portions of an altered building contrary to ZR §32-10. The amendment seeks to enlarge to use by 584 sq. ft. C4-4A/R6A zoning district.

PREMISES AFFECTED – 1038 Flatbush Avenue, Block 5125, 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, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:0

THE RESOLUTION –

WHEREAS, this is an application for reopening and an amendment of a previously granted special permit for a physical culture establishment (“PCE”) to reflect a change in the interior layout of the PCE on the cellar level and first floor; and

WHEREAS, the decision of the Borough Commissioner, dated December 4, 2017, acting on DOB application No. 321531794, reads in pertinent part:

Proposed PCE in a C4-4/R6A zoning district is contrary to ZR § 32-10 and plans previously

approved by BSA under Cal. No. 177-14-BZ; and

WHEREAS, a public hearing was held on this application on October 23, 2018, after due notice by publication in *The City Record*, and then to decision on that date; and

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

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

WHEREAS, the site is located on the west side of Flatbush Avenue, between Regent Place and Beverly Road, partially in a C4-4A zoning district and partially in an R6A zoning district, in Brooklyn; and

WHEREAS, the site has approximately 80 feet of frontage on Flatbush Avenue, 7,407 square feet of lot area, and is occupied by a three- (3) story plus cellar commercial building in which the subject PCE is located; and

WHEREAS, the Board has exercised jurisdiction over the subject site since February 24, 2015, when, under the subject calendar number, the Board granted a special permit to permit the operation of a PCE on the cellar level, and first, second, and third floors of a three-story plus cellar commercial building on condition that all work substantially conform to approved plans filed with the application; the term of the PCE grant expire on February 24, 2025; there be no change in ownership or operating control of the PCE without prior application to and approval from the Board; all signage displayed at the site by the applicant conform to applicable regulations; the above conditions appear on the certificate of occupancy; accessibility compliance be as reviewed and approved by the Department of Buildings (“DOB”); fire safety measures be installed and/or maintained as shown on the Board-approved plans; all DOB and related agency application(s) filed in connection with the authorized use and/or bulk be signed off by DOB and all other relevant agencies by February 24, 2019; the approval be limited to the relief granted by the Board in response to specifically cited objection(s); the approved plans be considered approved only for the portions related to the specific relief granted; and, DOB 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; and

WHEREAS, the applicant now seeks an amendment to permit modifications to the layout of the PCE on the cellar level, resulting in a reduction of floor space in the cellar, and an extension of the PCE on the first floor, resulting in an increase in floor area on the first floor; and

WHEREAS, the applicant represents that they seek the proposed amendment due to a change in the first-floor tenancy at the subject site allowing the PCE an opportunity to expand its occupancy within the premises; and

WHEREAS, specifically, the applicant proposes to

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relocate the PCE space on the cellar level, reducing the floor space from 2,299 square feet to 2,189 square feet, and extend the PCE by 584 square feet at the first floor, increasing the floor area occupied on that floor from 4,518 square feet to 5,102 square feet; and

WHEREAS, as a result, the PCE will now occupy 2,189 square feet of floor space at the cellar level, 5,102 square feet of floor area at the first floor, 5,849 square feet of floor area at the second floor, and 5,068 square feet of floor area at the third floor; and

WHEREAS, the applicant represents that there have been no changes to the PCE with regards to the second floor or third floor space, the hours of operation, the operator, or the services provided; and

WHEREAS, at the hearing, the Board raised concerns regarding outstanding DOB violations and summonses issued to the premises; and

WHEREAS, in response, the applicant demonstrated proof of payment of the summonses; and

WHEREAS, the Board notes that, pursuant to the prior approval, all DOB and related agency applications filed in connection with the PCE use—including sign-off for the fire protection systems shown on the Board-approved plans—must be signed off by February 24, 2019, a date that has not yet passed; and

WHEREAS, based upon its review of the record, the Board finds that the requested amendment, permitting an extension of the PCE space on the first floor, 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 24, 2015, so that as amended the resolution reads: “to reflect a change in the interior layout of the PCE on the cellar level and first floor such that the PCE will now occupy 2,189 square feet of floor space at the cellar level, 5,102 square feet of floor area at the first floor, 5,849 square feet of floor area at the second floor, and 5,068 square feet of floor area at the third floor, *on condition* that any and all work shall substantially conform to drawings as they apply to the objection above noted, filed with this application marked ‘Received January 9, 2018’—three (3) sheets; and *on further condition*:

THAT all signage displayed at the site by the applicant shall conform to applicable regulations;

THAT all conditions from the prior resolution 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 four (4) years, by October 23, 2022;

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) and/or configuration(s) not related to the relief granted.”

Adopted by the Board of Standards and Appeals, October 23, 2018.

322-14-BZ

APPLICANT –Eric Palatnik, P.C., for Maks Kutsak, owner.
SUBJECT – Application March 9, 2018 – Amendment of a previously approved Special Permit (§73-622) permitting the enlargement of an existing single-family home contrary to floor area, lot coverage and open space (ZR §23-141). The amendment seeks to decrease the approved FAR from 0.96 to 0.94 and to increase the lot coverage from 37% to 38%. R3-1 zoning district.

PREMISES AFFECTED – 82 Coleridge Street, Block 8728, Lot 58, 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 Sheta and Commissioner Scibetta.....5
Negative:0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated July 25, 2018, acting on DOB Application No. 320913124, reads in pertinent part:

1. ZR 23-142: Proposed as-built revisions to plans result in a floor area ratio of 0.94 which is not in conformance with ZR 23-142 as to floor area ratio but is less than the conditions approved under BSA Cal. No. 322-14-BZ, which permitted a floor area ratio[] of 0.96. FLOOR AREA RATIO IS NOT COMPLYING;
2. ZR 23-142: Proposed as-built revisions to plans result in a lot coverage [of] 38% and reduce the open space to 3728 SF which are not in conformance with ZR 23-142 as to lot coverage (%) and open space and are not in conformance with conditions approved under BSA Cal. No. 322-14-BZ, which permitted a lot coverage of 37% and required 3780 SF of open space. LOT COVERAGE IS NOT COMPLYING
[. . .]; and

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WHEREAS, this is an application for reopening and an amendment to a special permit, previously granted pursuant to ZR § 73-622, to legalize as-built conditions of a single-family residence that does not comply with the Board's grant; and

WHEREAS, a public hearing was held on this application on October 23, 2018, after due notice by publication in *The City Record*, and then to decision on that same date; and

WHEREAS, Community Board 15, Brooklyn, recommends disapproval of this application on the basis that the applicant did not construct pursuant to the Board-approved plans; 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 west side of Coleridge Street, between Shore Boulevard and Hampton Avenue, in an R3-1 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 60 feet of frontage, a depth of 100 feet, 6,000 square feet of lot area and is occupied by a two-story plus attic single-family home with 5,685 square feet of floor area (0.94 FAR), 3,728 square feet of open space (62 percent), and 38 percent of lot coverage; and

WHEREAS, the Board has exercised jurisdiction over the subject site since December 1, 2015, when, under the subject calendar number, the Board granted a special permit, pursuant to ZR § 73-622, authorizing the enlargement of a single-family residence contrary to zoning requirements for floor area, lot coverage and open space set forth in ZR §§ 23-141 and 23-47 on condition that all work substantially conform to approved plans filed with the application and on further condition that the following be the bulk parameters of the building: a maximum floor area of 5,748 square feet (0.96 FAR), side yards of ten (10) feet and five (5) feet, a front yard with a minimum depth of 15 feet, a rear yard with a minimum depth of 26 feet, a maximum lot coverage of 37 percent, and a minimum open space of 63 percent (3,780 square feet), all as illustrated on the BSA-approved plans; the existing walls be retained; the elevation of the existing floors be shown on the plans; the demolition of the existing structure by more than 50 percent of the floor area not be permitted; the approval be limited to the relief granted by the Board in response to specifically cited DOB/other jurisdiction objection(s); the approved plans be considered approved only for the portions related to the specific relief granted; all DOB and related agency application(s) filed in connection with the authorized use and/or bulk be signed off by DOB and all other relevant agencies by December 1, 2019; and DOB 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; and

WHEREAS, the single-family residence was subsequently enlarged and while the enlarged residence maintains a 26-foot rear yard and contains 5,658 square feet of floor area (0.94 FAR), less than the maximum permitted by the 2015 approval, 62 percent of open space was provided on the site (3,728 square feet) and the lot coverage was increased to 38 percent; and

WHEREAS, the applicant represents that the increase in lot coverage and reduction in FAR will not alter the essential character of the neighborhood; and

WHEREAS, at hearing, the Board commented that the as-built condition would have been acceptable had they been proposed in the original application; in particular, the reduction of the depth of the structure increased the depth of the front yard by 10 inches and brought the structure more in line with its neighbors; and

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

Therefore it is Resolved, that the Board of Standards and Appeals *reopens* and *amends* the resolution, dated December 1, 2015, so that as amended the resolution reads: "to permit the noted modifications, including the proposed decrease in floor area and open space, increase in lot coverage and maintenance of the non-complying rear yard, *on condition* that all work will substantially conform to drawings, filed with this application marked "Received August 9, 2018"—Nineteen (19) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area of 5,658 square feet (0.94 FAR), a minimum of 62 percent open space, a maximum of 38 percent lot coverage, and a rear yard with a minimum depth of 26 feet, all as illustrated on the BSA-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 Certificate of Occupancy shall be obtained by December 1, 2019;

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

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

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

Adopted by the Board of Standards and Appeals, October 23, 2018.

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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 47th Avenue, Block 5559, Lot 75, Borough of Queens.

COMMUNITY BOARD #11Q

ACTION OF THE BOARD – Laid over to January 15, 2019, at 10 A.M., for continued hearing.

30-58-BZ

APPLICANT – Vassalotti Associates Architects, LLP, for Maximum Properties, Inc., owner.
SUBJECT – Application April 26, 2018 – Extension of Term (§11-411) of a variance permitting the operation of an automotive service station (UG 16B) which expired on March 12, 2017; Waiver of the Rules. C2-1/R3-1 zoning district.
PREMISES AFFECTED – 184-17 Horace Harding Expressway, Block 7067, Lot 50, Borough of Queens.

COMMUNITY BOARD #11Q

ACTION OF THE BOARD – Laid over to January 15, 2019, at 10 A.M., for continued hearing.

103-79-BZ

APPLICANT – Akerman, LLP, for The 1989 Anthony Denicker Trust, owner.
SUBJECT – Application March 27, 2018 – Amendment of a previously approved Variance (§72-21) which permitted the development of a two-family residence contrary to side yard requirements. The amendment seeks to modify the Board’s prior approval to allow a conversion of the building from a two-family residence to a three-family residence contrary to ZR §23-49 and to request a termination of a Board condition that required a recorded declaration describing the use of the site as a two-family residence. R5 zoning district.
PREMISES AFFECTED – 25-30 44th Street, Block 702, Lot 56, Borough of Queens.

COMMUNITY BOARD #1Q

ACTION OF THE BOARD – Laid over to January 8, 2019, at 10 A.M., for continued hearing.

138-87-BZ

APPLICANT – Carl A. Sulfaro, Esq., for Philip Cataldi Trust #2, owner.
SUBJECT – Application August 3, 2017 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of car rental facility (UG 8C) which expired on January 12, 2013; Amendment to permit changes to the interior layout and to the exterior of the building; Waiver of the Rules. C2-2/R2 zoning district.
PREMISES AFFECTED – 218-36 Hillside Avenue, Block 10678, Lot 14, Borough of Queens.

COMMUNITY BOARD #13Q

ACTION OF THE BOARD – Laid over to February 12, 2019, at 10 A.M., for continued hearing.

24-96-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Legaga LLC, owner.
SUBJECT – Application January 23, 2018 – Extension of Term (11-411) of a previously approved variance permitting the operation of an Eating and Drinking Establishment (*McDonald's*) which expired on October 7, 2017; Extension of Time to obtain a Certificate of Occupancy which expired on July 15, 2015; Waiver of the Rules. R7-2 zoning district.
PREMISES AFFECTED – 213 Madison Street, Block 271, Lot 40, Borough of Manhattan.

COMMUNITY BOARD #3M

THE VOTE TO CLOSE HEARING –
Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5
Negative:0

ACTION OF THE BOARD – Laid over to November 8, 2018, at 10 A.M. for decision, hearing closed.

141-06-BZ

APPLICANT – Eric Palatnik, P.C., for Congregation Tefiloh Ledovid, owner.
SUBJECT – Application April 20, 2018 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) permitting the construction of a House of Worship (*Congregation Tefiloh Ledovid*) UG 3) contrary to underlying bulk requirements which expired on March 12, 2017; Waiver of the Board’s Rules. R5 zoning district.
PREMISES AFFECTED – 2084 60th Street, Block 5521, Lot 42, Borough of Brooklyn.

COMMUNITY BOARD #12BK

ACTION OF THE BOARD – Laid over to December 11, 2018, at 10 A.M., for continued hearing.

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APPEALS CALENDAR

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 44th Street, Block 702, Lot 57, Borough of Queens.

COMMUNITY BOARD #1Q

ACTION OF THE BOARD – Appeal Withdrawn on Condition.

THE VOTE TO WITHDRAW –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:0

THE RESOLUTION –

WHEREAS, this is an appeal, filed by the New York City Department of Buildings (“DOB”) pursuant to New York City Charter §§ 645(b)(3)(e) and 666(6)(a), seeking a revocation of Certificate of Occupancy No. 401501273, dated January 2, 2004, (the “CO”) issued for the subject premises; and

WHEREAS, the CO indicates that the premises are occupied by a two-story plus basement three-family residential building and accessory one car open parking; and

WHEREAS, DOB states that the CO is improper because it permits a three-family residence at the premises, contrary to the Board resolution issued under BSA Cal. No. 104-79-BZ, granting a variance of ZR § 23-462, which set forth side yard regulations applicable at the site, and permitting the erection of a two-story and basement, two-family dwelling on condition, *inter alia*, that a deed restriction limiting the occupancy to a two-family dwelling be filed and submitted to DOB prior to the issuance of a building permit and that the Certificate of Occupancy indicate the libre, page and date of recording of said covenant; and

WHEREAS, a public hearing was held on this application on September 26, 2017, after due notice by publication in *The City Record*, with continued hearings on January 23, 2018, May 1, 2018, and August 7, 2018, and then to decision on October 23, 2018; and

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

WHEREAS, the site is located on the west side of 44th Street, between 25th Avenue and 28th Avenue, in an R5 zoning district, in Queens; and

WHEREAS, the site has approximately 25 feet of frontage, 100 feet of depth, 2,500 square feet of lot area and

is occupied by a two-story plus basement residential building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since June 19, 1979, when, under BSA Cal. No. 104-79-BZ, the Board granted a variance to permit the construction of a two-story and basement, two-family dwelling that encroached on the required side yard on condition that all work substantially conform to drawings filed with the application; a deed restriction limiting the occupancy to a two-family dwelling be filed and submitted to DOB prior to the issuance of a building permit; the certificate of occupancy indicate the libre, page and date of recording of said covenant; and that all laws, rules and regulations applicable be complied with and that substantial construction be completed within one year; and

WHEREAS, on April 1, 1980, Certificate of Occupancy No. 195262 was issued for the subject premises, indicating the presence of a two-story plus basement two-family dwelling and referencing, in a section titled, “Limitations and Restrictions,” BSA Cal. No. 104-79-BZ and a deed restriction recorded on reel 1180 page 748; and

WHEREAS, DOB asserts that in 2002, a registered architect filed an Alteration Type 1 application to convert the two-family dwelling into a three-family dwelling under DOB’s Professional Certification procedure, wherein he affirmed that the application was complete and in accordance with applicable laws and avoided a full plan examination by DOB prior to the application’s approval on September 10, 2002; and

WHEREAS, the CO was subsequently issued on January 2, 2004; and

WHEREAS, upon receiving a complaint from the Buildings Special Investigations Unit, the Queens Borough Office of the DOB performed an audit in December 2014 and issued a Notice of Objections for the Alteration Type 1 application on December 19, 2014 (the “Notice of Objections”); and

WHEREAS, the Notice of Objections reports, *inter alia*, an objection to the Alteration Type I with respect to ZR § 11-62 and states:

This application increased the number of dwelling units from 2 to 3. 104-79-BZ stipulates that the number of dwelling units in this premises shall be limited to two (2). This application failed to comply with the conditions stipulated in the variance granted by 104-79-BZ and may constitute the basis for revocation of the C of O; and WHEREAS, ZR § 11-62 reads, in pertinent part: 11-62 Failure to Comply with Special Permits, Variances, Authorizations or Certifications Failure to comply with any conditions or restrictions in special permits, variances,

MINUTES

authorizations or certifications granted under this Resolution shall constitute a violation of this Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy, or for revocation of such special permit, variance, authorization or certification, and for all other applicable remedies.

[. . .]; and

WHEREAS, DOB sent an Order of the Commissioner, dated December 26, 2014, (the “December Order”) to the owner of the subject site, reporting the competition of the audit of the Alteration Type 1 application and stating:

PURSUANT TO SECTION 28-209.1 OF THE ADMINISTRATIVE CODE OF THE CITY OF NEW YORK (AC), YOU ARE HEREBY ORDERED TO FILE AN ALTERATION TYPE 1 APPLICATION, OR FILE AT THE BOARD OF STANDARDS AND APPEALS TO MODIFY ITS RESOLUTION, WITHIN THIRTY (30) DAYS FROM THE DATE OF THIS LETTER TO REMOVE OR MODIFY THIS UNLAWFUL CONDITION, AS LISTED IN THE ATTACHED NOTICE OF OBJECTIONS.

FAILURE TO COMPLY WITH THIS ORDER MAY RESULT IN THE DPEARTMENT INITIATING AN APPLICATION AT THE BOARD OF STANDARDS AND APPEALS TO REVOKE THE CERTIFICATE OF OCCUPANCY AND/OR ENFORCEMENT ACTION FOR FAILURE TO COMPLY WITH A COMMISSIONSER’S ORDER; and

WHEREAS, by letter dated April 27, 2015, (the “April Letter”) DOB informed the property owner that to date, no response to the December Order had yet been received and again warned that failure to comply with the directions of the December Order within thirty (30) days of this latest letter may result in a DOB-initiated application at the Board to revoke the CO; and

WHEREAS, DOB states that the owner of the premises subsequently replied to the December Order and April Letter by letters dated April 20, 2015, and June 5, 2015, and, in the latter letter, represented that they would seek a variance from the Board to cure the objection; and

WHEREAS, DOB filed the subject application to revoke the CO on or around May 8, 2017, by which time the owner of the premises had failed to file either an application at the Board for an amendment of the variance or an application at DOB to convert the use of the premises to a one- or two-family dwelling in accordance with BSA Cal. No. 104-79-BZ; and

WHEREAS, pursuant to §§ 1-06.4(d) and 1-10.6 of the Board’s Rules of Practice and Procedure (the “Board’s Rules”), DOB forwarded a copy of the subject application to

the owner of the subject premises via United State Postal Service certified mail on or around May 10, 2017, and submitted proof of such referral to the Board, pursuant to § 1-10.7 of the Board’s Rules; and

WHEREAS, by letter to the Board dated June 8, 2017, a legal representative for the owner communicated, in response to DOB’s filing of the subject application, that the owner of the subject premises intended to amend the variance granted under BSA Cal. No. 104-79-BZ; and

WHEREAS, by letter to the Board received on August 28, 2017, a registered architect reported that an Alteration Type 1 application had been filed on August 16, 2017, to revert the building located on the premises to a two-family dwelling, in compliance with BSA Cal. No. 104-79-BZ and requested an adjournment of the first hearing on this application, scheduled for September 26, 2017; and

WHEREAS, at the September 26, 2017, hearing, DOB stated that it had no objection to the property owner’s request that the hearing be adjourned, reported that the Alteration Type 1 application filed on August 16 was approved on September 21 and an architect, appearing on behalf of the property owner, submitted that the scope of work necessary to revert the premises to a two-family dwelling included the removal of the stove in the basement and the capping of the gas line; and

WHEREAS, on July 25, 2018, DOB issued Certificate of Occupancy No. 421539543F (the “New CO”) for the subject premises indicating its occupancy with a two-story plus basement two-family residential dwelling and an accessory one car open parking, and by letter dated August 6, 2018, DOB requests withdrawal of the subject application; and

WHEREAS, the Board noted, however, that the New CO does not refer to BSA Cal. No. 104-79-BZ or the conditions of that grant, including, but not limited to, the indication of the libre, page and date of the deed restriction/covenant limiting the occupancy of the building to a two-family dwelling on the certificate of occupancy; and

WHEREAS, accordingly, the Board orders DOB to modify the New CO to include reference to BSA Cal. No. 104-79-BZ and the conditions contained therein; and

WHEREAS, the Board was in receipt of several letters from a neighbor in opposition to the property owner’s submission that the subject premises would be reverted to a two-family dwelling, alleging that the property owner intentionally altered the deed restriction and knowingly deceived both DOB and the Board in effort to occupy the existing building as a three-family dwelling contrary to both use regulations applicable in an R5 zoning district and the Board’s variance and notes, as evidence of this duplicity, five complaints made to DOB between December 2001 and April 2014 regarding the occupancy of the subject premises by more than two families (the “Opposition”); and

MINUTES

WHEREAS, the Opposition additionally requested that the subject site be limited to occupancy by a one-family dwelling, comply with ZR § 23-462 by providing an 8-foot-wide side yard and that DOB institute severe penalties and actions against the subject property owner; and

WHEREAS, the Board notes that the Opposition, in essence, opposes the Board's grant of a variance to the premises in 1979, which is not the subject of the present application, and, further, that failure to occupy the premises as indicated on the New CO, as ordered amended herein, and mandated in the 1979 variance, particularly as a residence for more than two families, may result in enforcement actions by DOB.

Therefore, it is resolved, that the Board of Standards and Appeals grants the request for withdrawal of the subject application for revocation of Certificate of Occupancy No. 401501273, dated January 2, 2004, issued to the subject premises without prejudice and orders the New York City Department of Buildings, pursuant to New York City Charter §§ 645(b)(3)(e) and 666(6)(a) to modify Certificate of Occupancy No. 421539543F to include a reference to "variance granted to permit two-family dwelling under BSA Cal. No. 104-79-BZ (June 19, 1979)" and a reference to the libre, page and date of the covenant restricting the occupancy of the subject premises to a two-family dwelling (i.e., "deed restriction recorded July 23, 1979, at reel 1180 page 748 limits occupancy of subject premises to two-family dwelling").

Adopted by the Board of Standards and Appeals, October 23, 2018.

2018-14-A

APPLICANT – NYC Department of Buildings, for Daniel Nelson, owner,

SUBJECT – Application January 31, 2018 – Application by the NYC Department of Buildings pursuant to New York City Charter §§ 645(b)(3)(e) and 666.6(a) to request that the NYC Board of Standards and Appeals revoke the Certificate of Occupancy No. 300859122 issued on May 5, 2000. R5 zoning district

PREMISES AFFECTED – 596 East 81st Street, Block 7959, Lot 90, Borough of Brooklyn.

COMMUNITY BOARD #18BK

ACTION OF THE BOARD – Application granted.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:0

THE RESOLUTION –

WHEREAS, the certificate of occupancy issued by the Department of Buildings ("DOB") on May 5, 2000, under

Alteration Application No. 300859122 (the "Certificate of Occupancy"), reads in pertinent part:

BSMT . . . Zoning Use Group 2 . . . Ordinary Use Two (2) Family Dwelling; and

WHEREAS, this is an application under New York City Charter §§ 645(b)(3)(e) and 666(6)(a) to revoke the Certificate of Occupancy for identifying the lowest level of the subject building as a basement, for authorizing two dwelling units on such level and for failing to provide two means of egress from the front apartment; and

WHEREAS, a public hearing was held on this application on October 23, 2018, 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

BACKGROUND

WHEREAS, the subject site is located on the south side of East 81st Street, between Foster Avenue and Farragut Road, in an R5 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 28 feet of frontage along East 81st Street, 100 feet of depth, 2,825 square feet of lot area and is occupied by a two-story, with cellar, residential building; and

WHEREAS, the subject building was constructed in 1965 as a two-story, with basement, two-family residence with a certificate of occupancy (No. 191340) issued on March 29, 1965, permitting a recreation room, boiler room and storage room in the cellar and one dwelling unit on each of the first and second floors; and

WHEREAS, the plans submitted in connection with the new-building application in 1963 reflect that the subject building's lowest level is located 4 feet below curb level, 3 feet above curb level and has a total height of 7 feet; and

WHEREAS, on May 5, 1999, Alteration Application No. 300859122 was filed to convert the subject building into a four-family residence and to add an 8-foot porch at the rear of the subject building pursuant to DOB's Professional Certification procedure and was approved on May 14, 1999; and

WHEREAS, the Certificate of Occupancy was issued on May 5, 2000, and this application was filed on February 1, 2018; and

DOB's POSITION

WHEREAS, DOB states that Multiple Dwelling Law ("MDL") § 4(37) defines a cellar as follows:

A "cellar" in a dwelling is an enclosed space having more than one-half of its height below the curb level; except that where every part of the building is set back more than twenty-five feet from a street line, the height shall be measured from the adjoining grade elevations calculated

MINUTES

from final grade elevations taken at intervals of ten feet around the exterior walls of the building. A cellar shall not be counted as a story; and

WHEREAS, DOB states that the original new-building plans from 1963 and inspection reports show that the lowest level of the subject building is an enclosed space with more than one half of its height below curb level; and

WHEREAS, DOB states that the lowest level of the subject building is a cellar under the Multiple Dwelling Law; and

WHEREAS, there is no indication that any application was filed to convert said cellar to a basement; and

WHEREAS, DOB states that the Certificate of Occupancy erroneously identifies the lowest level of the subject building as a basement instead of a cellar; and

WHEREAS, DOB states that, as a cellar, the lowest level may not be occupied for any purpose other than household storage and mechanical equipment or appliances; and

WHEREAS, DOB states that MDL § 170-a provides the following:

[A] dwelling, other than a frame dwelling, three stories or less in height erected after April eighteenth, nineteen hundred twenty-nine as a one or two-family dwelling may be converted to a multiple dwelling to be occupied by not more than three families in all, with a maximum occupancy of two families on each floor in a two story building and one family on each floor in a three story building, provided however that all the provisions of this article are complied with and provided further that . . . 6. The cellar shall not be used for any purpose other than household storage and mechanical equipment or appliances, and the cellar ceiling shall be fire-retarded; and

WHEREAS, DOB states that, because the Certificate of Occupancy authorizes the lowest level—a cellar—to be occupied as two dwelling units, the CO was issued contrary to MDL § 170-a(6); and

WHEREAS, DOB states that, because the Certificate of Occupancy authorizes a four-family occupancy, it is also in further violation of MDL § 170-a, which permits no more than three families to occupy a converted dwelling of three stories or less in height; and

WHEREAS, DOB states that, under MDL § 146, “[t]here shall be at least two means of egress from every apartment or suite. Such means shall be remote from each other”; and

WHEREAS, DOB states that, according to the plans filed with DOB, the front apartment in the cellar of the subject building does not have the required second means of egress; and

WHEREAS, accordingly, DOB states that the

Certificate of Occupancy is in violation of law and requests that it be revoked; and

OWNER’S POSITION

WHEREAS, the owner of the subject site has not appeared in this proceeding; and

WHEREAS, DOB represents that a process server made several attempts to serve the owner with DOB’s submissions at the subject address; and

WHEREAS, in April 2018, DOB sent the owner a notice of this application by certified mail, return receipt requested, to the subject address, though there was no confirmation of receipt; and

WHEREAS, in August and October 2018, the Board sent the owner notices of this application by certified mail and by regular mail to the subject address as well as other potential addresses listed in the records of the New York City Department of Finance; and

WHEREAS, accordingly, DOB represents—and the record reflects—that said owner has been “give[n] due notice” of this application, consistent with New York City Charter § 669 as well as the Board’s Rules of Practice and Procedure §§ 1-06.4(a)(1) and 1-06.5(a)(1); and

DISCUSSION

WHEREAS, under New York City Charter § 666(6), the Board is empowered “[t]o hear and decide appeals from and review . . . any order, requirement, decision or determination of” DOB in connection with the Multiple Dwelling Law, “by reversing or affirming in whole or in part, or modifying the order, regulation, decision or determination appealed from, and to make such order, requirement, decision or determination as in its opinion ought to be made in the premises”; and

WHEREAS, the Board credits DOB’s evaluation of the evidence in the record, including the designation of the lowest level of the subject building as a cellar under MDL § 4(37); and

WHEREAS, the Board also notes that photographs in the record corroborate the measurements indicated on the new-building drawings from 1963; and

WHEREAS, the Board finds that the Certificate of Occupancy is, accordingly, in violation of MDL §§ 4(37), 170-a and 146; and

WHEREAS, based upon its review of the record, the Board finds that the Certificate of Occupancy was invalidly issued and that DOB has substantiated a basis to warrant exercise of discretion.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *revoke* the certificate of occupancy issued by the Department of Buildings on May 5, 2000, under Alteration Application No. 300859122.

Adopted by the Board of Standards and Appeals, October 23, 2018.

MINUTES

2017-68-A thru 2017-96-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Joline Estates, LLC, owner.

SUBJECT – Applications March 27, 2017 – Proposed construction of twenty-nine (29) two-family residences, not fronting on a legally mapped street, contrary to General City Law 36. R3-X (SRD) zoning district.

PREMISES AFFECTED – 7 to 49 Torrice Loop and 11 to 16 Frosinone Lane, Block 7577, Various Lots, Borough of Staten Island.

COMMUNITY BOARD #3SI

THE VOTE TO CLOSE HEARING –

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

ACTION OF THE BOARD – Laid over to November 8, 2018, at 10 A.M. for decision, hearing closed.

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 44th Street, Block 702, Lot 56, Borough of Queens.

COMMUNITY BOARD #1Q

ACTION OF THE BOARD – Laid over to January 8, 2019, at 10 A.M., for continued hearing.

2018-63-A

APPLICANT – Fried Frank, LLP, for 25-30 Columbia Heights (Brooklyn), LLC, owner.

SUBJECT – Application May 1, 2018 – Interpretative Appeal of a final determination of the New York City Department of Buildings, set forth in the ZRD1 denial dated April 2, 2018 (Control No. 46921), denying a request for confirmation that existing signs are non-conforming and may be continued as accessory signs, with changes to subject matter, structural alterations, reconstruction, and replacement permitted pursuant to Article V, Chapter 2 of the New York City Zoning Resolution. M2-1 zoning district.

PREMISES AFFECTED – 30 Columbia Heights, Block 208, Lot 2, Borough of Brooklyn.

COMMUNITY BOARD #2BK

THE VOTE TO CLOSE HEARING –

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

ACTION OF THE BOARD – Laid over to November 8, 2018, at 10 A.M. for decision, hearing closed.

ZONING CALENDAR

196-15-BZ

CEQR #16-BSA-021M

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 – Application granted on condition.

THE VOTE TO GRANT –

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

THE RESOLUTION –

WHEREAS, the decision on behalf of the Manhattan Borough Commissioner, dated August 11, 2015, acting on Department of Buildings (“DOB”) Application No. 122269829, reads in pertinent part:

ZR 73-36: Provide BSA approval for physical cultural establishment. Proposed change of use to a physical cultural 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 site located within a C6-2 zoning district and the NoHo Historic District, a physical culture establishment (“PCE”) on a portion of the first floor of an existing 12-story mixed-use commercial and residential building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on November 14, 2017, after due notice by publication in *The City Record*, with continued hearings on May 1, 2018, August 7, 2018, and October 23, 2018, and then to decision on that same date; and

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

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

WHEREAS, the subject site is bound by Mercer Street

MINUTES

to the west, Broadway to the east, West 4th Street to the north and West 3rd Street to the south, within a C6-2 zoning district and the NoHo Historic District, in Manhattan; and

WHEREAS, the site has approximately 209 feet of frontage along Mercer Street and Broadway, 200 feet along West 4th Street and West 3rd Street, 41,800 square feet of lot area, and is occupied by a 16-story mixed use commercial and residential building that has been designated by the New York Landmarks Preservation Commission as an individual landmark; 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, the Board notes that, because no portion of the subject PCE is represented as being 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 applicant submitted evidence that the subject PCE occupies 3,595 square feet of floor area on the first floor; and

WHEREAS, the applicant represents that the PCE has been in operation since October 16, 2015, as Haven Spa, with the following hours of operation: Monday, 12:00 p.m. to 7:00 p.m.; Tuesday, 11:00 a.m. to 7:00 p.m.; Wednesday and Thursday, 10:30 a.m. to 8:30 p.m.; Friday, 10:00 a.m. to 8:00 p.m.; Saturday, 10:00 a.m. to 7:00 p.m.; and Sunday, 10:00 a.m. to 6:00 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 the PCE will maintain the historic character and unique architectural character of the neighborhood; also, while it is located in a district that is residential in character, it is anticipated that the residents of the area will use the PCE space to receive spa treatments, manicures, pedicures, cosmetic and hair treatments; 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 represents that the PCE contains facilities for the provision of massage therapy and

MINUTES

cosmetic treatments and the applicant has submitted licenses for the subject PCE's New York State-licensed massage therapists, estheticians, cosmetologists and nail specialists; and

WHEREAS, accordingly, 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 submits that an approved interior fire alarm system – including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms, and a connection of the interior fire alarm system to an FDNY-approved central station – shall be installed within the PCE space, which is already equipped with a sprinkler system; and

WHEREAS, by letter dated October 6, 2018, the Fire Department confirms that agency records indicate that the subject premises have a combination standpipe sprinkler system, though the permit for such system has expired, the premises' owners have scheduled a hydrostatic pressure and flow test and the Fire Department has no additional comments or recommendations relative to this application; and

WHEREAS, the applicant represents that the PCE will not impact the privacy, quiet, light and air of the neighborhood on account of its historic presence in the area and suggests that its clientele enjoy receiving spa services in an area close in proximity to their residences and businesses; 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, 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 in which the PCE has operated at the premises without a 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-021M, dated August 24, 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 within a C6-2 zoning district and the NoHo Historic District, a physical culture establishment on a portion of the first floor of an existing 16-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 "March 17, 2017"—Three (3) sheets; and *on further condition*:

THAT the term of the PCE grant shall expire on October 16, 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 services provided to which licensure by New York State is required (including, but not limited to, massage therapy, esthetics, cosmetology and nail services) shall be performed by individuals licensed by New York State to provide such respective service;

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

THAT the existing sprinkler system shall be maintained as indicated on the Board-approved plans;

THAT an approved fire alarm system—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, shall be installed within the 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 a Certificate of Occupancy shall be obtained within one year, by October 23, 2019;

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, October 23, 2018.

MINUTES

2016-4347-BZ

CEQR #17-BSA-048K

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

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated November 22, 2016, acting on Alteration Application No. 320613724, reads in pertinent part:

1. ZR 23-142(b) Proposed FAR exceeds maximum permitted
2. ZR 23-142 Proposed lot coverage (%) exceeds the maximum permitted
3. ZR 23-142 Proposed open space is less than the minimum required
4. ZR 23-48 The proposed vertical enlargement of the existing building with non complying side yards . . . does not provide the min of 5’ side yards
5. ZR 23-47 The proposed horizontal enlargement does not provide the minimum rear yard; 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 zoning regulations for floor area, lot coverage, open space, side yards and rear yards, contrary to ZR §§ 23-142, 23-48 and 23-47; and

WHEREAS, a public hearing was held on this application on January 23, 2018, after due notice by publication in *The City Record*, with continued hearings on April 17, 2018, June 19, 2018, August 14, 2018, and then to decision on October 23, 2018; 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, stating that the proposed building is a minimal request and fits within

applicable flood regulations; and

WHEREAS, the subject site is located on the north side of Oriental Boulevard, between Norfolk Street and Oxford Street, in an R3-1 zoning district, in Brooklyn; and

WHEREAS, the subject site has approximately 25 feet of frontage along Oriental Boulevard, 100 feet of depth, 2,500 square feet of lot area and is occupied by an existing 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

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- (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, in response to questions from the Board at hearing about the retention of existing building material, the applicant revised the drawings to reflect that adequate amounts of exterior walls will be retained at the exterior of the subject building and that adequate amounts of floor joists will be retained; and

WHEREAS, the applicant proposes to enlarge the existing residence from 1,522 square feet of floor area (0.62 FAR) to 2,147 square feet of floor area (0.89 FAR), increase lot coverage from 40 percent to 46 percent, decrease open space from 60 percent to 54 percent, maintain side yards with depths of 1'-2" to the west and 4'-8" to the east and reduce the rear yard to a depth of 20 feet; and

WHEREAS, the applicant states that, at the subject site, floor area may not exceed 1,500 square feet (0.60 FAR) under ZR § 23-142, lot coverage may not exceed 35 percent under ZR § 23-142, open space must be at least 65 percent under ZR § 23-142, side yards must have minimum depths of 5 feet under ZR § 23-48 and rear yards must have minimum depths of 30 feet under ZR § 23-47; and

WHEREAS, the applicant represents that the proposed

building as enlarged is consistent with the built character of the neighborhood; and

WHEREAS, in support of this contention, the applicant surveyed single- and two-family residences in the surrounding area, finding that there are 23 residences with more than 0.88 FAR, 22 residences with lot coverage in excess of 47 percent and 18 residences on the subject block with rear yards with depths less than 20 feet; and

WHEREAS, the applicant also submitted a height study, a side yard diagram, a photographic streetscape montage, and a photographic neighborhood study demonstrating that the proposed building will fit in with the built conditions of the surrounding area; and

WHEREAS, based upon its review of the record and inspections of the subject site and surrounding neighborhood, the Board finds that the proposed building as enlarged will not alter the essential character of the neighborhood or district in which the subject building is located, nor impair the future use or development of the surrounding area; and

WHEREAS, by correspondence dated August 31, 2018, DOB states that it has no objection to the proposed building with respect to applicable flood regulations on condition that the number of flood vents required and provided be verified with nine flood vents to the exterior required but only eight shown on the drawings; that plumbing systems and components, including all plumbing fixtures, be located at or above the Design Flood Elevation and, where plumbing systems and components have openings below the Design Flood Elevation, the openings be protected with automatic backwater valves in accordance with ASCE 24; and that, in order to verify the average curb level height under ZR § 64-131, a certified survey be provided; 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 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. 17BSA048K, dated December 2, 2016; and

WHEREAS, the Board finds that the evidence in the record supports the findings required to be made under ZR §§ 73-622 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion.

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)

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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 R3-1 zoning district, the enlargement of an existing single-family detached residence that does not comply with zoning regulations for floor area, lot coverage, open space, side yards and rear yards, contrary to ZR §§ 23-142, 23-48 and 23-47; *on condition* that all work and site conditions shall conform to drawings filed with this application marked “Received October 4, 2018”-Fifteen (15) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: there shall be a maximum of 2,147 square feet of floor area (0.89 FAR), lot coverage shall not exceed 46 percent, open space shall be a minimum of 54 percent, side yards shall have minimum depths of 1’-2” to the west and 4’-8” to the east and the rear yard shall have a minimum depth of 20 feet, as illustrated on the Board-approved plans;

THAT removal of existing joists or perimeter walls in excess of that shown on the Board-approved drawings shall void the special permit;

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 23, 2022;

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 23, 2018.

2017-191-BZ

APPLICANT – Sheldon Lobel, P.C., for EMPSRGGREENE, LLC, owner.

SUBJECT – Application May 25, 2017 – 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).

PREMISES AFFECTED – 47 Greene Street, Block 475, Lot 50, Borough of Manhattan.

COMMUNITY BOARD #2M

ACTION OF THE BOARD – Application withdrawn without prejudice.

THE VOTE TO WITHDRAW –

Affirmative: Chair Perlmutter, Vice-Chair Chanda,

Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5
Negative:0

Adopted by the Board of Standards and Appeals, October 23, 2018.

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 19th Avenue, Block 5457, Lot 166, Borough of Brooklyn.

COMMUNITY BOARD #12BK

ACTION OF THE BOARD – Laid over to February 26, 2019, at 10 A.M., for adjourned hearing.

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

ACTION OF THE BOARD – Laid over to March 19, 2019, at 10 A.M., for adjourned hearing.

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**REGULAR MEETING
TUESDAY AFTERNOON, OCTOBER 23, 2018
1:00 P.M.**

Present: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.

**2017-303-BZ
CEQR #18-BSA-063R**

APPLICANT – Rothkrug Rothkrug & Spector, LLP, for Mayfield Group LLC, owner.

SUBJECT – Application November 20, 2017 – 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.

PREMISES AFFECTED – 1281 Forest Avenue, Block 1042, Lot 13, 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, Commissioner Sheta and Commissioner Scibetta.....5

Negative:0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated October 20, 2017, acting on New Building Application No. 520313535, reads in pertinent part:

“Proposed commercial required on site parking spaces in the R3-1 residential portion of zoning lot is contrary to ZR 22-10”; and

WHEREAS, this is an application under ZR §§ 73-52 and 73-03 to permit, on a site partially in an R3-1 zoning district and partially in an R3-2 (C2-1) zoning district, a commercial use to extend into the remaining portion of the subject site, contrary to ZR § 22-10; and

WHEREAS, a public hearing was held on this application on October 23, 2018, after due notice by publication in *The City Record*, and then to decision on the same date; and

WHEREAS, Commissioner Scibetta performed an inspection of the 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 north side of Forest Avenue, between Hamlin Place and Jewett Avenue, on a site partially in an R3-1 zoning district and partially in an R3-2 (C2-1) zoning district, in Staten Island; and

WHEREAS, the subject site has approximately 86 feet of frontage along Forest Avenue, between 228 feet and 163 feet of depth, 18,521 square feet of lot area and is vacant; and

WHEREAS, ZR § 73-52 provides:

Whenever a *zoning lot* existing in single ownership on December 15, 1961, or on the effective date of any applicable subsequent amendment to the *zoning maps* is divided by a boundary between two or more districts in which different *uses* are permitted, the Board of Standards and Appeals may permit a *use* which is a permitted *use* 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 a permitted *use*, provided that the following findings are made:

- (a) that, 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
- (b) that such extension will not cause impairment of the essential character or the future use or development of the surrounding area.

Where such an extension of a *use* is permitted, the Board may permit the *bulk*, off-street parking and loading, and all other regulations of the district in which more than 50 percent of the *lot area* of the *zoning lot* is located, to apply for the distance, not exceeding 25 feet, that such *use* is permitted to *extend* into the remaining portion of the *zoning lot*. Any portion of the *zoning lot* beyond such distance shall be subject to all the regulations of the district in which it is located, and shall not be counted as *lot area* for a *building or other structure*, or portion thereof, used for such *extended use*.

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

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the subject site is divided by a boundary between two or more districts in which different uses are permitted; and

WHEREAS, the applicant proposes to develop the portion of the subject site located in an R3-2 (C2-1) zoning district with a one-story commercial building for use as an eating and drinking establishment (Use Group 6) with 14 accessory parking spaces, 8 of which are proposed to be located within portion of the site in an R3-1 zoning district; and

WHEREAS, the applicant represents that, in R3-1 zoning districts, commercial uses are not permitted under ZR § 22-10; and

WHEREAS, the applicant states that, without the proposed extension, it would not be economically feasible to develop the remaining portion of the subject site with a permitted use because the remaining portion of the subject site would be an irregular interior parcel, approximately 3,000 square feet in area, that would only have access to the street through the commercial portion of the subject site and because development fronting on Forest Avenue in the vicinity is entirely commercial; and

WHEREAS, the applicant further represents that, in an R3-1 zoning district, the minimum lot area for residential development is 3,800 square feet, which exceeds the 3,000 square feet of the subject site located in an R3-1 zoning district; and

WHEREAS, accordingly, the Board finds that, without the proposed extension, it would not be economically feasible to use or develop the remaining portion of the subject site for a permitted use; and

WHEREAS, the applicant states that the proposed extension would not impair the character or future use or development of the surrounding area because the extension would allow for accessory parking spaces for the proposed commercial building and would not affect the light or air of surrounding lots; and

WHEREAS, the applicant states that lots to the east and west of the subject site contain commercial uses, similar to the proposed use, and the only adjacent residence has a residential building fronting in a different direction that with approximately 90 feet of space from the proposed accessory parking; and

WHEREAS, the applicant notes that screening and planting are proposed for the northern portion of the subject site to ensure adequate separation from said residential use; and

WHEREAS, accordingly, 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 modification of use,

parking or bulk regulations at the subject site 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 use, parking or bulk regulations will not interfere with any pending public improvement project; 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. 18BSA063R, submitted on June 2, 2018; and

WHEREAS, the Board finds that the evidence in the record supports the findings required to be made under ZR §§ 73-52 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion.

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 §§ 73-52 and 73-03 to *permit*, on a site partially in an R3-1 zoning district and partially in an R3-2 (C2-1) zoning district, a commercial use to extend into the remaining portion of the subject site, contrary to ZR § 22-10; *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked "Received November 20, 2017"-Four (4) sheets; and *on further condition*:

THAT a certificate of occupancy shall be obtained within four (4) years, by October 23, 2022;

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 23, 2018.

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2018-157-BZ

CEQR #19-BSA-041R

APPLICANT – NYC Mayor’s Office of Housing Recovery Operation.

SUBJECT – Application October 15, 2018 – Special Permit (§64-92) to waive bulk requirements for the reconstruction of homes damaged/destroyed by Hurricane Sandy for a property registered in the NYC Build it Back Program. Waiver of minimum required side yards (ZR §§23-461(a) and 64-A352). R3X ZD

PREMISES AFFECTED – 59 Andrews Street, Block 3410, Lot 70, Borough of Staten Island.

COMMUNITY BOARD #5SI

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....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 legalize, on a site within an R3X zoning district, the elevation of a single-family detached home in compliance with flood-resistant construction standards that does not comply with the zoning requirement for side yards contrary to ZR § 64-A352(a); and

WHEREAS, a public hearing was held on this application on October 23, 2018, 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 Andrews Street, between Olympia Boulevard and Quincy Avenue, in an R3X zoning district, on Staten Island; and

WHEREAS, the site has approximately 20 feet of

frontage along Andrews Street, 125 feet of depth, 2,500 square feet of lot area, and is occupied by a single-family detached residence; 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, the applicant now seeks a special permit, pursuant to ZR § 64-92 to legalize the elevation of the single-family residence to a total height of 16 feet from flood resistant construction elevation (“FRCE”), where Department of Buildings (“DOB”) previously approved a building height of 14.8 feet from FRCE, which increases the degree of non-compliance of the existing side yards; and

WHEREAS, specifically, the subject site has a 1.7 foot side yard and a 2.8 foot side yard, measuring a total of 4.5 feet of side yards, but, at the subject site, two side yards, each with a minimum width of 3 feet and a minimum combined

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width of 6 feet are required pursuant to ZR § 64-A352(a); and

WHEREAS, in accordance with ZR § 64-92(a), the applicant submits that the composition of the existing residence on the lot creates practical difficulties in complying with flood-resistant construction standards without the modification of requirements for side yards and that waivers of the same are the minimum necessary to allow for a building compliant with flood-resistant construction standards; and

WHEREAS, 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 residences and that the subject site is consistent with its essential character; and

WHEREAS, accordingly, the Board has reviewed the proposal and determined that the subject application 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. 19BSA041R, dated October 15, 2018; 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 legalize, on a site within an R3X 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 side yards contrary to ZR § 64-A352(a); *on condition* that all work shall substantially conform to the drawings filed with this application and marked "Received October 15, 2018" -Seven (7) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: side yards with minimum widths of 1.7 feet and 2.8 feet, and a minimum combined total side yard width of 4.5 feet, 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 the building is exempt from such requirement;

THAT the building shall be provided with interconnected smoke and carbon monoxide alarms, designed 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 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 authorized use and/or bulk shall be signed off by DOB and all other relevant agencies within four (4) years;

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 23, 2018.

2018-158-BZ

CEQR #19-BSA-042Q

APPLICANT – NYC Mayor's Office of Housing Recovery Operation.

SUBJECT – Application October 15, 2018 – Special Permit (§64-92) to waive bulk requirements for the reconstruction of homes damaged/destroyed by Hurricane Sandy for a property registered in the NYC Build it Back Program. Waiver of minimum required side yards (ZR §§23-461(a) and 64-A352). R3A/Special Coastal Risk District ZD.

PREMISES AFFECTED – 622 Cross Bay Boulevard, Block 15451, Lot 1, 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 Sheta and Commissioner Scibetta.....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 legalize, on a site within an R3A zoning district and the Special Coastal Risk District, the

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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 building height, contrary to ZR §§ 23-45, 64-A351 and 64-A36; and

WHEREAS, a public hearing was held on this application on October 23, 2018, 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 northeast corner of Cross Bay Boulevard and East 7th Road, in an R3A zoning district and the Special Coastal Risk District, in Queens; and

WHEREAS, the site has approximately 23 feet of frontage along Cross Bay Boulevard, 95 feet of frontage along East 7th Road, 2,524 square feet of lot area, and is occupied by a single-family detached residence and detached wood shed in the rear; and

WHEREAS, the Board has exercised jurisdiction over the subject site since March 8, 2016, when, under BSA Cal. No. 2016-3277-A, the Board granted a waiver of General City Law § 35 and also bulk regulations associated with the presence of the mapped but unbuilt street pursuant to ZR § 72-01(g) on condition that the proposed elevation or reconstruction comply with all applicable zoning district requirements; that all other applicable laws, rules and regulations be complied with; and on further condition that no building or other structure 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; 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; if a proposed building or 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; 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; all buildings and other structures, including exterior stairs, be set back at least 5 feet from the front lot line of the property; 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 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 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, 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 feet; the approval be limited to the Build it Back program; the approval be 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, the waiver be void as unnecessary; 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; DOB 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 DOB 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; and

WHEREAS, ZR § 64-92 provides:

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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, the applicant now seeks a special permit, pursuant to ZR § 64-92 to legalize the elevation of the single-family residence to a height of 25.3 feet from flood resistant construction elevation ("FRCE") and a perimeter wall height of 21.3 feet from FRCE, where Department of Buildings ("DOB") previously approved a building height of 24.6 feet from FRCE and a perimeter wall height of 19 feet, which creates a non-compliance with regards to height and increases the degree to which the existing front yards at the subject site do not comply with underlying bulk regulations; and

WHEREAS, specifically, the subject site has a 4.8 foot front yard at Cross Bay Boulevard, a 1 foot front yard at East 7th Road, but, at the subject site, a front yard of at least 10 feet is required pursuant to ZR §§ 23-45 and 64-A351; and

WHEREAS, additionally, a maximum perimeter wall

height of 19 feet and a maximum building height of 25 feet from FRCE is permitted pursuant to ZR § 64-A36; and

WHEREAS, in accordance with ZR § 64-92(a), the applicant submits that the composition of the existing residence on the lot creates practical difficulties in complying with flood-resistant construction standards without the modification of requirements for front yards and height and that waivers of the same are the minimum necessary to allow for a building compliant with flood-resistant construction standards; and

WHEREAS, pursuant to ZR § 64-92(b), the subject proposal does request a modification of bulk regulations related to height, but such request is to permit a height that exceeds the maximum permitted by 0.3 feet, which is both less than 10 feet in height and less than 10 percent of the permitted height as measured from FRCE (2.5 feet); 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 residences, most of which are detached homes, and that the subject site is consistent with and contributes to the improvement of the essential character of the neighborhood; and

WHEREAS, accordingly, the Board has reviewed the proposal and determined that the subject application 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. 19BSA042Q, dated October 15, 2018; 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 legalize, on a site within an R3A zoning district and the Special Coastal Risk 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 and building height, contrary to ZR §§ 23-45, 64-A351, and 64-A36; *on condition* that all work shall substantially conform to the drawings filed with this application and marked "Received October 15, 2018"- Three (3) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: a front yard with a minimum depth of 4.8 feet at Cross Bay Boulevard, a front yard with a minimum depth of

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1 foot at East 7th Road, a maximum perimeter wall height of 21.3 feet above flood-resistant construction elevation, and a maximum building height of 25.3 feet above flood-resistant construction elevation, 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 the building is exempt from such requirement;

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 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 authorized use and/or bulk shall be signed off by DOB and all other relevant agencies within four (4) years;

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

THAT all conditions from prior resolutions not 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 the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 23, 2018.

2018-159-BZ

CEQR #19-BSA-043Q

APPLICANT – NYC Mayor’s Office of Housing Recovery Operation.

SUBJECT – Application October 15, 2018 – Special Permit (§64-92) to waive bulk requirements for the reconstruction of homes damaged/destroyed by Hurricane Sandy for a property registered in the NYC Build it Back Program. Waiver of minimum required side yards (ZR §§23-461(a) and 64-A352). R3A/Special Coastal Risk District ZD.

PREMISES AFFECTED – 110 East 8th Road, Block 15462, 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 Sheta and Commissioner Scibetta.....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 legalize, on a site within an R3A zoning district and the Special Coastal Risk District, the elevation and rehabilitation of a single-family detached home in compliance with flood-resistant construction standards that does not comply with the zoning requirement for building height, contrary to ZR § 64-A36; and

WHEREAS, a public hearing was held on this application on October 23, 2018, 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 East 8th Road, between Church Road and Walton Road, in an R3A zoning district and the Special Coastal Risk District, in Queens; and

WHEREAS, the site has approximately 75 feet of frontage along East 8th Road, 110 feet of depth, 8,250 square feet of lot area, and is occupied by a single-family detached residence and detached wood shed in the rear; and

WHEREAS, the Board has exercised jurisdiction over the subject site since March 8, 2016, when, under BSA Cal. No. 2016-3349-A, the Board granted a waiver of General City Law § 35 as well as bulk regulations associated with the presence of the mapped but unbuilt street pursuant to ZR § 72-01(g) on condition that the proposed elevation or reconstruction comply with all applicable zoning district requirements; that all other applicable laws, rules and regulations be complied with; and on further condition that no building or other structure be constructed over an existing

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DEP-managed water or sewer main, as confirmed by a survey prepared by a New York State licensed land surveyor; 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; if a proposed building or 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; 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; all buildings and other structures, including exterior stairs, be set back at least 5 feet from the front lot line of the property; 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 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 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, 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 feet; the approval be limited to the Build it Back program; the approval be 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, the waiver be void as unnecessary; 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; DOB 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 DOB 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; 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, the applicant now seeks a special permit, pursuant to ZR § 64-92 to legalize the elevation of the single-family residence to a height of 25.6 feet from flood resistant construction elevation ("FRCE") and a perimeter wall height of 20.6 feet, where Department of Buildings ("DOB") previously approved a building height of 23.8 feet from FRCE, which creates a non-compliance with regards to

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height regulations; and

WHEREAS, a maximum perimeter wall height of 19 feet and a maximum building height of 25 feet from FRCE is permitted pursuant to ZR § 64-A36; and

WHEREAS, in accordance with ZR § 64-92(a), the applicant submits that the composition of the existing residence on the lot creates practical difficulties in complying with flood-resistant construction standards without the modification of requirements for height and that waivers of the same are the minimum necessary to allow for a building compliant with flood-resistant construction standards; and

WHEREAS, pursuant to ZR § 64-92(b), the subject proposal does request a modification of bulk regulations related to height, but such request is to permit a height that exceeds the maximum permitted by 0.6 feet, which is both less than 10 feet in height and less than 10 percent of the permitted height as measured from FRCE (2.5 feet); 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 residences, most of which are detached homes, and that the subject site is consistent with and contributes to the improvement of the essential character of the neighborhood; and

WHEREAS, accordingly, the Board has reviewed the proposal and determined that the subject application 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. 19BSA043Q, dated October 15, 2018; 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 legalize, on a site within an R3A zoning district and the Special Coastal Risk 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 building height, contrary to ZR § 64-A36; *on condition* that all work shall substantially conform to the drawings filed with this application and marked "Received October 15, 2018"- Five (5) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: a maximum perimeter wall height of 20.6 feet above flood-resistant construction elevation, and a maximum

building height of 25.6 feet above flood-resistant construction elevation, 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 the building is exempt from such requirement;

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 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 authorized use and/or bulk shall be signed off by DOB and all other relevant agencies within four (4) years;

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

THAT all conditions from prior resolutions not 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 the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 23, 2018.

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2018-160-BZ

CEQR #19-BSA-044Q

APPLICANT – NYC Mayor’s Office of Housing Recovery Operation.

SUBJECT – Application October 15, 2018 – Special Permit (§64-92) to waive bulk requirements for the reconstruction of homes damaged/destroyed by Hurricane Sandy for a property registered in the NYC Build it Back Program. Waiver of minimum required side yards (ZR §§23-461(a) and 64-A352). R4 ZD.

PREMISES AFFECTED – 33 Roosevelt Walk, Block 16350, Lot 400, 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 Sheta and Commissioner Scibetta.....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 legalize, on a site within an R4 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 and rear yards contrary to ZR §§ 23-45 and 23-47, respectively; and

WHEREAS, a public hearing was held on this application on October 23, 2018, 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 Roosevelt Walk, south of 6th Avenue/West End Avenue, in an R4 zoning district, in Queens; and

WHEREAS, the site has approximately 38 feet of frontage along Roosevelt Walk, 71 feet of depth, 2,665 square feet of lot area, and is occupied by a single-family detached residence; 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, the applicant now seeks a special permit, pursuant to ZR § 64-92 to legalize the elevation of the single-family residence to a total height of 20 feet 6 inches from flood resistant construction elevation (“FRCE”), where Department of Buildings (“DOB”) previously approved a building height of 19 feet 8 inches from FRCE, which results in an increase in the degree to which the existing front yard and rear yard at the subject site do not comply with underlying bulk regulations; and

WHEREAS, specifically, the subject site has a 14 foot

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10 inch front yard and a 12 foot 8 inch rear yard, but, at the subject site, a minimum front yard depth of 18 feet, and a minimum rear yard depth of 30 feet, are required pursuant to ZR §§ 23-45 and 23-47, respectively; and

WHEREAS, in accordance with ZR § 64-92(a), the applicant submits that the composition of the existing residence on the lot creates practical difficulties in complying with flood-resistant construction standards without the modification of requirements for front yards and rear yards and that waivers of the same are the minimum necessary to allow for a building compliant with flood-resistant construction standards; and

WHEREAS, 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 residences, most of which are detached homes, and that the subject site is consistent with and contributes to the improvement of the essential character of the neighborhood; and

WHEREAS, accordingly, the Board has reviewed the proposal and determined that the subject application 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. 19BSA044Q, dated October 15, 2018; 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 legalize, on a site within an R4 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 and rear yards contrary to ZR §§ 23-45 and 23-47; *on condition* that all work shall substantially conform to the drawings filed with this application and marked "Received October 15, 2018"- Seven (7) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: a minimum front yard depth of 14 feet 10 inches, and a minimum rear yard depth of 12 feet 8 inches, 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 the building is exempt from such requirement;

THAT the building shall be provided with interconnected smoke and carbon monoxide alarms, designed in accordance with Section 907.2.11 of 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 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 authorized use and/or bulk shall be signed off by DOB and all other relevant agencies within four (4) years;

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 23, 2018.

2018-161-BZ

CEQR #19-BSA-045Q

APPLICANT – NYC Mayor's Office of Housing Recovery Operation.

SUBJECT – Application October 15, 2018 – Special Permit (§64-92) to waive bulk requirements for the reconstruction of homes damaged/destroyed by Hurricane Sandy for a property registered in the NYC Build it Back Program. Waiver of minimum required side yards (ZR §§23-461(a) and 64-A352). R4 ZD.

PREMISES AFFECTED – 30 Roosevelt Walk, Block 16350, Lot 300, 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 Sheta and Commissioner Scibetta.....5

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 legalize, on a site within an R4 zoning district, the elevation of a single-family detached home in compliance with flood-resistant construction standards that does not comply with the zoning requirement for front yards contrary to ZR § 23-45; and

WHEREAS, a public hearing was held on this application on October 23, 2018, 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 Roosevelt Walk, south of 6th Avenue/West End Avenue, in an R4 zoning district, in Queens; and

WHEREAS, the site has approximately 38 feet of frontage along Roosevelt Walk, 85 feet of depth, 3,194 square feet of lot area, and is occupied by a single-family detached residence with a detached frame shed in the rear; 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, the applicant now seeks a special permit, pursuant to ZR § 64-92 to legalize the elevation of the single-family residence to a total height of 23.3 feet from flood resistant construction elevation ("FRCE"), where Department of Buildings ("DOB") previously approved a building height of 22.4 feet from FRCE, which increases the degree of non-compliance of a front yard at the subject site; and

WHEREAS, specifically, the subject site has 14.7 feet of front yard depth at Roosevelt Walk, but, at the subject site, a minimum front yard depth of 18 feet is required pursuant to ZR § 23-45; and

WHEREAS, in accordance with ZR § 64-92(a), the applicant submits that the composition of the existing residence on the lot creates practical difficulties in complying with flood-resistant construction standards without the modification of requirements for front yards and that waivers of the same are the minimum necessary to allow for a building compliant with flood-resistant construction standards; and

WHEREAS, 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 residences, most of which are detached homes, and that the subject site is

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consistent with and contributes to the improvement of the essential character of the neighborhood; and

WHEREAS, accordingly, the Board has reviewed the proposal and determined that the subject application 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. 19BSA045Q, dated October 15, 2018; 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 legalize, on a site within an R4 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 contrary to ZR § 23-45; *on condition* that all work shall substantially conform to the drawings filed with this application and marked “Received October 15, 2018”-Seven (7) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: a minimum front yard depth of 14.7 feet on Roosevelt Walk, 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 the building is exempt from such requirement;

THAT the building shall be provided with interconnected smoke and carbon monoxide alarms, designed in accordance with Section 907.2.11 of 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 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 authorized use and/or bulk shall be signed off by DOB and all other relevant agencies within four (4) years;

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 23, 2018.

2018-162-BZ CEQR #19-BSA-046Q

APPLICANT – NYC Mayor’s Office of Housing Recovery Operation.

SUBJECT – Application October 15, 2018 – Special Permit (§64-92) to waive bulk requirements for the reconstruction of homes damaged/destroyed by Hurricane Sandy for a property registered in the NYC Build it Back Program. Waiver of minimum required side yards (ZR §§23-461(a) and 64-A352). R4 ZD.

PREMISES AFFECTED – 70 Bedford Avenue, Block 16350, Lot 300, 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 Sheta and Commissioner Scibetta.....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 legalize, on a site within an R4 zoning district, the elevation of and reconstruction of a portion 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 contrary to ZR §§ 23-45 and 23-461(a), respectively; and

WHEREAS, a public hearing was held on this application on October 23, 2018, 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

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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 a through-lot located on the west side of Bedford Avenue, between West Market Street (12th Avenue) and Bayside, in an R4 zoning district, in Queens; and

WHEREAS, the site has approximately 28 feet of frontage along both Bedford Avenue and Beach 204th Street, 103 feet of depth, 2,884 square feet of lot area and is occupied by a single-family detached residence with a detached shed in the rear; 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, the applicant now seeks a special permit, pursuant to ZR § 64-92 to legalize the elevation of the single-family residence to a total height of 25.5 feet from flood

resistant construction elevation ("FRCE"), where Department of Buildings ("DOB") previously approved a building height of 24.6 feet from FRCE, and rehabilitation of the subject residence with regard to the demolition and replacement of the existing deck with a screened room on the second floor, results in an increase in the degree to which front yards and side yards at the subject site do not comply with underlying bulk regulations; and

WHEREAS, specifically, the subject site has of a front yard depth of 17.4 feet at Bedford Avenue, a front yard depth of 17.9 feet at Beach 204th Street, and two side yards measuring 4.6 feet and 5.1 feet, but, at the subject site, a minimum front yard depth of 18 feet is required pursuant to ZR § 23-45, and two side yards, each with a width of at least 5 feet and with a combined minimum width of 13 feet, are required pursuant to ZR § 23-461(a); and

WHEREAS, in accordance with ZR § 64-92(a), the applicant submits that the composition of the existing residence on the lot creates practical difficulties in complying with flood-resistant construction standards without the modification of requirements for front yards and side yards and that waivers of the same are the minimum necessary to allow for a building compliant with flood-resistant construction standards; and

WHEREAS, 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 residences, most of which are detached homes, and that the subject site is consistent with and contributes to the improvement of the essential character of the neighborhood; and

WHEREAS, accordingly, the Board has reviewed the proposal and determined that the subject application 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. 19BSA046Q, dated October 15, 2018; 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 legalize, on

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a site within an R4 zoning district, the elevation and rehabilitation 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 contrary to ZR §§ 23-45 and 23-461(a) respectively; *on condition* that all work shall substantially conform to the drawings filed with this application and marked "Received October 15, 2018"-Eight (8) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: a front yard with a minimum depth of 17.4 feet on Bedford Avenue, a front yard with a minimum depth of 17.9 feet on Beach 204th Street, and side yards with minimum widths of 4.6 feet and 5.1 feet, 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 building shall be provided with interconnected smoke and carbon monoxide alarms, designed 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 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 authorized use and/or bulk shall be signed off by DOB and all other relevant agencies within four (4) years;

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 23, 2018.

2018-163-BZ

CEQR #19-BSA-047Q

APPLICANT – NYC Mayor’s Office of Housing Recovery Operation.

SUBJECT – Application October 15, 2018 – Special Permit (§64-92) to waive bulk requirements for the reconstruction of homes damaged/destroyed by Hurricane Sandy for a property registered in the NYC Build it Back Program. Waiver of

minimum required side yards (ZR §§23-461(a) and 64-A352). R3A/Special Coastal Risk District ZD.

PREMISES AFFECTED – 123 East 6th Road, Block 15400, Lot 5, 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 Sheta and Commissioner Scibetta.....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 legalize, on a site within an R3A zoning district and the Special Coastal Risk District, the elevation a single-family detached home in compliance with flood-resistant construction standards that does not comply with the zoning requirements for front yards contrary to ZR §§ 23-45 and 64-A351(a); and

WHEREAS, a public hearing was held on this application on October 23, 2018, 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 north side of East 6th Road, between West Street and Walton 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 6th Road, 100 feet of depth, 2,500 square feet of lot area and is occupied by a single-family detached residence with a detached frame shed in the rear; and

WHEREAS, the Board has exercised jurisdiction over the subject site since March 8, 2016, when, under BSA Cal. No. 2016-3706-A, the Board granted a waiver of General

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City Law § 35 as well as bulk regulations associated with the presence of the mapped but unbuilt street pursuant to ZR § 72-01(g) on condition that the proposed elevation or reconstruction comply with all applicable zoning district requirements; that all other applicable laws, rules and regulations be complied with; and on further condition that no building or other structure 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; 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; 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 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; 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; 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; all buildings or other structures, including exterior stairs, not be constructed within a planned DOT Capital Project as indicated on the DDC's Damages Map and/or Acquisitions plan as of September 15, 2015, or as indicated in writing by the DDC; 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 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 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, 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 not exceed 32'-0"; the approval be limited to the Build it Back program; the approval be 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, the waiver be void as unnecessary; 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; 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 DOB 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; 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, the applicant now seeks a special permit, pursuant to ZR § 64-92 to legalize the elevation of the single-family residence to a total height of 23 feet 2.16 inches from flood resistant construction elevation (“FRCE”), where Department of Buildings (“DOB”) previously approved a building height of 22 feet 8 inches from FRCE, increases the degree to which the front yards do not comply with the underlying bulk regulations; and

WHEREAS, specifically, the subject site has of a front yard depth of 7 feet 3 inches, but, at the subject site, a minimum front yard depth of 10 feet is required pursuant to ZR §§ 23-45 and 64-A351; and

WHEREAS, in accordance with ZR § 64-92(a), the applicant submits that the composition of the existing residence on the lot creates practical difficulties in complying with flood-resistant construction standards without the modification of requirements for front yards and that waivers of the same are the minimum necessary to allow for a building compliant with flood-resistant construction standards; and

WHEREAS, 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 residences, most of which are detached homes, and that the subject site is consistent with and contributes to the improvement of the essential character of the neighborhood; and

WHEREAS, accordingly, the Board has reviewed the proposal and determined that the subject application 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. 19BSA047Q, dated October 15, 2018; 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 legalize, on a site within an R4 zoning district and the Special Coastal Risk District, the elevation and rehabilitation 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 contrary to ZR §§ 23-45 and 64-A351(a); *on condition* that all work shall substantially conform to the drawings filed with this application and marked “Received October 15, 2018”-Five (5) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: a front yard with a minimum depth of 7 feet 3 inches, 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 the building is exempt from such requirement;

THAT the building shall be provided with interconnected smoke and carbon monoxide alarms, designed 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 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 authorized use and/or bulk shall be signed off by DOB and all other relevant agencies within four (4) years;

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

THAT all conditions from prior resolutions not 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 the plan(s)/configuration(s) not related to the relief granted.

Adopted by the Board of Standards and Appeals, October 23, 2018.

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2017-257-BZ

APPLICANT – Law Offices of Marvin B. Mitzner, LLC, for GMI Realty, owner; CorePower Yoga LLC, lessee.

SUBJECT – Application October 23, 2018 – 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.

PREMISES AFFECTED – 159 North 4th Street, Block 2344, Lot 7503, Borough of Brooklyn.

COMMUNITY BOARD #1BK

ACTION OF THE BOARD – Laid over to January 8, 2019, at 10 A.M., for postponed hearing.

2017-295-BZ

APPLICANT – Law Office of Jay Goldstein, for 129 West 26th Street Development LLC, owner.

SUBJECT – Application November 6, 2017 – 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.

PREMISES AFFECTED – 128 West 26th Street, Block 801, Lot 58, Borough of Manhattan.

COMMUNITY BOARD #4M

ACTION OF THE BOARD – Laid over to February 5, 2019, at 10 A.M., for continued hearing.

2018-54-BZ

APPLICANT – Sheldon Lobel, P.C., for Dagny Enterprises LLC, owner; Civic Builders, Inc., lessee.

SUBJECT – Application April 16, 2018 – Special Permit (§73-19) to permit the construction of a charter school (UG 3) (Classical Charter School) contrary to ZR §32-10. C8-3 zoning district.

PREMISES AFFECTED – 761 Sheridan Avenue/757 Concourse Village West, Block 2458, Lot 124, Borough of Bronx.

COMMUNITY BOARD #4BX

ACTION OF THE BOARD – Laid over to December 11, 2019, at 10 A.M., for continued hearing.

2018-64-BZ & 2018-65-A

APPLICANT – Sheldon Lobel, P.C., for Benjamin Brecher, owner.

SUBJECT – Application May 1, 2018 – Variance (§72-21) to permit the construction of a House of Worship (UG 4) (*Kehilas Bais Yisroel*) contrary to ZR §24-111 (FAR); ZR §24-521 (maximum wall height); ZR §24-35(a) (side yard regulations); ZR §24-36 (rear yard); ZR §24-34 (front yard);

and ZR §§25-31 & 25-32 (parking regulations) within the bed of a mapped street contrary to Article III, Section 35 of the General City Law. R2X zoning district.

PREMISES AFFECTED – 725 Mobile Road, Block 15553, Lot(s) 13 & 22, Borough of Queens.

COMMUNITY BOARD #14Q

ACTION OF THE BOARD – Laid over to January 8, 2019, at 10 A.M., for continued hearing.

2018-107-BZ

APPLICANT – Eric Palatnik, P.C., for Corporate Commons Three, LLC, owner.

SUBJECT – Application July 5, 2018 – Variance (§72-21) to permit a school campus (UG 3) (Integration Charter Schools) contrary to ZR §42-00. M1-1 zoning district.

PREMISES AFFECTED – 1441 South Avenue, Block 2165, Lot 120, Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Laid over to January 29, 2019, at 10 A.M., for continued hearing.

Carlo Costanza, Executive Director

BULLETIN

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Thursday, October 30, 2018**

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Affecting Calendar Numbers:

2017-284-BZ	605 Third Avenue, Manhattan
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DOCKETS

New Case Filed Up to October 30, 2018

2018-169-BZ

43 West 12th Road, Located on Cross Bay Boulevard, Broad Channel Island Shoreline, Block 15316, Lot(s) 0066, Borough of **Queens, Community Board: 4**. 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.R3A zoning district. R3-A district.

2018-170-A

51-03 Van Dam Street, Located on the SE corner of Van Dam Street and Borden Avenue, Block 00305, Lot(s) 0017, Borough of **Queens, Community Board: 2**. Appeal of a NYC Department of Buildings determination that a sign does not comply with the provisions of ZR §42-55c M1-3 district.

2018-171-BZ

1 East 70th Street, Located on Fifth Avenue, bounded by East 70th and East 71st Streets, Block 1385, Lot(s) 0001, Borough of **Manhattan, Community Board: 8**. Variance (§72-21) to permit an addition to an existing museum and library buildings (The Frick Collection) contrary to ZR §24-591 (height); ZR §24-11 (lot coverage); ZR §§24-33 and 24-382 (rear yard equivalent) and ZR §§23-661 and 23-662 (street wall location and setback). R10 (Special Park Improvement District), R8B (Limited Height District 1-A) Upper East Side Historic District and an individual New York City Landmark. R10/PL and R8B/LH1-A district.

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

CALENDAR

REGULAR MEETING DECEMBER 4, 2018, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, December 4, 2018, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

SPECIAL ORDER CALENDAR

490-72-BZ

APPLICANT – Gerald J. Caliendo, RA, AIA, for Eran Gohari, owner.

SUBJECT – Application June 27, 2017 – Amendment of a previously approved Variance (§72-21) which permitted the operation of a commercial bank (UG 6). The amendment seeks to permit a change in use from commercial bank to retail grocery store (UG 6); Extension of Term which expired on March 13, 2008; Waiver of the Rules. R4 zoning district.

PREMISES AFFECTED – 4200 Baychester Avenue, Block 5023, Lot 29, Borough of Bronx.

COMMUNITY BOARD #12BX

332-79-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Northern Spots LLC, owner.

SUBJECT – Application June 11, 2018 – Extension of Term of a previously approved Variance (§72-21) which permitted the construction and maintenance of an accessory parking facility which expired on February 13, 2015; Waiver of the Board's Rules. R2A zoning district.

PREMISES AFFECTED – 43-20 Little Neck Parkway, Block 8129, Lot 44, Borough of Queens.

COMMUNITY BOARD #11Q

85-99-BZ

APPLICANT – Walter T. Gorman, P.E., P.C., for Silvestre Petroleum Corp., owner; Mobil Oil Corporation, lessee.

SUBJECT – Application March 12, 2018 – Extension of Term of a previously approved Variance (§72-21) permitting, the operation of an automotive service station (Use Group 16B) with an accessory convenience store which is set to expire on June 27, 2020; Waiver of the Board's Rules to permit the early filing. R6 zoning district.

PREMISES AFFECTED – 1106 Metcalf Avenue, Block 3747, Lot 88, Borough of Bronx.

COMMUNITY BOARD #9BX

223-00-BZ

APPLICANT – Sheldon Lobel, P.C., for Village Community School, owner.

SUBJECT – Application July 2, 2018 – Amendment of a previously approved variance (§72-21) which permitted the development of a five-story plus cellar Use Group (“UG”) 3 School (Village Community School) (VCS). The amendment seeks to permit a three-story plus cellar and play-yard enlargement contrary ZR §24-11 (maximum permitted lot coverage). R6 zoning district.

PREMISES AFFECTED – 272 West 10th Street, Block 630, Lot(s) 9& 10, Borough of Manhattan.

COMMUNITY BOARD #2M

REGULAR MEETING DECEMBER 4, 2018, 1:00 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, December 4, 2018, 1:00 P.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

ZONING CALENDAR

2016-4128-BZ

APPLICANT – Herrick, Feinstein, LLP, for Ponte Equities, owner; Dogpound Fitness LLC, lessee.

SUBJECT – Application February 29, 2016 – Special Permit (§73-36) to permit a physical culture establishment (*Dogpound Fitness*) to be located at the ground-floor level of an existing commercial building. C6-2A zoning district.

PREMISES AFFECTED – 511 Canal Street, Block 594, Lot 8, Borough of Manhattan.

COMMUNITY BOARD #2M

2016-4236-BZ

APPLICANT – Francis R. Angelino, Esq., for One Hudson Park Inc., owner; Radiant Yoga Bet, LLC, lessee.

SUBJECT – Application August 4, 2016 – Special Permit (§73-36) to operate a physical culture establishment (*YogaSpark*) in the ground floor and cellar of an existing mixed use residential and commercial building. C6-2A (TMU) zoning district within the Tribeca West Historic District.

PREMISES AFFECTED – 158 Duane Street/16 Hudson Street, Block 144, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #1M

CALENDAR

2016-4238-BZ

APPLICANT – Qiang Su Ra, for 388 Broadway Owners LLC, owner; Eden Day Spa, lessee.

SUBJECT – Application August 10, 2016 – Special Permit (§73-36) to operate a physical culture establishment (*Eden Day Spa*) within an existing building. C6-2A zoning district within the Tribeca East Historic District.

PREMISES AFFECTED – 388 Broadway, Block 195, Lot 3, Borough of Manhattan.

COMMUNITY BOARD #1M

2017-315-BZ

APPLICANT – Eric Palatnik, P.C., for Thomas J. Cannistraci, owner; Strong Pelham Fitness, lessee.

SUBJECT – Application December 12, 2017 – 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.

PREMISES AFFECTED – 2030 Eastchester Road, Block 4218, Lot 9, Borough of Bronx.

COMMUNITY BOARD #11BX

2018-42-BZ

APPLICANT – Bryan Cave LLP, for Congregation Beis Shloime, owner; Bobover Yeshiva Bnei Zion, lessee.

SUBJECT – Application March 16, 2018 – Special Permit (§73-19) to allow for a Use Group 3 school use (*Bobover Yeshiva Bnei Zion*) contrary to ZR §32-31 (Use Regulations); Variance (§72-21) to permit the development of the building contrary to ZR §33-283 (rear yard equivalent) and ZR §33-432 (height and setback regulations). C8-2 zoning district.

PREMISES AFFECTED – 1360 36th Street, Block 5301, Lot 20, Borough of Brooklyn.

COMMUNITY BOARD #12BK

2018-52-BZ

APPLICANT – Akerman, LLP, for SPG Boerum LLC, owner.

SUBJECT – Application April 13, 2018 – Special Permit (§73-433) to permit the waiver of 18 existing parking spaces accessory to an existing Section 8 dwelling to facilitate the development and preservation of affordable housing contrary to ZR §§25-23 and 25-251. R6 zoning district.

PREMISES AFFECTED – 159 Boerum Street, Block 3071, Lot(s) 10, 40, Borough of Brooklyn.

COMMUNITY BOARD #1BK

2018-55-BZ

APPLICANT – Akerman, LLP, for SPG Johnson LLC, owner.

SUBJECT – Application April 17, 2018 – Special Permit (§73-433) to permit the waiver of 34 existing parking spaces accessory to an existing Section 8 dwelling to facilitate the development and preservation of affordable housing contrary to ZR §§25-23 and 25-251. R6 zoning district.

PREMISES AFFECTED – 222 Johnson Avenue, Block 3072, Lot(s) 1, 40, Borough of Brooklyn.

COMMUNITY BOARD #1BK

2018-99-BZ

APPLICANT – Sheldon Lobel, P.C., for Shawn Hope, owner.

SUBJECT – Application May 25, 2018 – Variance (§72-21) to permit the construction of a five-story and basement, two-family building contrary to ZR §23-32 (Minimum Lot Area or Lot Width for Residences). R7A zoning district.

PREMISES AFFECTED – 275 Pleasant Avenue, Block 1708, Lot 25, Borough of Manhattan.

COMMUNITY BOARD #11M

2018-132-BZ

APPLICANT – Deirdre A. Carson, Greenberg Traurig LLP, for 100 Church Fee LLC, owner; 100 Church Street Tenant, LLC, lessee.

SUBJECT – Application August 7, 2018 – Special Permit (§73-36) to permit the operation of a physical culture establishment (*Club*) within an existing building contrary to ZR §32-10. C5-3 Special Lower Manhattan District.

PREMISES AFFECTED – 100 Church Street, Block 125, Lot 20, Borough of Manhattan.

COMMUNITY BOARD #1M

2018-176-BZ

APPLICANT – NYC Mayor’s Office of Housing Recovery Operation.

SUBJECT – Application November 13, 2018 – Special Permit (§64-92) to waive bulk requirements for the reconstruction of homes damaged/destroyed by Hurricane Sandy for a property registered in the NYC Build it Back Program. R3A Special Coastal Risk zoning district. R4 zoning district.

PREMISES AFFECTED – 116 Dare Court, between Bartlett Place and Cyrus Avenue, Block 8914, Lot 414, Borough of Brooklyn.

COMMUNITY BOARD #15BK

Carlo Costanza, Executive Director

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**REGULAR MEETING
TUESDAY MORNING, OCTOBER 30, 2018
10:00 A.M.**

Present: Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.
Absent: Chair Perlmutter.

SPECIAL ORDER CALENDARS

677-53-BZ

APPLICANT – Akerman LLP, for James Marchetti, owner.
SUBJECT – Application November 17, 2016 – Extension of Term (§11-411) of a previously granted Variance permitting the operation of a UG16 Auto Body Repair Shop (*Carriage House*) with incidental painting and spraying which expired on October 18, 2016; Extension of Time to Obtain a Certificate of Occupancy which expired on October 18, 2012. Waiver of the Rules.C2-2/R4 zoning district.
PREMISES AFFECTED – 61-28 Fresh Meadow Lane, Block 6901, Lot 48, Borough of Queens.

COMMUNITY BOARD #8Q

ACTION OF THE BOARD – Granted on condition.

THE VOTE TO GRANT –

Affirmative: Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta...4
Negative:0
Absent: Chair Perlmutter1

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Board’s Rules of Practice and Procedure, reopening, an extension of the term of a variance, previously granted by the Board, which expired on October 18, 2016, an amendment of the same and an extension of time to obtain a certificate of occupancy, which expired on October 18, 2012; and

WHEREAS, a public hearing was held on this application on May 1, 2018, after due notice by publication in *The City Record*, with a continued hearing on October 30, 2018, and then to decision on the same date; and

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

WHEREAS, Community Board 8, Queens, recommends approval of this application on condition that the extension of term be limited to five (5) years and the operator submit a bi-annual report as to the status of the facility’s parking situation; and

WHEREAS, the subject site is located on the west side of Fresh Meadow Lane, between Horace Harding Expressway and 65th Avenue, in an R4(C2-2) zoning district, in Queens; and

WHEREAS, the site has approximately 67 feet of frontage, 93 feet of depth along the southern lot line, 84 feet of depth along the northern lot line, 5,126 square feet of lot area

and is occupied by a one-story automotive repair establishment (Use Group (“UG”) 16); and

WHEREAS, the Board has exercised jurisdiction over the subject site since March 2, 1954, when, under the subject calendar number, the Board granted a variance to permit the construction and use of a one-story building for motor vehicle repairing, as indicated on approved plans filed with the application, for a term of five (5) years, expiring March 2, 1959, with parking and storage of motor vehicles awaiting service, on condition that the building comply in all other respects with all requirements of the Zoning Resolution and Building Code; there be no windows or other openings in the rear or side lot lines to the north and west in the space proposed for welding; any skylight in such room be located approximately 15 feet from the rear lot line; the balance of the premises where not occupied with the proposed building be paved with concrete or asphaltic paving; there be erected on the side lot lines a woven wire fence of the chain link type with anchored steel posts, not less than five (5) feet six (6) inches in height with substantial posts at the lot lines; curb cuts may be as proposed, not more than 20 feet in width and not nearer than five (5) feet to the side lot line as prolonged; sidewalks surrounding the premises be reconstructed or repaired to the satisfaction of the Borough President; such portable fire-fighting appliances be maintained within the building as the Fire Commissioner directs; and that all permits required be obtained and all work completed within one (1) year, by March 2, 1955, and a certificate of occupancy be obtained; and

WHEREAS, on March 29, 1955, under the subject calendar number, the Board extended the time to obtain permits and complete construction for one (1) year in light of the statement by the applicant that the plans had been approved by the Department of Housing and Buildings and the contract for construction had been let, and required all permits required be obtained and all work completed within one (1) year of the amended resolution, by March 29, 1956; and

WHEREAS, on April 21, 1959, under the subject calendar number, the Board extended the term of the variance for five (5) years, expiring April 21, 1964, and required all permits, including a new certificate of occupancy, be obtained and all work completed within six (6) months, by October 21, 1959; and

WHEREAS, on February 9, 1960, under the subject calendar number, the Board extended the time to obtain permits and complete construction for one (1) year, by February 9, 1961, and required a certificate of occupancy to be obtained; and

WHEREAS, on July 21, 1964, under the subject calendar number, the Board extended the term of the variance for five (5) years, expiring July 21, 1969, on condition that other than as amended the resolution be complied with in all respects and a certificate of occupancy be obtained; and

WHEREAS, on October 15, 1969, under the subject calendar number, the Board extended the term of the variance for ten (10) years, expiring July 21, 1979, on condition that

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other than as amended the resolution be complied with in all respects, and a new certificate of occupancy be obtained; and

WHEREAS, on November 7, 1979, under the subject calendar number, the Board reopened and amended the March 2, 1954 resolution, as amended through October 15, 1969, to extend the term of the variance for ten (10) years, expiring November 7, 1989, on condition that the sidewalk area around the utility pole be repaired and the curb be repaired where required; other than as amended the resolution be complied with in all respects; and, a new certificate of occupancy be obtained within one (1) year, by November 7, 1980; and

WHEREAS, on March 24, 1987, under the subject calendar number, the Board reopened and amended the resolution, as amended through November 7, 1979, to extend the term of the variance for ten (10) years, expiring March 24, 1997, on condition that there be no more than 20 gallons of paint stored on the premises at any one time and there be no more than two (2) quarts of paint used in one day; other than as amended the resolution be complied with in all respects; and, a new certificate of occupancy be obtained within one (1) year, by March 24, 1988; and

WHEREAS, on January 13, 1998, under the subject calendar number, the Board reopened and amended the resolution, as amended through March 24, 1987, to extend the term of the variance for ten (10) years, expiring March 24, 2007, on condition that there be no outdoor lift located on the premises; sidewalks be adequately maintained; fencing and gates be maintained; signs be limited to those shown on the BSA-approved drawings; the premises be maintained graffiti free and in substantial compliance with the existing and proposed drawing submitted with the application; other than as amended the resolution be complied with in all respects; and, a new certificate of occupancy be obtained within one (1) year, by January 13, 1999; and

WHEREAS, on October 18, 2011, under the subject calendar number, the Board waived its Rules of Practice and Procedure, reopened and amended the resolution to extend the term of the variance for five (5) years, expiring October 18, 2016, and to extend the time to obtain a certificate of occupancy for one (1) year, expiring October 18, 2012, on condition that all spray painting on the site be limited to water-based paint; the hours of operation be limited to 8:00 a.m. to 5:00 p.m., daily; there be no parking of vehicles on the sidewalk; the site be maintained free of debris and graffiti; the above conditions be listed on the certificate of occupancy; a certificate of occupancy be obtained by October 18, 2012; all conditions from prior resolutions not specifically waived by the Board remain in effect; the approval be limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and the DOB 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; and

WHEREAS, the prior term of the variance and time to obtain a certificate of occupancy having expired, the applicant seeks a ten (10) year extension of the term of the

variance, first issued in 1953, pursuant to ZR § 11-411, and an extension of time to obtain a certificate of occupancy; and

WHEREAS, ZR § 11-411 states:

Where no limitation as to the duration of the *use*¹ was imposed at the time of [the variance authorized by the Board of Standards and Appeals pursuant to the 1916 Zoning Resolution], such *use* may be continued. Where such *use* was authorized subject to a term of years, such *use* may be continued until the expiration of the term, and thereafter, the agency which originally authorized such *use* may, in appropriate cases, extend the period of continuance for one or more terms or not more than 10 years each. The agency may prescribe appropriate conditions and safeguards to minimize adverse effects of such *use* on the character of the neighborhood;

WHEREAS, in addition, because this application was filed less than two (2) years after the expiration of the term of the variance and more than one (1) year after the expiration of the time to obtain a certificate of occupancy, the applicant requests waivers, pursuant to § 1-14.2 of the Board's Rules of Practice and Procedure (the "Board's Rules"), of §§ 1-07.3(b)(2) and 1-07.3(d)(2) of the Board's Rules to permit the filing of this application; and

WHEREAS, over the course of the hearings, the Board expressed concerns regarding a tow truck operation at the subject site and the parking of tow trucks on the streets and surrounding neighborhood; and

WHEREAS, in response, the applicant represented that the tow truck operation is very limited, and the number of tow trucks was reduced from five (5) to two (2) tow trucks such that they can be parked on the subject site; and

WHEREAS, at the hearing, the Board discussed whether a five (5) year term would be more appropriate, such that this site could be monitored more closely;

WHEREAS, the applicant represented that they will return to Community Board 8, Queens, every two (2) years for Community Board approval in compliance with the Community Board's conditional approval recommendation with regards to this application; and

WHEREAS, the Board finds, in light of the applicant's representation, a ten (10) year term is appropriate in this case with certain conditions set forth below; and

WHEREAS, the Board also notes that, should the applicant be out of compliance with any of the conditions of this grant, members of the public, including the Community Board, may recommend that the applicant be brought before the Board on compliance, a procedure that may result in the revocation or modification of the variance pursuant to New York City Charter § 666(11), ZR § 11-62 and § 1-12.8 of the Board's Rules; and

WHEREAS, the applicant additionally seeks an amendment to the variance, first granted March 24, 1954, as

1 Words in *italics* are defined in Section 12-10 of the Zoning Resolution.

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amended through October 18, 2011, as it relates to the hours of operation and the presence of a fence between the subject site and the adjacent tax lot 52; and

WHEREAS, pursuant to the BSA resolution dated October 18, 2011, the hours of operation of the facility at the premises were limited to 8:00 a.m. to 5:00 p.m., daily; and

WHEREAS, over the course of the hearings, the applicant stated that the hours of operation for the automotive repair establishment are Monday through Friday, 8:00 a.m. to 5:00 p.m.; Saturday, 8:00 a.m. to 3:00 p.m., and thus compliant with the 2011 extension of term, but the hours of operation for the towing operation are 24 hours a day, seven (7) days a week; and that the fence between the subject property and lot 52 was removed approximately 20 years ago because it is under the same ownership as the subject lot and, therefore, a fence separating the two is no longer required; and

WHEREAS, by letter dated April 30, 2018, the Fire Department stated that it had no objection to this application, and confirmed that the subject site is current with all applicable permits—including permits for the use of combustible gas, spray booth, and storage of paints, lacquer, and varnish—and was last inspected on February 22, 2018; and

WHEREAS, based on the foregoing, the Board has determined that the request to amend the previously granted variance, with regard to the hours of operation and removal of the fence, is appropriate with certain conditions as set forth below.

Therefore it is Resolved, that the Board of Standards and Appeals *waives* Rules §§ 1-07.3(b)(2) and 1-07.3(d)(2) of its Rules of Practice and Procedure *reopens* and *amends* the resolution, dated March 23, 1954, as amended through October 18, 2011, so that as amended this portion of the resolution shall read: “to grant an extension of the term of the variance for a term of ten (10) years, to expire on October 18, 2026; and *on condition* that all work and site conditions shall conform to drawings filed with this application marked “March 15, 2018”-Five (5) sheets and *on further condition*:

THAT the term of this grant shall expire on October 18, 2026;

THAT the hours of operation of the automotive repair establishment shall be limited to 8:00 a.m. to 5:00 p.m., daily;

THAT the permitted hours of operation of the tow truck establishment are 24 hours per day, seven (7) days per week;

THAT the applicant shall return to the Community Board 8, Queens to demonstrate compliance of parking at the site with the approved plans and the Board’s resolution;

THAT all signage shall comply with the BSA-approved plans;

THAT the site shall remain free of debris and graffiti at all times;

THAT all spray painting on the site shall be limited to water-based paint;

THAT that there shall be no outdoor lift located on the premise;

THAT the sidewalks shall be adequately maintained;

THAT there shall be no parking of vehicles on the

sidewalk;

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

THAT the above conditions and reference to this calendar number (“BSA Cal. No. 677-53-BZ”) shall appear on the certificate of occupancy;

THAT a certificate of occupancy be obtained within one (1) year, by October 30, 2019;

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, October 30, 2018.

60-82-BZ

APPLICANT – Eric Palatnik, P.C., for BP Products North America, owner.

SUBJECT – Application July 20, 2016 – Extension of Term (§11-411) of a previously granted variance permitting the operation of an Automotive Service Station (UG 16B) which expired on July 7, 2016. C2-3/R7X zoning district.

PREMISES AFFECTED – 60-11 Queens Boulevard, Block 1338, Lot 1, Borough of Queens.

COMMUNITY BOARD #2Q

ACTION OF THE BOARD – Granted on condition.

THE VOTE TO GRANT

Affirmative: Vice-Chair Chanda, Commissioner Ottley-

Brown, Commissioner Sheta and Commissioner Scibetta...4

Negative:0

Absent: Chair Perlmutter1

THE RESOLUTION

WHEREAS, this is an application for an extension of the term of a variance, previously granted by the Board; and

WHEREAS, a public hearing was held on this application on May 22, 2018, after due notice by publication in *The City Record*, with continued hearings on August 21, 2018, and October 30, 2018, and then to decision on that date; and

WHEREAS, Community Board 2, Queens, recommends disapproval of this application due, in part, to concerns caused by the unsatisfactory operation of a car wash on the premises and traffic caused by the operation; and

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

WHEREAS, the subject site is bound by Queens Boulevard to the south, 44th Avenue to the north, 60th Street to the west, and 61st Street to the east, in an R7X (C2-

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3) zoning district, in Queens; and

WHEREAS, the site has approximately 200 feet of frontage on Queens Boulevard and 44th Avenue, 85 feet of frontage on 60th Street, 79 feet of frontage on 61st Street, 16,435 square feet of lot area, and is occupied by an automotive service station (UG 16) with accessory kiosk; and

WHEREAS, the Board has exercised jurisdiction over the subject site since March 24, 1953, when, under BSA Cal. No. 570-52-BZ, the Board granted a variance to permit, for a term of 15 years, expiring on March 24, 1968, the construction and operation of a gasoline service station, as indicated on approved plans filed with the application, on condition that all existing structures and uses be removed and the working area of the plot be leveled substantially to the grade of Queens Boulevard; the premises be arranged as indicated on revised approved plans filed with the application; the higher grade on 44th Avenue be protected with high dense screening planting, as proposed and as indicated, protected by a retaining wall and curb as thereon shown; such screening be seven (7) feet in height; the accessory building be of the design and arrangement as indicated without cellar; the façade of the building on all sides be of face brick; there be no roof signs or temporary signs; signs be restricted to a permanent sign attached to the façade of the accessory building facing Queens Boulevard and the illuminated globes of the pumps, but permitting the erection within the building lines of a post standard at either corner at 61st Street and 60th Street, as shown, for advertising the brand of gasoline on sale, but not extending beyond the building line more than four (4) feet; such signs may be illuminated; a block of concrete be installed and maintained within each intersection for a distance of five (5) feet and 12 inches in height; the number of gasoline tanks not exceed twelve (12) 550-gallon tanks; pumps be erected not nearer than 15 feet of the street building line of Queens Boulevard as shown; such pumps be of a low approved type; curb cuts be restricted to three (3) curb cuts to Queens Boulevard, each not over 35 feet in width and two similar curb cuts to 61st Street and 60th Street, located where shown; the sidewalks and curbing around the premises be restored or reconstructed to the satisfaction of the borough president; the accessory building be arranged, as shown, without cellar underneath, and comply in all other respects with the requirements of the Building Code; there may be minor repairing under section 7, subdivision i, with hand tools only carried on entirely within the accessory building for a similar term; there be under section 7, subdivision h, the parking of motor vehicles waiting to be serviced for a similar term; the balance of the premises where not occupied as accessory building, pumps and planting be paved with concrete or asphaltic pavement; the existing trees along the property along 44th Avenue be retained and kept in good condition and additional trees be planted so that trees be spaced not more than 25 feet apart to provide a uniform spacing with existing trees; there be no windows opening to 44th Avenue from the accessory building, except that any

openings provided may be filled with glass block as approved for exterior walls without ventilating sections; such portable firefighting appliances be maintained as the Fire Commissioner directs; and all permits be obtained and all work completed by March 24, 1954; and

WHEREAS, on June 15, 1954, under BSA Cal. No. 570-52-BZ, the Board amended the resolution to permit the existing pumps to continue at the distance from the building line as indicated on BSA-approved plans, on condition that the replacement of the existing pumps with new pumps be located as required in the resolution adopted on March 24, 1953; and

WHEREAS, on July 7, 1954, under BSA Cal. No. 570-52-BZ, the Board amended the resolution, adopted March 24, 1953, to permit the erection within the building lines of a post standard at each of the corners of 61st Street and 60th Street, and required that other than as amended the resolution be complied with in all respects; and

WHEREAS, on September 15, 1964, under BSA Cal. No. 570-52-BZ, the Board amended the resolution to permit the front and two sides of the accessory building to be faced with an approved type of porcelain enamel, substantially as shown on approved plans filed with the application, on condition other than as amended the resolution be complied with in all respects; and;

WHEREAS, on September 10, 1968, under BSA Cal. No. 570-52-BZ, the Board extended the term of the variance, granted on March 24, 1953, for a term of ten (10) years, expiring March 24, 1978, and required that other than as amended the resolution be complied with in all respects, and a new certificate of occupancy be obtained; and

WHEREAS, on November 25, 1969, under BSA Cal. No. 570-52-BZ, the Board amended the resolution to permit alterations to the premises as shown on approved plans filed with the application on condition that all signs comply with the provisions of the Zoning Resolution for a C1 district and that other than as amended the resolution be complied with in all respects; and

WHEREAS, on July 11, 1978, under BSA Cal. No. 570-52-BZ, the Board extended the term of the variance for ten (10) years, expiring July 11, 1988, and required that other than as amended the resolution be complied with in all respects, and a new certificate of occupancy be obtained within one (1) year, by July 11, 1979; and

WHEREAS, on July 7, 1982, under the subject calendar number, the Board permitted, in an R6 district, the reconstruction of an existing automotive service station with accessory uses previously before the Board into a gasoline and oil selling station without repair services, on condition that all work substantially conform to approved plans filed with the application; that the modification be limited to a term of 15 years, expiring July 7, 1997; there be no repair services performed on the station; the variance supersedes previously-approved BSA Cal. No. 570-52-BZ; the hours of operation be limited to from 6:00 a.m. to 12:00 a.m. Sunday through Thursday, and from 6:00 a.m. to 1:00 a.m. on Friday and Saturday; all trees on the premises and adjacent

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sidewalk, and all plantings, be maintained and, when necessary, promptly replaced; screening be installed in accordance with submitted plans, on the portion of the premises where the existing building is to be demolished, six- (6) feet-high hemlocks be planted six (6) feet on center so as to provide a dense screen; in the existing planting area on 44th Avenue, additional six- (6) feet-high trees be planted so as to create dense screening; the station be operated at all times in such fashion so as to minimize traffic congestion; the Department of Buildings issue no permits until 31 days after the date of certification of the resolution; all laws, rules and regulations applicable be complied with; and that substantial construction be completed within four (4) years, by July 7, 1984; and

WHEREAS, on the same date, under BSA Cal. No. 61-82-A, the Board modified the decision of the Borough Superintendent and granted an application to use self-service pumps contrary to Section C19.73.0(b)2 of the New York City Fire Prevention Code on condition that a trained attendant who possesses a Certificate of Fitness be on duty at all times when the station is open for business; it be the attendant's duty to require the engine of any vehicle be shut off before the start of fuel operation and prohibit smoking within the immediate area of the fuel operation; it be the attendant's duty to prevent the dispensing of fuel into portable containers; signs reading, "NO SMOKING," "STOP YOUR ENGINE," "IT IS UNLAWFUL TO DISPENSE GASOLINE INTO PORTABLE CONTAINERS," and "THE DISPENSING OF GASOLINE SHALL BE DONE BY A PERSON HOLDING A VALID DRIVERS LICENSE OR A PERSON 18 YEARS OF AGE OR OLDER" be conspicuously posted in clear view of the customer at the dispensing island; portable fire extinguishers be provided and, in type, quantity and location, be acceptable to the Fire Commissioner; all dispensing devices and fire suppression systems be approved by the Board and be installed in accordance with the requirements of the laboratory upon which the approval is based; the suppression system be arranged in a manner so as to cover an area around each pump encompassed by a circle having a radius equal to the maximum extendable length of the hose and nozzle of said pump; the installation and use of coin-operated dispensing devices for fuel be prohibited; there be constant contact between the attendant in the control booth and the dispensing island by means of a voice intercommunication system that shall be maintained in a proper operating condition at all times; all controls, devices, fire suppression systems and firefighting equipment be maintained in good operating order at all times; a maintenance log be kept on the premises as per direction of the Fire Commissioner; all dispensing nozzles be of the automatic closing type without hold open latches; a list of emergency procedures and instructions be conspicuously posted in the immediate vicinity of the attendant's principal control location and said instructions be at the direction of the Fire Commissioner; the dispensing area be well lit for complete visual control at all times; the permit to operate

this station be for a term of five (5) years from the date of approval; all of the conditions of this resolution be conspicuously posted in the attendant's booth; there be no servicing or repair of motor vehicles on the premises; mirrors be provided that ensure that the person with the Certificate of Fitness in the control booth can readily see the people operating any of the further self-service devices and on further condition that the building, equipment, devices and controls conform to drawings filed with the application, substantial construction be completed within one (1) year and all applicable laws, rules and regulations be complied with; and

WHEREAS, on February 9, 1988, under BSA Cal. No. 61-82-A, the Board amended the resolution to grant an five (5) year extension of the term of the waiver, expiring July 7, 1992, on condition that a trained attendant with a Certificate of Fitness be on duty at all times to monitor the operation of the pumps and have no other duties while any self-service pump is in operation and be located in an enclosure separated from all other activities by partitions not less than seven (7) feet in height; the suppression system be arranged in a manner so as to cover an area around each pump encompassed by a circle having a radius equal to the maximum extendable length of the hose and nozzle of said pump and the gauges for the tanks serving the fire suppression system shall be positioned so as to be easily readable; manual switches be provided that actuate the fire suppression system and electrically disconnect the pumps and these switches be located adjacent to each other and within five (5) feet of the console that controls the self-service operation; the gasoline service station be operated in such a manner that minimizes traffic congestion; the windows and the glass panels of the control booth remain clear and unobstructed at all times; other than as amended the resolution be complied with in all respects and a new certificate of occupancy be obtained within one (1) year; and

WHEREAS, on September 28, 1999, under the subject calendar number, the Board waived its Rules of Practice and Procedure, reopened, extended the term of the variance for ten (10) years, expiring on July 7, 2007, and allowed 24-hour operation of the site on condition that the premises remain graffiti free at all times; all signs and landscaping be maintained in accordance with BSA approved plans; the premises be maintained in substantial compliance with the proposed drawings submitted with the application; other than as amended the resolution be complied with in all respects; and a new certificate of occupancy be obtained within one (1) year, by September 28, 2000; and

WHEREAS, on July 15, 2003, under the subject calendar number, the Board waived its Rules of Practice and Procedure and amended the resolution to permit a change in signage from a total of 129 square feet of illuminated signage to 65.5 square feet of illuminated signage and nine (9) square feet of non-illuminated signage for a total of 74.5 square feet of signage and extended the time to obtain a certificate of occupancy for two (2) years, by July 15, 2005, on condition that all work substantially conform to approved

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plans filed with the application; the premises be maintained free of debris and graffiti; any graffiti located on the premises be removed within 48 hours; the above conditions and all conditions from prior resolutions appear on the certificate of occupancy; the approval be limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and the Department of Buildings 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; and

WHEREAS, on September 27, 2005, under the subject calendar number, the Board extended the time to obtain a certificate of occupancy for two (2) years, expiring July 15, 2007; and

WHEREAS, on March 13, 2007, under the subject calendar number, the Board extended the term of the variance for ten (10) years, expiring July 7, 2017, and extended the time to obtain a certificate of occupancy to December 13, 2007, on condition that the use substantially conform to approved plans filed with the application; the term of the grant expire on July 7, 2017; the above condition be listed on the certificate of occupancy; the fence around the site be repaired and maintained; shrubs be planted and maintained at the site; a certificate of occupancy be obtained within nine (9) months of the date of the grant; all conditions from prior resolutions not specifically waived by the Board remain in effect; the approval be limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and the Department of Buildings 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; and

WHEREAS, on November 24, 2009, under the subject calendar number, the Board waived its Rules of Practice and Procedure and extended the time to obtain a certificate of occupancy to November 24, 2011, on condition that the use and operation of the site complies with BSA-approved plans associated with the prior grant; and

WHEREAS, the prior term having expired, the applicant now seeks an extension of the term of the variance, first issued in 1953 under BSA Cal. No. 570-52-BZ, pursuant to ZR § 11-411; and

WHEREAS, ZR § 11-411 states:

Where no limitation as to the duration of the *use*²

1 The resolution incorrectly presents the term of the variance as July 7, 2006 and July 7, 2016. Review of the Board's history reflects that the prior term expired on July 7, 2007, pursuant to the resolution issued September 28, 1999, and, thus, was extended, by the March 2008 resolution, to July 7, 2017.

2 Words in *italics* are defined in Section 12-10 of the Zoning Resolution.

was imposed at the time of [the variance authorized by the Board of Standards and Appeals pursuant to the 1916 Zoning Resolution], such *use* may be continued. Where such *use* was authorized subject to a term of years, such *use* may be continued until the expiration of the term, and thereafter, the agency which originally authorized such *use* may, in appropriate cases, extend the period of continuance for one or more terms or not more than 10 years each. The agency may prescribe appropriate conditions and safeguards to minimize adverse effects of such *use* on the character of the neighborhood;

WHEREAS, at the public hearing, the Board raised concerns about the required landscaping, storage of trash, and the carwash operation, which was never approved by the Board, at the site; and

WHEREAS, in response, the applicant provided photographs demonstrating improved landscaping and fencing, as well as the removal of the carwash and associated water lines from the site; and

WHEREAS, by letter dated October 29, 2018, the Fire Department submitted a Letter of No Objection and stated that the automotive service station is current with its Fire Department permits for storage of combustible liquids, leak detection equipment, underground storage tank, and fire suppression (dry-chemical) system; and

WHEREAS, based upon its review of the record, the Board has determined that the requested waiver of the Board's Rules and extension of the term of the variance are appropriate with certain conditions as set forth below; and

Therefore it is Resolved, that the Board of Standards and Appeals *amends* the resolution, dated July 7, 1982, as amended through November 24, 2009, so that, as amended, this portion of the resolution reads "to grant an extension of the term of the variance for ten (10) years, expiring July 7, 2017; on condition that the use and operation of the site shall conform to drawings filed with this application marked "August 21, 2018"-Six (6) sheets; and *on further condition*:

THAT the term of this grant shall expire on July 7, 2027;

THAT landscaping shall be maintained as illustrated on the Board-approved plans and replaced as necessary;

THAT there shall be no banners or other signs permitted on the premises other than those shown on approved plans;

THAT the premises shall remain free of debris and graffiti;

THAT any graffiti located at the premises shall be removed within 48 hours;

THAT the above conditions shall be indicated 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;

THAT this approval is limited to the relief granted by

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the Board in response to specifically cited and filed DOB/other jurisdictional 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 plans or configurations not related to the relief granted.”

Adopted by the Board of Standards and Appeals, October 30, 2018.

131-97-BZ

APPLICANT – Pryor Cashman LLP, for Ricky’s Bronx Property, LLC, owner; McDonald’s Corporation, lessee.

SUBJECT – Application June 29, 2016 – Amendment to re-instate and eliminate the term of a previously approved Variance (72-21) which permitted an eating and drinking establishment (UG 6) with an accessory drive-through facility, which expired on January 27, 2003; change the hours of operation, enlarge the existing building, and reduce the parking from 9 to 8 spaces; Waiver of the Rules. R1-2 zoning district.

PREMISES AFFECTED – 1600 Boston Road, Block 2967, Lot 42, Borough of Bronx.

COMMUNITY BOARD #3BX

ACTION OF THE BOARD – Granted on condition.

THE VOTE TO GRANT –

Affirmative: Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta...4

Negative:0

Absent: Chair Perlmutter1

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 a variance previously granted by the Board, which expired on January 27, 2003, and an amendment of the same; and

WHEREAS, a public hearing was held on this application on July 17, 2018, after due notice by publication in *The City Record*, with continued hearings on September 13, 2018, and October 30, 2018, and then to decision on October 30, 2018; and

WHEREAS, the subject site is located on the southeastern corner of Boston Road and Seabury Place, in an R1-2 zoning district, in the Bronx; and

WHEREAS, the site has approximately 114 feet of frontage along Boston Road, 102 feet of frontage along Seabury Place, 12,917 square feet of lot area and is occupied by one-story eating and drinking establishment with accessory drive-through facilities; and

WHEREAS, the Board has exercised jurisdiction over the subject site since January 27, 1998, when, under the subject calendar number, the Board granted a variance, pursuant to ZR § 72-21, to permit the replacement of an existing non-conforming eating and drinking establishment (Use Group (“UG”) 6), with a new eating and drinking establishment with accessory drive-through facilities (UG 6)

and accessory parking for ten (10) cars which does not conform to district use regulations, on condition that all work substantially conform to approved-plans filed with the application; fencing and landscaping be provided and maintained in accordance with BSA-approved plans; sidewalks and curb cuts be installed and maintained in accordance with BSA-approved plans; garbage pick-ups be limited to weekday daytime hours; signage be limited in accordance with BSA-approved plans; the hours of operation of the drive-through be limited to 7:00 a.m. to 11:00 p.m. Monday through Friday, and 7:00 a.m. to 12:00 a.m. Saturday and Sunday; the term of the variance be limited to five (5) years, to expire on January 27, 2003; security personnel be provided if necessary; the above conditions appear on the certificate of occupancy; the development, as approved, is subject to verification by the Department of Buildings (“DOB”) for compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under the jurisdiction of the Department; and substantial construction be completed within four (4) years, by January 27, 2002; and

WHEREAS, the term of the variance having expired, the applicant seeks a ten (10) year extension of the term of the variance as well as an amendment to permit changes to the hours of operation, enlarge the existing building, and reduce the number of parking spaces; and

WHEREAS, specifically, the applicant seeks an amendment to the variance to change the hours of operation to permit a 24-hour 7 days per week operation of the drive-through window; to enlarge the existing building horizontally by 249 square feet to meet ADA requirements; and, to reduce the number of parking spaces from nine (9) to eight (8); and

WHEREAS, the applicant represents that the additional square footage will require a redesign of the interior layout, but will not increase the number of seats in the restaurant and that, on average, only seven (7) parking spots are utilized during peak times; and

WHEREAS, additionally, 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)(4)(ii) to permit the filing of this application more than ten (10) years after the expiration of the term; and

WHEREAS, the applicant initially requested the elimination of the term, but in light of the Board’s concerns regarding the late filing of this application, evidence of extraneous signage on the premises contrary to the previously approved plans and the applicant’s submission that the drive-through facility currently operates in excess of the limited hours of operations set forth in the 1998 Resolution, the applicant subsequently revised the application to seek a ten (10) year term; and

1 The resolution states that ten (10) accessory parking spaces were permitted, but the approved plans indicate the provision of only nine (9) accessory parking spaces onsite.

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WHEREAS, at hearing, the Board expressed concerns regarding number of reservoir spaces provided for the drive-through, non-conforming signage located at the site, the appearance of landscaping and the screening of noise and light from the subject site and drive-through menu board in proximity to the adjacent residential properties; and

WHEREAS, in response, the applicant provided detailed landscaping plans, a revised signage analysis showing compliance with C-1 zoning regulations and additional noise attenuation measures, specifically, the applicant's proposal includes installing noise reducing fences on the south and east lot lines, and four (4) planting zones around the subject site including six (6) to eight (8) feet tall evergreen shrubs; and

WHEREAS, additionally, at the September 13, 2018, public hearing, an adjoining residential neighbor and member of a local homeowner's association stated that the lighting is beneficial in that it provides lighting in their residential backyards, and that the applicant has been very responsive to the neighbors' concerns regarding the operation of the site; and

WHEREAS, the Board finds that a reinstatement and ten (10) year extension of the term of the variance, originally granted in 1998, and amendments to the variance with regard to the hours of operation, horizontal enlargement, and number of parking spaces are appropriate with conditions previously imposed by the Board and with certain conditions as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals waives Rule § 1-07.3(b)(4)(ii) of its Rules of Practice and Procedure, reopens and amends the resolution, dated January 27, 1998, 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 date of this amended resolution, to expire on October 30, 2028, to permit a horizontal extension of 249 square feet, modify the hours of operation to permit 24-hour seven (7) days per week operation of the drive-through, and reduce the number of accessory off-street parking spaces to eight (8) on condition that all work and site conditions shall comply with drawings filed with this application marked "Received October 30, 2018"-Fourteen (14) sheets; and on further condition:

THAT landscaping and noise-reducing fencing shall be installed on-site in accordance with BSA-approved plans and maintained and replaced as needed;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy shall be obtained within four (4) years;

THAT all conditions from 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; 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, October 30, 2018.

197-05-BZ

APPLICANT – Law Offices of Marvin B. Mitzner LLC, for Broadway Realty LLC, owner.

SUBJECT – Application April 27, 2018 – Amendment of a previously approved variance (§72-21) which permitted the construction of an 11-story mixed-use building with ground floor commercial. The amendment seeking to permit a 4'9" by 28' bump out at the rear of the building; Extension of Time to Complete construction which expires on April 29, 2019. C6-1/R7 zoning district.

PREMISES AFFECTED – 813 Broadway, Block 563, Lot(s) 33 & 34, Borough of Manhattan.

COMMUNITY BOARD #2M

ACTION OF THE BOARD – Granted on condition.

THE VOTE TO GRANT –

Affirmative: Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta...4

Negative:0

Absent: Chair Perlmutter1

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated June 8, 2018, acting on Department of Buildings ("DOB") Application No. 123238317, reads in pertinent part:

Plan filed for approval of amendment do not conform to the previously granted BSA resolution # 197-05-BZ; and

WHEREAS, this is an application for reopening, to amend a variance, previously granted by the Board pursuant to ZR § 72-21, and for an extension of time to complete construction, which expired on April 29, 2018; and

WHEREAS, a public hearing was held on this application on August 7, 2018, after due notice by publication in *The City Record*, with a continued hearing on September 27, 2018, and then to decision on October 30, 2018; and

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

WHEREAS, Community Board 2, Manhattan, states that it has no objection to the subject application; and

WHEREAS, the site is located on the west side of Broadway, between East 11th Street and East 12th Street, in a C6-1 zoning district, in Manhattan; and

WHEREAS, the site is comprised of two (2) tax lots with approximately 50 feet of frontage, 100 feet of depth and 5,029 square feet of lot area; and

WHEREAS, the Board has exercised jurisdiction over the subject site since July 1, 2008, when, under the subject calendar number, the Board granted a variance, pursuant to ZR § 72-21, to permit the construction of an 11-story mixed-

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use building with ground floor commercial space and 40 dwelling units that does not comply with zoning regulations relating to residential floor area ratio (“FAR”), open space ratio, height, setback, and dwelling count, contrary to ZR §§ 23-142, 33-432, and 23-22, on condition that all work substantially conform to approved plans filed with the application; the total FAR of the development be limited to 6.0, with a residential FAR of 5.6 and a commercial FAR of 0.4; the street wall of the building be limited to a height of 129’-8” and the open space be limited to a minimum of 2,022 square feet (seven (7) percent open space ratio (“OSR”)); other bulk parameters of the building be as indicated on the BSA-approved plans; the interior layout and all existing requirements be as reviewed and approved by the Department of Buildings (“DOB”); the approval be limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; the approved plans be considered approved only for the portions related to the specific relief granted; the DOB 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; and

WHEREAS, on January 12, 2010, under the subject calendar number, the Board reopened and amended the resolution to permit the addition of a second elevator, a sub-cellar, and other related plan changes on condition that all work substantially conform to approved plans filed with the application; the residential FAR be limited to 5.6 and the commercial FAR be limited to 0.4; the use of the cellar be strictly limited to accessory storage associated with the first floor Use Group (“UG”) 6; the cellar not be generally accessible from the UG 6 use except for storage purposes; and all conditions from prior resolutions not specifically waived by the Board remain in effect; and

WHEREAS, on April 29, 2014, under the subject calendar number, the Board waived its Rules of Practice and Procedure and extended the time to complete construction to April 29, 2018, on condition that the use and operation of the site comply with BSA-approved plans associated with the prior grant; substantial construction be completed by April 29, 2018; and all conditions from the prior resolution not specifically waived by the Board remain in effect; and

WHEREAS, the applicant now seeks further amendment of the variance to permit a 2 foot by 28 foot bump out at the rear of the building, and additionally seeks an extension of time to complete construction; and

WHEREAS, the applicant represents that the proposed change to the plans was caused by a need for the building to comply with the 2014 NYC Building Code, which required a redesign of the stair width and larger elevators, and a construction accident at 809 Broadway, immediately adjacent to the premises, that damaged and partially collapsed the wall of the building located on tax lot 34, that requires the relocation of the building core; and

WHEREAS, the applicant represents that the proposed amendment to the variance will allow the dwelling units to

remain of similar size and value, as previously approved by the Board, with no change to the maximum FAR and floor area previously approved by the Board; and, a proposed partial rear extension will maintain the proposed complying 39’-9” rear yard; and

WHEREAS, over the course of the hearings, the Board noted that the proposed plans submitted with this application included additional detailing on the roof—including elevator and mechanical bulkheads—absent from the deductions approved in connection with the prior resolution and requested that the proposed plans be revised to remove errant floor area deductions and reduce the stair and elevator bulkheads; 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 2008 Resolution to permit a bump out at the rear of the building is appropriate with certain conditions as set forth below; and

WHEREAS, the applicant is also requesting an extension of time to complete construction that expired on April 29, 2018; and

WHEREAS, the applicant represented that the delay in construction was due to a concrete blowout at the adjacent construction site in March 2016, causing a wall collapse at the subject site, resulting in difficulties in securing financing and stoppage of construction activities; and

WHEREAS, the applicant requested a two (2) year extension of time to complete construction; and

WHEREAS, the Board expressed concern that no construction activities have commenced yet on the site and that granting further extensions of time would allow for the completion of construction more than a decade after the original grant of the variance without vesting, thus, conditions this approval on it being the final approval for an extension of time to complete construction for the subject proposed 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 July 1, 2008, as amended through April 29, 2014, so that as amended this portion of the resolution shall read: “to permit a 2 foot by 28 foot extension at the rear of the building, *on condition* that any and all work shall substantially conform to drawings as filed with this application, marked ‘Received October 18, 2018’ - Twenty-five (25) sheets; and *on further condition*:

THAT the total FAR of the development is limited to 6.0, with a maximum residential FAR of 5.6 and a maximum commercial FAR of 0.4;

THAT there shall be no change to the sellable floor area or FAR previously approved by the Board, as indicated on

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BSA-approved plans;

THAT substantial construction shall be completed by April 29, 2022;

THAT the use of the cellar shall be strictly limited to accessory storage associated with the first floor Use Group 6 use;

THAT the cellar shall not be generally accessible from the Use Group 6 use except for storage purposes;

THAT no further extensions of time to complete construction of the subject development shall be granted by the Board;

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

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, October 30, 2018.

35-09-BZ

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for Direct Supply Co. Inc., owner.

SUBJECT – Application July 17, 2018 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of a contractors’ establishment (UG 16B) which expires on June 9, 2019. R7A zoning district. PREMISES AFFECTED – 345-347 East 103rd Street, Block 1675, Lot(s) 21, 22, Borough of Manhattan.

COMMUNITY BOARD #11M

ACTION OF THE BOARD – Granted on condition.

THE VOTE TO GRANT –

Affirmative: Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta...4

Negative:0

Absent: Chair Perlmutter1

THE RESOLUTION –

WHEREAS, this is an application an extension of the term of a variance, previously granted by the Board; and

WHEREAS, a public hearing was held on this application on October 30, 2018, after due notice by publication in *The City Record*, and then to decision on that same date; and

WHEREAS, by letter dated October 23, 2018, the Chair of Community Board 11, Manhattan, states that the Community Board supports the subject application; and

WHEREAS, Commissioner Ottley-Brown performed an inspection of the site and the surrounding neighborhood; and

WHEREAS, the subject site is comprised of two contiguous tax lots located on the north side of East 103rd Street, between First Avenue and Second Avenue, in an R7A zoning district, in Manhattan; and

WHEREAS, the site has approximately 50 feet of frontage along East 103rd Street, 101 feet of depth, 5,000 square feet of lot area and is occupied by a two-story contractors’ establishment; and

WHEREAS, the Board has exercised jurisdiction over the subject site since December 20, 1938 when, under BSA Cal. No. 958-38-BZ, the Board granted a variance to permit the use of part of an existing two-story building, formerly occupied with a stable in the cellar and first floor and residential dwelling above, to be used as a garage for more than five (5) cars, limited to the first story only, on condition that in all other respects, except as to zone use, the building comply with all laws, rules and regulations applicable thereto; no gasoline storage be maintained on the premises other than in tanks of cars; the cellar remain vacant except that that portion below the existing store may be used in conjunction therewith, provided that such portion of the cellar is separated from the balance of cellar with fireproof construction with no openings therein; and that all permits be obtained and all work be completed within one (1) year; and

WHEREAS, on June 20, 1950, under BSA Cal. No. 958-38-BZ, the Board amended the December 20, 1938, resolution, permitting a change of use on the first floor of the building to a motor vehicle repair shop, as indicated on approved plans filed with the application, for a term of five (5) years, on condition that in all other respects the resolution adopted by the Board on December 20, 1938, be complied with where not inconsistent with the amendment; in all other respects the building and occupancy comply with all laws, rules and regulations applicable thereto, except as modified by the Board; that such repair work be mainly with hand tools, precluding all heavy repair and the use of forge or anvil; and all permits required be obtained and all work completed within six (6) months from the date of the amended resolution; and

WHEREAS, on June 19, 1953, under BSA Cal. No. 958-38-BZ, the Board amended the resolution to permit the change in use of a portion of the first floor of the premises occupied by a store to a motor vehicle repair shop in conjunction with the adjoining building on Lot 21, previously permitted to be utilized as a motor vehicle repair shop in 1950, for a term of five (5) years from June 19, 1953, and to extend the time for such building from the date of this amended resolution for the use as proposed, and as indicated on approved plans filed with the application, and to permit the proposed occupancy in connection with the adjoining building for the same use under the same tenancy, on condition that the building not be increased in height or area; there not be any windows constructed on the side or

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rear lot lines other than those then existing; the floor of the building be surfaced with concrete; the cellars under both buildings not be used except as stated; such portable firefighting appliances be maintained as the Fire Commissioner directs; all permits be obtained and all work completed within six (6) months from the date of the resolution and a certificate of occupancy be obtained; and

WHEREAS, on February 4, 1958, under BSA Cal. No. 958-38-BZ, the Board extended the term of the variance for five (5) years, expiring February 4, 1963, on condition that the resolution be otherwise complied with in all respects; and that all permits, including a new certificate of occupancy, be obtained and all work completed by February 4, 1959; and

WHEREAS, on May 24, 1966, under BSA Cal. No. 958-38-BZ, the Board extended the term of the variance for five (5) years, expiring May 24, 1971, and amended the resolution to permit the use of the premises as a contractor's establishment under Use Group 16, on condition that the resolution be otherwise complied with in all respects; and a certificate of occupancy be obtained; and

WHEREAS, on October 5, 1971, under BSA Cal. No. 958-38-BZ, the Board extended the term of the variance for five (5) years, expiring May 24, 1976, on condition that other than as amended the resolution be complied with in all respects and a new certificate of occupancy be obtained; and

WHEREAS, on March 1, 1977, under BSA Cal. No. 958-38-BZ, the Board reopened and extended the term of the variance for five (5) years, expiring March 1, 1982, on condition that other than as amended the resolution be complied with in all respects and a certificate of occupancy be obtained by March 1, 1978; and

WHEREAS, on June 9, 2009, under the subject calendar number, the Board reinstated the prior approval of a contractors' establishment (UG 16) and legalized and permitted the extension of the contractors' establishment to the second floor of the subject building, on condition that any and all work substantially conform to approved drawings filed with the application; the permit be for a term of ten years, to expire on June 9, 2019, the use be limited to an electrical, glazing, heating, painting, paper hanging, plumbing, roofing or ventilating contractor's establishment; the conditions be listed on the certificate of occupancy; a certificate of occupancy be obtained by December 9, 2009; all conditions from prior resolutions not specifically waived by the Board remain in effect; the approval be limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; the approved plans be considered approved only for the portions related to the specific relief granted; and the Department of Buildings 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; and

WHEREAS, on February 23, 2010, under the subject calendar number, the Board granted an 18-month extension

of time to obtain a certificate of occupancy, to expire on August 23, 2011, on condition that the use and operation of the site comply with BSA-approved plans associated with the prior grant; and on further condition that all conditions from prior resolutions not specifically waived by the Board remain in effect; the approval be limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and the Department of Buildings 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; and

WHEREAS, the prior term set to expire, the applicant now seeks an extension of the term of the variance, first issued in 1938, pursuant to ZR § 11-411; and

WHEREAS, ZR § 11-411 states:

Where no limitation as to the duration of the *use* was imposed at the time of [the variance authorized by the Board of Standards and Appeals pursuant to the 1916 Zoning Resolution], such *use* may be continued. Where such *use* was authorized subject to a term of years, such *use* may be continued until the expiration of the term, and thereafter, the agency which originally authorized such *use* may, in appropriate cases, extend the period of continuance for one or more terms or not more than 10 years each. The agency may prescribe appropriate conditions and safeguards to minimize adverse effects of such *use* on the character of the neighborhood;

WHEREAS, the applicant submitted Certificate of Occupancy No. 110008688F, issued to the subject site April 25, 2012, and represents that there has been no change in use of the site or of the built floor area; and

WHEREAS, based upon its review of the record, the Board has determined that the requested extension of the term of the variance are appropriate with certain conditions as set forth below; and

Therefore it is Resolved, that the Board of Standards and Appeals *reopens* and *amends* the resolution dated June 9, 2009, as amended through February 23, 2010, so that, as amended, this portion of the resolution reads "to grant an extension of the term of a variance permitting, on a site located within an R7A zoning district, the operation of a contractors' establishment for a term of ten (10) years, to expire on June 9, 2029, *on condition* that site conditions shall comply with BSA-approved plans associated with the prior grant, marked "Received August 29, 2018" —five (5) sheets"; and *on further condition*:

THAT the term of this grant shall expire on June 9, 2029;

THAT the use shall be limited to an electrical, glazing, heating, painting, paper hanging, plumbing, roofing or

1 Words in *italics* are defined in Section 12-10 of the Zoning Resolution.

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ventilating contractor's establishment;

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;

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

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

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 30, 2018.

309-09-BZ

APPLICANT – Eric Palatnik, P.C., for Yong Lin, owner.
SUBJECT – Application April 20, 2018 – Extension of Time to Complete Construction of a previously approved Variance (§72- 21) to permit construction of a four-story (three levels and a basement) eight-unit multiple dwelling that does not provide a required side yard, contrary to ZR § 23-51 which expired on May 3, 2015; Amendment to permit a height increase from an approved 34'-8" to 37'-8"; Waiver of the Rules. C2-3/R5 and R6A zoning districts.
PREMISES AFFECTED – 2173 65th Street, Block 5550, Lot 40, Borough of Brooklyn.

COMMUNITY BOARD #11BK

ACTION OF THE BOARD – Granted on condition.

THE VOTE TO GRANT –

Affirmative: Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta...4

Negative:0

Absent: Chair Perlmutter1

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Board's Rules of Practice and Procedure, reopening, an extension of time to complete construction pursuant to a previously granted variance, which expired on May 3, 2015, and an amendment to the same; and

WHEREAS, a public hearing was held on this application on September 13, 2018, after due notice by publication in *The City Record*, with a continued hearing on October 30, 2018, and then to decision on that date; and

WHEREAS, Community Board 11, Brooklyn, recommends approval of this application on condition that there be no commercial or community facility use at the subject site; and

WHEREAS, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Scibetta performed inspections of

the site and surrounding neighborhood; and

WHEREAS, the subject site is located on the north side of 65th Street, between Bay Parkway and 21st Avenue, partially in an R5 zoning district and partially in an R6A(C2-3) zoning district, in Brooklyn; and

WHEREAS, the site has approximately 24 feet of frontage, a depth of 100 feet, 2,400 square feet of lot area and is vacant; and

WHEREAS, the Board has exercised jurisdiction over the subject site since May 3, 2011, when, under the subject calendar number, the Board granted a variance, pursuant to ZR § 72-21, to permit the construction of a four- (4) story (three (3) levels and a basement) eight- (8) unit multiple dwelling that does not provide a required side yard, contrary to ZR § 23-51, on condition that any and all work substantially conform to approved plans filed with the application; the parameters of the proposed building be as follows: a maximum of 6,240 square feet of floor area (2.6 floor area ratio ("FAR")); a lot coverage of 65 percent; a rear yard with a minimum depth of 35'-0"; and a wall height and total height of 34'-8", as per the BSA-approved plans; the internal floor layouts on each floor of the proposed building be subject to DOB review and approval; there be no habitable room in the cellar; the approval be limited to the relief granted by the Board, in response to specifically cited and filed DOB/other jurisdiction objection(s) only; the approved plans be considered approved only for the portions related to the specific relief granted; significant construction proceed in accordance with ZR § 72-23; and the Department of Buildings 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; and

WHEREAS, pursuant to ZR § 72-23, a variance granted under the provisions of the Zoning Resolution automatically lapses if substantial construction, in accordance with the plans for which such variance was granted, has not been completed within four (4) years from the date of granting such variance by the Board of Standards and Appeals; and

WHEREAS, accordingly, the time to substantially complete construction pursuant to the 2011 variance grant expired on May 3, 2015; and

WHEREAS, the time for substantial construction to have been completed having expired, the applicant seeks the subject relief; and

WHEREAS, the applicant additionally requests a waiver, pursuant to § 1-14.2 of the Board's Rules of Practice and Procedure, of Rule § 1-07.3(c)(3) to permit the filing of this application less than four (4) years after the expiration of the time to complete construction; and

WHEREAS, the applicant submits that the commencement of construction at the site has been delayed because the current owner purchased the property on October 24, 2014, seven (7) months before the required time to complete construction, and the owner could not develop construction plans, obtain permits, and complete substantial construction prior to the expiration of the grant; and

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WHEREAS, in addition, the applicant stated their full commitment to building this development in a timely manner and represented that hardship would result should the owner not be allowed to construct pursuant to the Board's original grant; 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; and

WHEREAS, the applicant additionally requests an amendment to the variance, granted on May 3, 2011, as it relates to building height; specifically, the applicant seeks to increase the building's height from 34'-8" to 37'-4", by raising the basement level to grade; and

WHEREAS, the applicant states that, the increase in height to 37'-4" is compliant with ZR § 23-693, as it was amended after the original grant and now permits a building height of 45 feet as-of-right in this zoning district and, as such, would not increase the building's floor area, unit count, lot coverage, and would not require any additional waivers; and

WHEREAS, over the course of the hearings, the Board raised concerns regarding the degree of return the owner will enjoy as a result of the increase in height and whether this proposed building still meets the findings required for a variance, specifically, whether the proposal to replace studio units located in the basement, partially below grade, to one-bedroom units at grade provides more than a reasonable return pursuant to ZR § 72-21(b); and

WHEREAS, in response, the applicant stated that the elevator has been removed from the proposed building and it is now a walk-up, two (2) ADA-accessible apartments are located on the ground floor at grade, the cost savings associated with the removal of the elevator are balanced out by lower sales prices of the walk-up apartments and, thus, there is no change in the financial return; and

WHEREAS, based on the foregoing, the Board has determined that the request to amend the previously granted variance with regard to the building height is appropriate with certain conditions as set forth below.

Therefore it is Resolved, that the Board of Standards and Appeals *waives* Rule § 1-07.3(c)(3) of its Rules of Practice and Procedure *reopens* and *amends* the resolution, dated May 3, 2011, so that as amended this portion of the resolution reads: "to grant a four (4) year extension of time to complete construction to October 30, 2022, *on condition* that all work shall substantially conform to drawings filed with this application marked "August 23, 2018"—Twelve (12) sheets; and *on further condition*:

THAT substantial construction shall be completed by to October 30, 2022, as evidenced by an inspection and determination by the Department of Buildings;

THAT the parameters of the proposed building shall be as follows: a maximum of 6,240 square feet of floor area (2.6 FAR); a maximum lot coverage of 65 percent; a rear yard with a minimum depth of 35 feet; and a maximum wall height and total height of 37 feet and four (4) inches, as per the BSA-approved plans;

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

THAT a certificate of occupancy shall be obtained within four (4) years;

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); 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, October 30, 2018.

16-12-BZ

APPLICANT – Eric Palatnik, P.C., for Congregation Adas Yereim, owner.

SUBJECT – Application April 2, 2015 – Amendment of a previously approved Special Permit (§73-19) permitting a school (*Congregation Adas Yereim*) contrary to use regulations (§42-00). The amendment seeks changes to the interior, an increase in the height of the building. M1-2 zoning district.

PREMISES AFFECTED – 184 Nostrand Avenue, northwest corner of Nostrand Avenue and Willoughby Avenue, Block 01753, Lot 0042, Borough of Brooklyn.

COMMUNITY BOARD #3BK

THE VOTE TO REOPEN –

Affirmative: Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta...4

Negative:0

Absent: Chair Perlmutter1

THE VOTE TO CLOSE HEARING –

Affirmative: Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta...4

Negative:0

Absent: Chair Perlmutter1

ACTION OF THE BOARD – Laid over to January 29, 2019, at 10 A.M., for decision, hearing closed.

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540-84-BZ

APPLICANT – Eric Palatnik, P.C., for 341 Soundview Corp., owner.

SUBJECT – Application June 20, 2016 – Extension of Term of a previously approved Variance (§72-21) which permitted the operation of an Automotive Service Station (UG 16B) which expired on Jun 20, 2016. R3-2 zoning district.

PREMISES AFFECTED – 341 Soundview Avenue, Block 3473, Lot 43, Borough of Bronx.

COMMUNITY BOARD #9BX

ACTION OF THE BOARD – Laid over to January 8, 2019, at 10 A.M., for adjourned hearing.

219-97-BZ

APPLICANT – Eric Palatnik, P.C., for Remica Property Group Corp., owner.

SUBJECT – Application May 11, 2018 – Extension of Term of a previously approved Variance (§72-21) which permitted the operation of an Automotive Service Station (UG 16B) with accessory uses which expires on February 23, 2019. R3-2 zoning district.

PREMISES AFFECTED – 130-11 North Conduit Avenue, Block 11864, Lot(s) 13, 16, Borough of Queens.

COMMUNITY BOARD #10Q

ACTION OF THE BOARD – Laid over to January 8, 2019, at 10 A.M., for continued hearing.

163-14-A thru 165-14-A

APPLICANT – Ponte Equities Inc.

SUBJECT – Application July 13, 2018 – Compliance Hearing.

PREMISES AFFECTED – 502, 504 and 506 Canal Street, Block 595, Lot(s) 40, 39, 38, Borough of Manhattan.

COMMUNITY BOARD #1M

ACTION OF THE BOARD – Laid over to May 7, 2019, at 10 A.M., for continued hearing.

2016-4150-BZ

APPLICANT – Sheldon Lobel, P.C., for Courtwood Capital LLC, owner; Grandave Fitness Inc. (d/b/a L Train CrossFit), lessee.

SUBJECT – Application March 24, 2016 – Special Permit (§73-36) to permit a physical culture establishment (*CrossFit*) on the cellar, first floor and mezzanine of an existing building commercial building. C6-4A zoning district.

PREMISES AFFECTED – 667 Grand Street, Block 2781, Lot 29, Borough of Brooklyn.

COMMUNITY BOARD #1BK

ACTION OF THE BOARD – Laid over to January 8, 2019, at 10 A.M., for adjourned hearing.

APPEALS CALENDAR

2017-276-A

APPLICANT – Eric Palatnik, P.C., for Frank McErlean, owner.

SUBJECT – Application October 4, 2017 – Proposed construction of a commercial building not fronting on a legally mapped street, contrary to General City Law 36. M3-1 zoning district.

PREMISES AFFECTED – 96 Industrial Loop, Block 7206, Lot 176, Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta...4

Negative:0

Absent: Chair Perlmutter1

THE RESOLUTION –

WHEREAS, the decision of the Deputy Borough Commissioner, dated September 5, 2017, acting on Department of Buildings Application No. 520307659 reads in pertinent part:

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:

- 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 section 501.3.1 of the 2014 NYC Building Code; and

WHEREAS, this is an application to permit the construction of a one-story Use Group (“UG”) 17A warehouse building with frontage on Industrial Loop, a private paved street not duly placed on the official New York City map, contrary to General City Law (“GCL”) § 36; and

WHEREAS, a public hearing was held on this application on May 1, 2018, after due notice in *The City Record*, with continued hearings on June 19, 2018, August 14, 2018, and August 21, 2018, and then to decision on October 30, 2018; and

WHEREAS, Community Board No. 3, performed an inspection of the site and the surrounding area; and

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

WHEREAS, the subject site is located on the west side of Industrial Loop approximately 750 feet northwest of the intersection of Industrial Loop and Arthur Kill Road, in an M1-1 zoning district and the Special South Richmond Development District, on Staten Island; and

WHEREAS, the site has approximately 108 feet of frontage along Industrial Loop, 20,361 square feet of lot area

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and is occupied by a one-story garage, two storage containers and three open lumber sheds, all of which will be demolished to facilitate the proposed development; and

WHEREAS, by letter dated September 19, 2017, the Office of the Staten Island Borough President states that Industrial Loop is a private road with no title or opinion of dedication to the City of New York; and

WHEREAS, the Office of the Staten Island Borough President waived any further comment with respect to this application; and

WHEREAS, by letter dated October 12, 2018, the New York City Department of Environmental Protection (“DEP”) states that there is an 8-inch diameter private water main in Industrial Loop to the north of Arthur Kill Road; there are no sewers in Industrial Loop at the subject location; no existing water mains or sewers are crossing the subject lot; the Storm Water and Sanitary Drainage Management Plan for South Richmond, Sheet 2 of 7, TD-7, dated March 27, 2003, does not show future sewers at the subject location; the applicant submitted a copy of the certified Site Connections Proposal SCP # 9576, Phase 17, which shows an 8-inch diameter sanitary connection and dry wells for storm discharge; that it is anticipated that the existing private water main and water connection to the private main and the proposed sanitary and storm drains as per the Site Connection Proposal will be maintained by the owners/members of the Arthur Kill Association and will not be maintained by the City of New York; and based on the above, DEP has no objection to the subject application; and

WHEREAS, the applicant provided a Declaration of maintenance, dated January 26, 1995, executed by the Arthur Kill Association, Ltd. (the “Declarant”), recorded at Reel 5901, Page 43-47, stating, *inter alia*, that an easement for ingress and egress was established for the benefit of the Declarant and all adjoining landowners pursuant to a Declaration of easement dated April 9, 1985, and recorded April 20, 1985, in Reel 41, page 6694-6704 and that the Declarant shall maintain the easement, including paving, repairing, surfacing, re-surfacing, snow removal, clearance of all debris and all work otherwise necessary to maintain the easement for ingress and egress; the Declarant agrees to maintain in good and effective working condition the fire hydrants, fire alarm system, the storm drainage system, electricity, telephone, natural gas and water lines; the Declarant indemnifies and holds harmless the City of New York against any claims that may result from the use, maintenance, inspection, repair and/or replacement of the street hydrants, fire alarm system, the storm drainage system, electricity, telephone, natural gas, water lines, and tree, sod and shrub planting as required by the City Planning Declaration, CPCN840612, paragraph “A,” approved August 11, 1993; and that the Declarant agrees that any conveyance by, for or on behalf of the Declarant, his heirs, successors or assigns shall contain a provision to obligate the grantee or heirs, successors or assigns of said Declarant to maintain the existing street, hydrants, fire alarm systems, storm drainage systems, electricity, telephone, natural gas, water lines and

tree, sod and shrub planting as required by City Planning Declaration, CPCN840612, paragraph “A”, approved August 11, 1993, and to indemnify and hold harmless the City of New York from any claims whatsoever which may arise from the failure to adequately maintain or use the existing street, hydrants, fire alarm system, and storm drainage system, electricity, telephone, natural gas, water lines and tree, sod and shrub planting as required by City Planning Declaration, CPCN840612, paragraph “A”, August 11, 1993; and

WHEREAS, the applicant submits that the proposed building will comply with all applicable zoning regulations, including but not limited to those relating to floor area, floor area ratio, lot coverage, open space, height and off-street accessory parking spaces, and be fully sprinklered; and

WHEREAS, the applicant states that Industrial Loop is paved to a width of approximately 38 feet and that the subject site will be accessed by a 20-foot curb cut; and

WHEREAS, at hearing, the Board expressed concerns regarding the absence of a sidewalk at the subject premises and requested that the proposed building be set back from the street in order to provide a continuous sidewalk along Industrial Loop; and

WHEREAS, in response, the applicant revised the plans to show a 5-foot wide sidewalk at the premises and continuity of the same with adjacent sidewalks; 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 Department of Buildings dated September 5, 2017, acting on DOB Application No. 520307659, is modified by the power vested in the Board by Section 36 of the General City Law, and that this appeal is granted, limited to the decision noted above; *on condition* that construction shall substantially conform to the drawing filed with the application marked “Received June 26, 2018”-Seven (7) sheets; 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 sidewalks shall be provided at the subject premises and be continuous with existing sidewalks on the immediately adjacent tax lots, as indicated on the Board-approved plans;

THAT Arthur Kill Association, Ltd. shall maintain the existing private water main, water connection to the private main and the proposed sanitary and storm drains as per the certified Site Connections Proposal SCP # 9576, Phase 17;

THAT the subject building be fully sprinklered, as indicated on the Board-approved plans;

THAT a certificate of occupancy, indicating this approval and calendar number (“BSA Cal. No. 2017-276-A”) shall be obtained within four (4) years, by October 30, 2022;

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

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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 30, 2018.

2017-282-A

APPLICANT – Law Office of Steven Simicich, for Lera Property Holdings, LLC, owner.

SUBJECT – Application May 22, 2018 – Proposed construction of three, two family detached buildings where one of the houses will not be fronting on a mapped street contrary to General City Law 36. R3X Special South Richmond District.

PREMISES AFFECTED – 148 Sprague Avenue, Block 7867, Lot 52, Borough of Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Granted on condition.

THE VOTE TO GRANT –

Affirmative: Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta...4

Negative:0

Absent: Chair Perlmutter1

THE RESOLUTION –

WHEREAS, the decision of the Deputy Borough Commissioner, dated September 27, 2017, acting on Department of Buildings Application No. 520308532 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 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 application to permit the construction of a two-family detached residence on a site with frontage on Sprague Avenue, an improved street not duly placed on the official New York City map, contrary to General City Law (“GCL”) § 36; and

WHEREAS, a public hearing was held on this application on May 22, 2018, after due notice in *The City Record*, with a continued hearing on August 14, 2018, and then to decision on October 30, 2018; and

WHEREAS, Commissioner Scibetta performed an inspection of the site and the surrounding area; and

WHEREAS, Community Board 3, Staten Island, recommends disapproval of this application due to the reliance of the original submission on tandem parking at the site, the proposed residence’s reliance on a 200-foot-long driveway that must also be utilized by an adjacent residence, the

proposal of new private driveway easement and the applicant’s failure to obtain a utility pole plan confirming that any new utility poles would not interfere with an existing home on nearby Petunia Court; and

WHEREAS, the subject site is located on the east side of Sprague Avenue, between George Street and Keppel Avenue, in an R3X zoning district and the Special South Richmond Development District, on Staten Island; and

WHEREAS, the subject tax lot is a flag-shaped lot with approximately 21 feet of frontage along Sprague Avenue, a depth of 85 feet at the northern lot line, a depth of 199 feet at the southern lot line and 11,218 square feet of lot area; and

WHEREAS, the subject tax lot is the result of a subdivision of former tax lot 50, which was subdivided into three tax lots (Tax Lots 50, 52 and 53) and two zoning lots consisting of Tax Lots 52 and 53 (“Zoning Lot 1”) and Tax Lot 50 (“Zoning Lot 2”); and

WHEREAS, the applicant provided a subdivision diagram, stamped “Approval Accepted with Self Certification of Objection” on August 11, 2017, under DOB Job No. 520291899 showing the subdivision of former tax lot 50 into Zoning Lot 1, with 4,491 square feet of lot area, and Zoning Lot 2, having 15,290 square feet of lot area; and

WHEREAS, Tax Lots 50 and 53 are also proposed to be developed, each with one two-family residence, but as each of those tax lots have frontage on Sprague Avenue, the applicant has not requested any waivers GCL § 36 with regards to those lots; and

WHEREAS, by letter dated October 27, 2017, the Staten Island Office of the New York City Department of City Planning (“DCP”) communicated approval of applications for certification by the Chair of the City Planning Commission to DOB that sufficient school capacity exists to accommodate the total of six dwelling units proposed to be developed on Zoning Lot 1 and Zoning Lot 2 pursuant the ZR § 170-121 and the subdivision of former tax lot 50 into Zoning Lot 1 and Zoning Lot 2 pursuant to ZR § 107-8; and

WHEREAS, by letter dated November 16, 2017, the Office of the Staten Island Borough President states that Sprague Avenue at the subject site has a record width of 50 feet, does not appear on the final New York City map and is the subject of an Opinion of Dedication as-in-use for 50 feet dated May 20, 1998; and

WHEREAS, the applicant submits that the two-family residence proposed on the subject tax lot—and the two two-family residences total proposed on Zoning Lot 1—will comply with all applicable zoning regulations, including those relating to required yards, distance between buildings and parking spaces, and that the residence proposed on the subject tax lot will be fully sprinklered; and

WHEREAS, the applicant represents that the subject tax lot will be accessed from a curb cut on Sprague Avenue and a 20-foot easement, located wholly on the subject tax lot, which will provide access to the parking spaces provided for the four total units located on Zoning Lot 1 and widens to a width of 30 feet immediately in front of the subject proposed two-family residence; and

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WHEREAS, by communication dated May 11, 2018, the Office of the Staten Island Borough President requested that the Board confirm unobstructed access to the subject tax lot from the nearest mapped street; that the Fire Department sign off on the applicability of the Fire Code with respect to the total distance from the nearest mapped street to the termination of the 20-foot-wide driveway accessing the structure from the unmapped street; that the Board address access to proposed garage structures pursuant to GCL § 36(2); that ingress and egress easement be memorialized in the resolution and recorded in the Office of the County Clerk; that the Staten Island Topographical Bureau's requirement to post house number signage along the Sprague Avenue frontage for the residence proposed on the subject tax lot be memorialized in the resolution to maximum public safety and emergency response times; and that the Board address the curb to curb pavement of Sprague Avenue to ensure that there will be no street cuts along unmapped streets being relied upon for additional access pursuant to the GCL § 36 exemption; and

WHEREAS, in response to those comments, the applicant submits that unobstructed access to the subject tax lot is provided from Hylan Boulevard, a mapped street located approximately 777 south of the subject tax lot along Sprague Avenue; cited a Fire Department signoff as confirmation of compliance of the proposed plans with the Fire Code; removed the proposed garage from the site plan and agreed to the easement being included in the resolution and to provide house number signage; and

WHEREAS, the Board confirms that the plans approved herein do not indicate access to the subject tax lot from any unmapped streets other than Sprague Avenue; and

WHEREAS, in response to the Community Board's comments regarding the proposal for two tandem parking spaces located in front of a one-car garage on the subject tax lot, for a total of three tandem parking spaces for a two-family residence, the applicant removed a one-car garage from the site plan for the subject tax lot, leaving two tandem parking spaces, and located a third parking space at the far eastern portion of the subject tax lot, directly adjacent and parallel to two parking spaces proposed on tax lot 53, located on the same zoning lot; and, concerning the Community's Board's comment regarding a utility pole plan, the applicant submits that all utilities will be run underground and, thus, no utility pole will be required for the subject development; and

WHEREAS, by letter date April 2, 2018, the New York City Department of Environmental Protection ("DEP") states that there is an 8 inch diameter City water main and a 10 inch diameter sanitary, 24 inch diameter and 30 diameter storm sewers in Sprague Avenue at the subject location; the drainage plan showing location, sizes and grades of sanitary and storm sewers in the Borough of Richmond, Sheet 3 of 6, shows future 10 inch diameter and 18 inch/21 inch diameter storm sewers in Sprague Avenue between Keppel Avenue and George Street; that the sanitary and storm for the residence proposed for the subject tax lot will be discharged as per the Self-Certified House Connection Proposal (HCP) ID #7430, dated November 21, 2017; that all sanitary storm and water

connections for the three two-family residences proposed on Tax Lots 50, 52 and 53 will be maintained by the owners and will not be maintained by the City of New York; and that based on the aforementioned, DEP has no objections to the subject application; and

WHEREAS, in response to the Board's request that the applicant provide an explanation, pursuant to GCL § 36(2), of how the enforcement of the provision "would entail practical difficulty or unnecessary hardship," the applicant submits that absent the requested relief, the subject two-family residence could not be constructed, despite Zoning Lot 1 being of sufficient size, under the Zoning Resolution, to accommodate two two-family residences, and that construction on the two-family residence located on tax lot 53 has already commenced, preventing the reconfiguration of the lot to accommodate two two-family residences that would not require waivers of GCL § 36; 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 Department of Buildings dated September 27, 2017, acting on DOB Application No. 520308532, 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 October 30, 2018"-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 residence shall be full sprinklered;

THAT a permanent easement shall be recorded permitting emergency vehicle access across all lots leading to the subject development;

THAT no parking shall be permitted at any time along the entire length of the driveway easement with signs posted as required in Fire Code Section 503.2.7.2;

THAT a formal restrictive declaration citing the parking restrictions shall be filed against the subject site;

THAT a sign shall be posted from Sprague Avenue at the entrance to the private driveway indicating the house number ("148 Sprague Avenue"), as indicated on the Board-approved plans;

THAT the residence shall comply with all applicable provisions of the Zoning Resolution, including, but not limited to, those relating to yards, distance between buildings and parking spaces;

THAT the sanitary and storm for the shall be discharged as per the Self-Certified House Connection Proposal (HCP) ID #7430, dated November 21, 2017;

THAT all sanitary storm and water connections shall be maintained by the owners and will not be maintained by the City of New York;

THAT prior to the issuance of any certificate of occupancy, including a temporary certificate of occupancy, a restrictive declaration shall be recorded in the Office of the

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City Register in Richmond County against the subject tax lot substantially conforming to the form and substance of the following:

DECLARATION made this ____ day of _____ in the year 2018, by RANDY FRANZA, Member – LERA Property Holdings, LLC, hereinafter referred to as the “Declarant,” with a principal office at 4073 Victory Boulevard, Staten Island, NY 10314;

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 7867 Lot 52, 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. 2017-282-A, Block 7861 Lot 52, to appeal the decisions of the Staten Island 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 building 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 against Block 7867 Lot 52 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 legally be responsible for operating and maintaining the Subject Premises in compliance with the following restrictions of the FDNY’s approved plan and Letter of No Objection dated October 30, 2017, and that such compliance shall be subject to enforcement by the Fire Commissioner;

FURTHER, 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 maintain the driveway easement 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 in good working order;
- c) Assuring that street lights operate during hours

of darkness;

- d) Replacing street lights 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 driveway in good working order;

FURTHER, 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 an easement declaration set forth in Schedule C to allow for access to parking required for the development on adjacent Lot 53, hereinafter referred to as Parcel B more particularly described by a metes and bounds description set forth in Schedule B annexed hereto and by this reference made a part hereof;

WHEREAS, a diagram marked Schedule D showing the two above referenced properties, the boundaries of each and a cross-hatched portion indicating the area of the driveway easement is attached hereto and made a part hereof, said driveway easement being more particularly described by a metes and bounds description set forth in Schedule C annexed hereto and by this reference made a part hereof;

NOW, THEREFORE, in consideration of the issuance by the BSA of a GCL 36 approval for the Subject Premises, Declarant does hereby declare, create, impose and establish the following:

1. The driveway easement shall be used to permit and enable present and future owners of said parcels, their heirs, guests and emergency service vehicles and assigns to pass over the lands of Parcel A for the purpose of ingress and egress to and from Parcel B, to and from Sprague Avenue and the front of said parcels for pedestrian, motor vehicle use and Fire Department access;
2. The driveway easement shall at all times be maintained and kept clear and unobstructed; the owner of Parcel A, their successors and assigns shall maintain the driveway at all times throughout the life of the proposed housing development; should the owner of Parcel A serviced by the driveway fail to repair, maintain or reconstruct the driveway, then the owner of Parcel B shall have the right, but not the obligation, to repair, maintain or reconstruct the driveway and the owner of Parcel A shall reimburse such owner for the cost thereof;
3. This declaration may not be modified,

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amended or terminated without the prior written consent of the BSA;

4. 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;
5. 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;
6. Premise identification signage shall be placed at the intersection of the driveway easement and Sprague Avenue;
7. Signs stating "No Parking Fire Access Road" shall be mounted on four-foot-high posts or fence along the perimeter of the driveway easement; and
8. This declaration shall be recorded at the City Register's/County Clerk'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;

THAT a certificate of occupancy shall be obtained within four (4) years, by October 30, 2022, and shall cross-reference the subject calendar number ("BSA Cal. No. 2017-282") and the number and title of the above referenced filed declaration;

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 30, 2018.

2017-5-A thru 2017-7-A

APPLICANT – Eric Palatnik, P.C., for Cetka Mersimovski, owner.

SUBJECT – Application January 6, 2017 – 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.

PREMISES AFFECTED – 620A, 620B, 620C Sharrotts

Road, Block 7400, Lot 40, Borough of Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Laid over to February 12, 2019, at 10 A.M., for adjourned hearing.

2017-290-A

APPLICANT – Michael Gruen, Esq., for Carnegie Hill Neighbors, owners

SUBJECT – Application November 3, 2017 – 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 zoning district.

PREMISES AFFECTED – 1558 Third Avenue, Block 01516, Lot(s) 32, 37 & 138, Borough of Manhattan.

COMMUNITY BOARD #8M

THE VOTE TO CLOSE HEARING –

Affirmative: Vice Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....4

Negative:0

Abstain: Chair Perlmutter.....1

ACTION OF THE BOARD – Laid over to December 11, 2018, at 10 A.M., for decision, hearing closed.

ZONING CALENDAR

89-15-BZ

APPLICANT – Law Office of Jay Goldstein, for G & W Enterprises Inc., owner.

SUBJECT – Application April 21, 2015 – Variance (§72-21) to permit the construction of a 4-story, 4-family home contrary to §42-11. M1-1 zoning district.

PREMISES AFFECTED – 92 Walworth Street, Block 1735, Lot 16, Borough of Brooklyn.

COMMUNITY BOARD #3BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Vice Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....4

Negative:0

Abstain: Chair Perlmutter.....1

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings ("DOB"), dated April 15, 2015, acting on DOB Application No. 320597314, reads in pertinent part:

ZR 42-00: Proposed residential building Use Group 2 is not permitted as-of-right in an M1-1 zoning district as per ZR Section 42-00 and therefore requires a variance from the Board of Standards and Appeals pursuant to ZR Section 72-21; and

WHEREAS, this is an application under ZR § 72-21 to permit, on a site located in an M1-1 zoning district, the

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development of a four-story plus cellar four-family residential building, contrary to ZR § 42-00; and

WHEREAS, a public hearing was held on this application on February 13, 2018, after due notice by publication in *The City Record*, with continued hearings on May 1, 2018, July 17, 2018, September 27, 2018, and then to decision on October 30, 2018; and

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

WHEREAS, Community Board 3, Brooklyn, recommends waived its review and recommendation of the subject proposal; and

WHEREAS, the subject site is located on the west side of Walworth Street, between Park Avenue and Myrtle Avenue, in an M1-1 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 25 feet of frontage along Walworth Street, depth of 100 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 Use Group 2 multi-family residence with four dwelling units, 5,602 square feet of floor area, a floor area ratio ("FAR") of 2.24, a base height of 43'-6" and a building height of 52'-6"; and

WHEREAS, at the subject site, residential use is not permitted pursuant to ZR § 42-00; and

WHEREAS, accordingly, the applicant seeks the subject relief; and

WHEREAS, the applicant submits that, pursuant to ZR § 72-21(a), the small size and narrow width 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 because the small footprint of the subject site renders it inadequate for modern manufacturing use; and

WHEREAS, the applicant submitted a study of 88 lots within 400 feet of the subject premises and an M1-1 zoning district, not including the subject site (the "Study Area"), demonstrating that 41 of the lots (approximately 47 percent) are owned and/or utilized in common with at least one other adjacent lot, 20 lots (approximately 23 percent) are wider and/or have greater lot area than the subject site; 19 lots (approximately 22 percent) are the same size or smaller than the subject site and occupied by non-conforming uses; 4 lots (approximately 5 percent) are the same size or smaller than the subject site and occupied by conforming uses; and 4 lots (approximately 5 percent) are the same size or smaller than the subject site and currently vacant; and

WHEREAS, the applicant submits that the small percentage of sites in the Study Area similar in size to the subject site developed with conforming uses, the predominant occupation of similarly sized sites in the Study Area with residential uses (19 out of 27, approximately 70 percent) evidences the unsuitability of the subject site for a conforming use; and

WHEREAS, in addition, the applicant states that the site was developed with a residential building as early as

1950s such building was demolished between 1965 and 1977, evidenced by historic Sanborn Maps submitted into the record, and the site has remained vacant since; and

WHEREAS, the Board finds that the small size and narrow width of the site are unique conditions that create unnecessary hardship and practical difficulty in developing the site in conformance with the applicable zoning regulations; and

WHEREAS, in satisfaction of ZR § 72-21(b), the applicant states that there is no reasonable possibility that a conforming development at the site will bring a reasonable return and, in support of that contention, submitted a financial analysis for (1) an as-of-right one-story manufacturing development and (2) the subject proposal; and

WHEREAS, the financial analyses submitted with the application conclude that only the subject proposal will generate a reasonable return, approximately 5 percent, while the as-of-right development will result in a loss of approximately 64 percent of the projected development costs; 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 will not be detrimental to the public welfare in accordance with ZR § 72-21(c); specifically, the applicant's study evidences that the lots on either side of the subject site are currently or are in the process of being developed with educational institutes and that 13 of the 40 other lots located on the subject tax block (approximately 33 percent) and 11 of the 29 other lots with frontage along this block of Walworth Street (approximately 38 percent) are occupied by residential uses; and

WHEREAS, in response to the Board's concerns that the height of the building was inconsistent with building heights in the immediate area, the applicant revised the proposal by setting the fourth floor back from the street, reducing the bulk of the rooftop bulkhead and reducing the floor-to-floor, base and total building heights from 11'-4" to 10 feet, 48'-10" to 43'-6" and 57'-10" to 52'-6", respectively; and

WHEREAS, the Board finds that the subject proposal will neither 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

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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. 15BSA196K, dated April 9, 2018; and

WHEREAS, the EAS documents that the project, as currently 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 27, 2018, the New York City Department of Environmental Protection (“DEP”) states that it has reviewed the February 2018 Remedial Action Plan (“RAP”) and Construction Health and Safety Plan (“CHASP”) submitted by the applicant’s consultant and finds the February 2018 RAP and CHASP acceptable so long as the applicant removed/revised references in the February 2018 RAP to the Mayor’s Office of Environmental Remediation regarding submittals and, upon completion of the project, a Professional Engineer certified Remedial Closure Report—indicating that all remedial requirements have been properly implemented (i.e., installation of vapor barrier, transportation/disposal manifests for removal and disposal of soil in accordance with NYSDEC regulations, and two feet of DEP approved certified clean fill/top soil capping requirement in any landscaped/grass covered areas not capped with concrete/asphalt, etc.)—is submitted to DEP for review and approval; and

WHEREAS, the applicant subsequently provided a revised RAP from which references to the Mayor’s Office of Environmental Remediation regarding submittals had been excised; and

WHEREAS, DEP additionally reviewed the subject proposal with regards to air quality and noise and, by letter dated April 2, 2018, states that it has concluded that the proposed project would not result in any significant adverse impacts with regards to either; and

WHEREAS, the New York City Landmarks Preservation Commissioner (“LPC”) reviewed the proposal and indicated 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.

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 Use Group 2 multi-family residential building with four dwelling units, contrary to ZR § 42-00; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received October 11, 2018”-Eight (8) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum of 5,602 square feet of residential floor area (2.24 FAR), a maximum base height of 43’-6”, a maximum building height of 52’-6” and a maximum of four dwelling units;

THAT balconies or window cages projecting onto the street shall not be permitted;

THAT no sleeping and/or cooking shall be permitted in the cellar;

THAT the cellar shall only be used as accessory to the dwelling units located above;

THAT upon completion of the project, a Professional Engineer certified Remedial Closure Report—indicating that all remedial requirements have been properly implemented (i.e., installation of vapor barrier, transportation/disposal manifests for removal and disposal of soil in accordance with NYSDEC regulations, and two feet of DEP approved certified clean fill/top soil capping requirement in any landscaped/grass covered areas not capped with concrete/asphalt, etc.)—shall be submitted to DEP for review and approval;

THAT substantial construction shall be completed pursuant to ZR § 72-21;

THAT a certificate of occupancy, indicating this approval and calendar number (“BSA Cal No 89-15-BZ”) shall be obtained with 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 30, 2018.

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302-14-BZ

CEQR #15-BSA-110Q

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 45th Avenue. Block 5538, Lot 30. Borough of Queens.

COMMUNITY BOARD #11Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Vice Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....4

Negative:0

Abstain: Chair Perlmutter.....1

THE RESOLUTION –

WHEREAS, the decision on behalf of the Queens Borough Commissioner, dated October 8, 2014, acting on Department of Buildings (“DOB”) Application No. 420944697, reads in pertinent part:

Respectfully request that the proposed ambulatory diagnostic or treatment health care facility (UG4) in excess of 1500 sq. ft. located in an R3X zoning district which is contrary to ZR 22-14 and requires a Special Permit from the Board of Standards and Appeals pursuant to ZR 73-125 be permitted; and

WHEREAS, this is an application under ZR § 73-125 and 73-03 to permit, in an R3X zoning district, the enlargement and conversion of a two-family dwelling to a Use Group (“UG”) 4 ambulatory diagnostic or treatment health care facility having 4,569 square feet of floor area, contrary to ZR § 22-14; 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, November 1, 2016, February 28, 2017, May 16, 2017, August 22, 2017, October 31, 2017, January 23, 2018, April 17, 2018, June 26, 2018, August 14, 2018, August 21, 2018, and then to decision on October 30, 2018; and

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

WHEREAS, Community Board 11, Queens, expressed concerns regarding the number of exam rooms proposed at the premises, the sufficiency of the number of parking spaces provided; the sufficiency of landscaping at the site to buffer it from surrounding occupancies; the lack of ADA-compliance in the building; the reliance of access to the site from the narrower 45th Avenue;

WHEREAS, the subject site is located on the southwestern corner of Francis Lewis Boulevard and 45th Avenue, in an R3X zoning district, in Queens; and

WHEREAS, the site has approximately 80 feet of

frontage along Francis Lewis Boulevard, 74 feet of frontage along 45th Avenue, 6,087 square feet of lot area and is currently occupied by a two-story plus cellar two-family residential building; and

WHEREAS, the applicant proposes to enlarge the existing building, resulting in a two-story plus cellar and basement UG 4 ambulatory diagnostic or treatment health care facility building having 4,569 square feet of floor area; and

WHEREAS, at the subject site, UG 4 ambulatory diagnostic or treatment health care facilities are limited to a maximum of 1,500 square feet of floor area pursuant to ZR § 22-14; and

WHEREAS, accordingly, the applicant seeks the subject relief; and

WHEREAS, ZR § 73-125 reads, in pertinent part, as follows:

73-125

Ambulatory diagnostic or treatment health care facilities

In R3A, R3X, R3-1, R4A, R4B or R4-1 Districts, excluding *lower density growth management areas*, the Board of Standards and Appeals may permit ambulatory diagnostic or treatment health care facilities listed in Use Group 4, limited in each case to a maximum of 10,000 square feet of *floor area*, provided that the Board finds that the amount of open spaces and its distribution on the *zoning lot* conform to standards appropriate to the character of the neighborhood.

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 is also subject to and guided by ZR § 73-00 et seq.; and

WHEREAS, the Board additionally notes that, pursuant to ZR § 73-04, it has prescribed certain conditions and safeguards to the subject special permit to minimize the adverse effects of the special permit upon other property and the 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 recognizes that the subject site is in an R3X zoning district, wherein a special permit pursuant to ZR § 73-125 is available; and

WHEREAS, the applicant originally proposed to maintain the two-family residential use, occupy a 3,979 square foot enlargement with the UG 4 ambulatory diagnostic or treatment health care facility and provide 12 off-street accessory parking spaces, including ten for the community facility use; and

WHEREAS, in the course of hearings, the Board

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expressed concerns regarding the amount of open space provided on the lot and whether it was consistent with the amount of open space provided in the neighborhood in satisfaction of ZR § 73-125, particularly because a majority of the open space provided in the original proposal was covered by driveways and parking; the necessity and location of three proposed curb cuts; the existing residential occupancy being compromised by the bulk of the proposed enlargement; whether there was enough space on the site to support the proposed mixed uses, specifically, whether the site was large enough to allow for the maneuverability of cars into and out of the off-street accessory parking spaces, and whether the design of the façade of the 45th Avenue frontage of the enlargement was cohesive and consistent with neighborhood character; and

WHEREAS, in response to the Board's concerns and those raised by Community Board 11, the applicant revised the proposal to eliminate residential use at the site; reduced the size of the enlarged building from 6,086 square feet to 4,569 square feet of floor area; increased the number of off-street accessory parking spaces from 12 to 15 attended spaces; relocated 13 parking spaces from the open space surrounding the proposed enlargement to the basement; reoriented the building to be accessed solely from Francis Lewis Boulevard; eliminated one of the proposed curb cuts on 45th Avenue; added landscaping along each of the lot lines and around the enlargement to buffer the parking from surrounding residential uses; added a 6-foot-tall opaque wood fence along the southern and western edges of the site to prevent the future expansion of the parking area into areas intended to be landscaped; added street trees to the site plan 25 feet apart and 40 feet from the corner pursuant to New York City Department of Parks and Recreation's standards; and indicated that the façade of the building would be treated with brick veneer, a more appropriate material for the surrounding neighborhood; and

WHEREAS, with regard to ZR § 73-03(a), the applicant submits that the hazards or disadvantages to the community at large of the subject special permit use at the site are outweighed by advantages to be derived by the community by the grant of the special permit and that no adverse effects on the privacy, quiet, light and air in the neighborhood are foreseeable; and

WHEREAS, in relation to ZR § 73-03(b), the applicant state that the proposed enlargement and community facility use will not interfere with any public improvement project that is approved or pending before the City Council, Site Selection Board or City Planning Commission; and

WHEREAS, ZR § 73-03(c) through (g) are inapplicable to the subject application because ZR § 73-125 does not require the Board to determine whether the special permit use is appropriately located in relation to the street system as stated in ZR § 73-03(c); that ZR § 73-125 is not one of the sections expressly named in ZR § 73-03(d); there is no term of years specified in ZR § 73-125 that would render ZR § 73-03(e) applicable; the subject application is not for a renewal of a special permit, as contemplated in ZR § 73-03(f); and the subject application is not for an enlargement or extension of

an existing use, as described in ZR § 73-03(g); and

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

WHEREAS, the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 15BSA110Q, dated November 10, 2014; and

WHEREAS, in light of the foregoing, the Board has determined that the that the evidence in the record supports the requisite findings pursuant to ZR § 73-125; and

WHEREAS, the Board further finds that the subject use will not alter the essential character of the surrounding neighborhood nor will it impair the future use and development of the surrounding area and 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 § 73-03.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby issue a Type II determination under 6 NYCRR 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 §§ 73-125 and 73-03 to permit, in an R3X zoning district, the enlargement and conversion of a two-family dwelling to a Use Group 4 ambulatory diagnostic or treatment health care facility having 4,569 square feet of floor area, contrary to ZR § 22-14, *on condition* that all work shall substantially conform to drawings filed with this application marked "Received October 29, 2018"--Twelve (12) sheets; and *on further condition*:

THAT all signage at the site shall be limited to the pylon sign indicated on the approved plans;

THAT there shall be no signage along the 45th Avenue frontage of the subject site;

THAT the landscaping and fencing indicated on the approved plans shall be maintained and replaced as necessary;

THAT there shall be no parking permitted on the sidewalks;

THAT the 15 off-street accessory parking spaces shall be attended parking;

THAT the proposed curb cuts on the approved plans shall be as approved by the New York City Department of Buildings and/or the New York City Department of Transportation;

THAT no EFIS shall be utilized for any façade of the building;

THAT substantial construction shall be completed in accordance with ZR § 73-70;

THAT a certificate of occupancy, indicating this approval and the subject calendar number ("BSA Cal No 302-14-BZ"), shall be obtained within four (4) years;

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 specific relief granted;

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

Adopted by the Board of Standards and Appeals, October 30, 2018.

2017-314-BZ

CEQR #18-BSA-072K

APPLICANT – Eric Palatnik, P.C., for 1571 Holding LLC, owner; 1571 Development LLC, lessee.

SUBJECT – Application December 12, 2017 – 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).

PREMISES AFFECTED – 1571 McDonald Avenue, Block 6564, Lot 60, Borough of Brooklyn.

COMMUNITY BOARD #12BK

ACTION OF THE BOARD – Granted on condition.

THE VOTE TO GRANT –

Affirmative: Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta...4

Negative:0

Absent: Chair Perlmutter1

THE RESOLUTION –

WHEREAS, the decision of the Borough Commissioner, dated November 16, 2017, acting on Department of Buildings (“DOB”) Application No. 321679224, reads in pertinent part:

Proposed physical culture establishment in a C2-3/R5 zoning district (OP) district is contrary to Section 32-10 ZR and must be referred to the BSA pursuant to 73-36 ZR; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to permit, on a site located partially in an R5 zoning district and partially in an R5/C2-3 zoning district and in the Special Ocean Parkway District and partially in the Special Ocean Parkway Subdistrict, a physical culture establishment (“PCE”) on the cellar level, basement, and mezzanine of a proposed commercial building consisting of a cellar, basement, and mezzanine level, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on August 7, 2018, after due notice by publication in *The City Record*, with a continued hearing on October 30, 2018, and then to decision on that same date; and

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

WHEREAS, the Board was in receipt of one (1) form letter in support of this application; and

WHEREAS, Commissioner Ottley-Brown and Commissioner Scibetta performed inspections of the site and

surrounding neighborhood; and

WHEREAS, the subject site is located on the east side of McDonald Avenue, between Avenue M and Avenue N, in a partially in an R5 zoning district and partially in an R5/C2-3 zoning district and in the Special Ocean Parkway District and partially in the Special Ocean Parkway Subdistrict, in Brooklyn; and

WHEREAS, the site has approximately 280 feet of frontage on McDonald Avenue, 112 feet of depth, 31,360 square feet of lot area, and is occupied by an existing one- (1) story commercial building on the northern portion of the lot, and will also be occupied by a proposed two- (2) story plus cellar commercial building in which the subject PCE will be located; 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* 1 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, the Board notes that, because no portion of the subject PCE is represented as being 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

1 Words in *italics* are defined in Section 12-10 of the Zoning Resolution.

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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 applicant submits that the proposed PCE will occupy 52,304 square feet of gross floor area at the subject site; 22,400 square feet of floor space on the cellar level with a restaurant, lounge areas, offices, storage rooms, changing rooms, locker rooms, bathrooms, a food prep room, and laundry room; 22,400 square feet of floor area on the basement floor with tanning rooms, baths, saunas, therapy rooms, a jacuzzi, and a 1,750 square foot large swimming pool; 3,304 square feet of floor area on the mezzanine with storage; and 267 square feet of floor area on the roof with access from the PCE to 37 accessory off-street parking spaces; and

WHEREAS, the applicant represents that the proposed PCE will operate as “World Spa” and will be open daily from 8:00 a.m. to 12:00 a.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 the PCE will be located in a mixed-use commercial and residential area and fits with the essential character of the surrounding area; 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 represents that the PCE will

facilities for practice of massage by New York State licensed masseurs or masseuses, as well as a 1,750 square foot large swimming pool; and

WHEREAS, accordingly, 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 submits that the PCE space will be protected with a wet sprinkler system, and an approved interior fire alarm system—including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms, and a connection of the interior fire alarm system to an FDNY-approved central station—will also be installed within the PCE space; and

WHEREAS, by letter dated July 27, 2018, the Fire Department submitted a letter of no objection to the application with conditions, stating that applications have been filed with the DOB and the status of the applications is as follows: Fire Alarm System (Alt. II 321780676) – application processed entire 2/15/18; Alteration Type II (Alt. II 321780667) – application processed entire 2/15/18; Place of Assembly (PA 321671268) – application has been pre-filed and not formally submitted to the DOB for review; the Fire Department requests that the Board direct the applicant to file the place of assembly application for review, and requests that the applicant fully submit the plans and applications with the DOB for review; once the application has been filed, the Licensed Public Place of Assembly Unit (LPPA) can track the approval process and issue any orders if an operating permit is not obtained from the DOB; Fire Prevention will assist the applicant of record for the fire alarm application for review and approval; and, once the plans have been approved, the fire alarm installer will be responsible for scheduling a test date with the Fire Alarm Inspection Unit (FAIU) in the Bureau of Fire Prevention; both LPPA and FAIU have been notified of the place of assembly and fire alarm application for the PCE and will issue any violation orders if approvals and permits are not obtained; and

WHEREAS, the applicant represents that the PCE will not impact the privacy, quiet, light and air of the neighborhood on account that it will be located entirely within a commercial building and will be surrounded by other commercial properties; and the operator will turn off the rooftop lights when the PCE is not operating; 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 that the proposed special permit use will not interfere with any pending public improvement project; and

WHEREAS, the project is classified as an Unlisted

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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 Environmental Assessment Statement (“EAS”) Short Form CEQR No. 18-BSA-072K, received December 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; 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; 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, on January 23, 2018, under Control No. 53303, the applicant obtained a DOB Zoning Resolution Determination Form (“ZRD1”) approval with conditions for consideration of the proposed site as a two- (2) story building with a basement and mezzanine for zoning purposes such that off-street parking spaces are permitted to be located on the roof over the basement portion of the proposed building, in compliance with ZR § 36-11, on condition that no parking space be located on the roof of the building directly above the mezzanine; all of the parking spaces be located within 30 feet in height from base plane elevation; and parapet walls be not more than four (4) feet in height from the roof level; and

WHEREAS, over the course of the public hearings, the Board raised concerns over the light spread of the rooftop parking illumination and the effect it may have on nearby residential properties; and

WHEREAS, in response, the applicant amended the plans to adjust the heights of the parapet wall and lights; and

WHEREAS, the Board notes that this is an application for a special permit pursuant to ZR §§ 73-36 and 73-03 to permit a PCE at the subject site and the Board is not granting any relief with regards to off-street accessory parking at the subject site; to the extent that the proposed off-street accessory rooftop parking is permitted at the site pursuant to all applicable regulations, the Board has instituted conditions pertaining to the maintenance of the parking lot—including a requirement that all rooftop lights be turned off when the PCE is closed, roll down gates be used to prevent access to the rooftop parking during off-hours and that parking be accessory to the PCE use only—as a part of this grant to protect the surrounding neighborhood and community; 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 that permitting the subject PCE space proposed on the cellar level, basement and mezzanine the proposed building, is appropriate, with certain conditions as set forth below.

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, 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 partially in an R5 zoning district and partially in an R5/C2-3 zoning district and in the Special Ocean Parkway District and partially in the Special Ocean Parkway Subdistrict, a physical culture establishment on the cellar level, basement and mezzanine of the proposed commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received October 30, 2018”—Ten (10) sheets; and *on further condition*:

THAT the term of the PCE grant shall expire on October 30, 2028;

THAT the maximum permitted hours of operation shall be 8:00 a.m. to 12:00 a.m.;

THAT any change in hours of operation shall require application to and approval from the Board;

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

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

THAT a sprinkler system shall be installed and maintained as indicated on the Board-approved plans;

THAT an approved fire alarm system—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—shall be installed and maintained within the 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 a place of assembly permit shall be obtained;

THAT rooftop lighting for the accessory parking shall be provided as per approved plans;

THAT the perimeter lights on the rooftop parking shall be located not higher than three (3) feet;

THAT the parking lot shall be striped;

THAT rooftop parking lights shall be turned off when the PCE is closed;

THAT a roll down gate, preventing access to the rooftop parking, shall be closed when the PCE is closed;

THAT parking on site shall be accessory to the PCE only;

THAT no parking space shall be located on the roof of the building directly above the mezzanine;

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THAT all parking spaces shall be located within 30 feet in height from the base plane;

THAT parapet walls shall not be more than four (4) feet in height from the roof level;

THAT trash shall be stored in the refrigerated trash room and removed to the street only prior to pick up;

THAT any changes in hours shall require application to and approval from the Board;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy indicating the subject calendar number (“BSA Cal. No. 2017-314-BZ”) shall be obtained within four (4) years, by October 30, 2022;

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, October 30, 2018.

263-15-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Seshadri and Prema Das (Lot 29) & Premast Management (Lot 32), owners.

SUBJECT – Application December 4, 2015 – Special Permit (§73-126) to allow a medical office, contrary to bulk regulations (§22-14). R3X zoning district.

PREMISES AFFECTED – 45/47 Little Clove Road, Block 662, Lot(s) 29 & 32, Borough of Staten Island.

COMMUNITY BOARD #1SI

ACTION OF THE BOARD – Laid over to January 8, 2019, at 10 A.M., for continued hearing.

2016-4265-BZ

APPLICANT – Law Office of Fredrick A. Becker, for 25 Bleecker Street, LLC, owner.

SUBJECT – Application October 6, 2016 – Variance (§72-21) to permit the development of a six-story and penthouse structure containing commercial retail (UG 6) on the first and cellar floors contrary to ZR §42-14(D)(2)(B) and residential (UG 2) in the upper floors contrary to ZR §42-10. The proposed rear yard does not comply with ZR §§43-26 & 43-27. M1-5B (NOHO Historic District) zoning district.

PREMISES AFFECTED – 25 Bleecker Street, Block 529, Lot 54, Borough of Manhattan.

COMMUNITY BOARD #2M

ACTION OF THE BOARD – Laid over to January 8, 2019, at 10 A.M., for continued hearing.

REGULAR MEETING

TUESDAY AFTERNOON, OCTOBER 30, 2018

1:00 P.M.

Present: Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.

Absent: Chair Perlmutter.

ZONING CALENDAR

2017-284-BZ

CEQR #18-BSA-046M

APPLICANT – Sheldon Lobel, P.C., for 605 Third Avenue Fee LLC, owner; Midtown Fitness Partners LLC, lessee.

SUBJECT – Application October 26, 2017 – Special Permit (§73-36) to permit the operation of the Physical Culture Establishment (*Orangetheory Fitness*) on portions of the first floor and cellar level contrary to ZR §32-10. C5-3 & C1-9 zoning districts.

PREMISES AFFECTED – 605 Third Avenue, Block 920, Lot 12, Borough of Manhattan.

COMMUNITY BOARD #6M

ACTION OF THE BOARD – Granted on condition.

THE VOTE TO GRANT –

Affirmative: Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta...4

Negative:0

Absent: Chair Perlmutter1

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Deputy Borough Commissioner, dated October 19, 2017, acting on Department of Buildings (“DOB”) Application No. 123048558, reads in pertinent part:

Proposed Physical Culture Establishment [as defined in section ZR 12-10] is not permitted as of right in C5-3 and C1-9 zoning districts and is contrary to section ZR 32-10

Use as the physical culture health establishment in C5-3 and C1-9 zoning districts shall comply with regulation of section ZR 32-31 (uses permitted by special permit of 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 partially within a C5-3 zoning district and partially within a C1-9 zoning district, in the Special Midtown District, a physical culture establishment (“PCE”) on portions of the cellar floor and first floor of an existing 43-story plus cellar commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on October 30, 2018, after due notice by publication in *The City Record*, and then to decision on that

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same date; and

WHEREAS, Community Board 6, Manhattan, waived review of this application; and

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

WHEREAS, the subject site is located on the southeast corner of Third Avenue and East 40th Street, partially within a C5-3 zoning district and partially within a C1-9 zoning district, in the Special Midtown District, in Manhattan; and

WHEREAS, the site has approximately 198 feet of frontage along Third Avenue, 244 feet of frontage long East 39th Street, 246 feet of frontage along East 40th Street, 48,258 square feet of lot area, and is occupied by a 43-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, the Board notes that, because no portion of the subject PCE is represented as being 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 applicant submitted evidence that the subject PCE occupies 539 square feet of floor area in a portion of the first floor dedicated to reception and access to the cellar level and 5,225 square feet of floor area in a portion of the cellar with a fitness area for treadmills, rowing machines, weights, and various exercise equipment, a floor space for training, restrooms, changing rooms, showers, an office, laundry, storage, and mechanical rooms; and

WHEREAS, the applicant represents that the PCE has been in operation since March 1, 2018, as Orangetheory Fitness, 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.; Sunday, 8:00 a.m. to 2:00 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 the PCE is located in an area with a mix of retail stores, offices and eating and drinking establishments and there are two (2) other PCEs in the immediate vicinity; and

WHEREAS, the applicant represents that, though the PCE space is separated from commercial uses in the subject building, that start on the second floor of the subject building, by existing demising walls, sound mitigation measures, including insulated walls and ceiling, a rubber floor system under the fitness and weight areas, and interior signage instructing patrons against dropping or throwing

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weights, have been installed in the portions of the cellar floor occupied by the PCE to mitigate any adverse impacts of the use to other building tenants; specifically: a spring isolated gypsum acoustic ceiling; 1/4-inch thick rubber flooring in the fitness area; 1.5-inch thick rubber flooring in the area where weights are used; and the sound system processor includes output processing capabilities programmed to limit the overall system volume and maintain uniform sound levels between music and the microphones; 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 weight training and physical training on exercise machines and equipment; and

WHEREAS, accordingly, 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 submits that an approved interior fire alarm system—including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms, and a connection of the interior fire alarm system to an FDNY-approved central station—is installed within the PCE space, which is already equipped with a sprinkler system; and

WHEREAS, by letter dated October 29, 2018, the Fire Department submitted a letter of no objection to the application and confirmed that the fire alarm and sprinkler systems in the PCE space have been permitted and inspected by units in the Bureau of Fire Prevention; and

WHEREAS, the applicant represents that the PCE will not impact the privacy, quiet, light and air of the neighborhood on account of its location entirely within the first floor and cellar of a commercial building in a commercial zoning district and that its patrons will consist of people who live and/or work in the immediate area and, thus, will not result in any significant increase in pedestrian or vehicular traffic to the site; 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, 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 in which the PCE has operated at the premises without a 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. 18-BSA-046M, dated October 27, 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 partially within a C5-3 and partially within a C1-9 zoning district, in the Special Midtown District, a physical culture establishment on a portion of the cellar and first floor of an existing 43-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 May 18, 2018”—Six (6) sheets; and *on further condition*:

THAT the term of the PCE grant shall expire on March 1, 2028;

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

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

THAT the existing sprinkler system shall be maintained as indicated on the Board-approved plans;

THAT an approved fire alarm system—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—shall be maintained within the 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 the above conditions shall appear on the Certificate of Occupancy;

THAT a Certificate of Occupancy shall be obtained within one (1) year, by October 30, 2019;

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

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

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

Adopted by the Board of Standards and Appeals, October 30, 2018.

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2018-5-BZ

CEQR #18-BSA-084M

APPLICANT – Cutrona Architecture, PLLC, for 306-308 East 126th Street, LLC, owner.

SUBJECT – Application January 17, 2018 – Special Permit (§73-50) to permit the development of a two-story automotive repair building (UG 16B) contrary to ZR §43-302 (building does not provide the required 30-ft’ rear yard coincidental to a residential zoning district. M1-2 zoning district.

PREMISES AFFECTED – 306-308 East 126th Street, Block 1802, Lot(s) 45, 46, Borough of Manhattan.

COMMUNITY BOARD #11M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta...4

Negative:0

Absent: Chair Perlmutter1

THE RESOLUTION –

WHEREAS, the decision of the Deputy Borough Commissioner, dated January 10, 2018, acting on Job Application No. 123165733, reads in pertinent part:

ZR 43-302, ZR 73-50: Required 30 feet in depth rear yard is not provided for the proposed new building (automotive repair Use Group 16) in M1-2 Manufacturing District which coincides with the rear lot line of the zoning lot in the adjoining R7-2 Residence District that is contrary to regulations of section ZR 43-302.

Special provisions of sections ZR 43-30 applying along district boundaries may be waived in appropriate cases by the Board of Standards and Appeals [section ZR 73-50]; and

WHEREAS, this is an application pursuant to ZR § 73-50 to waive the rear yard requirements of ZR § 43-302; and

WHEREAS, a public hearing was held on this application on October 30, 2018, after notice by publication in *The City Record*, 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 11, Manhattan, states that it has no objection to the granting of this application; and

WHEREAS, the subject site is located on the south side of East 126th Street, between First Avenue and Second Avenue, in an M1-2 zoning district, in Manhattan; and

WHEREAS, the site is comprised of two adjacent tax lots having approximately 50 feet of frontage along East 126th Street, 100 feet of depth and 4,996 square feet of lot area; and

WHEREAS, Certificate of Occupancy No. 120733956F was issued for lot 45 on February 6, 2012, for Use Group (“UG”) 16C dead storage of motor vehicles; and

WHEREAS, ZR § 73-50 reads, in pertinent part, as follows:

73-50

SPECIAL PROVISIONS APPLYING ALONG DISTRICT BOUNDARIES

In appropriate cases, for *zoning lots* with single frontage, the Board of Standards and Appeals may permit primary business entrances, *show windows*, or *signs* not otherwise permitted under the provisions of Section 32-51 or 42-44 (Limitations on Business Entrances, Show Windows or Signs), provided that in no case shall any such primary business entrance, *show window* or *sign* be permitted within 10 feet of a *Residence District* boundary.

In addition, in appropriate cases, the Board may waive the requirements for *rear yards* or *side yards* set forth in Sections 33-29 or 43-40 (SPECIAL PROVISIONS APPLYING ALONG DISTRICT BOUNDARIES) or the requirements for *front yards* as set forth in Section 34-233 (Special provisions applying along district boundaries) [. . .]; and

WHEREAS, the Board notes that in addition to the foregoing, its determination is also subject to and guided by ZR § 73-00 et seq.; and

WHEREAS, ZR § 43-302 reads as follows:

43-302

Required yards along district boundary coincident with rear lot lines of two adjoining zoning lots
M1 M2 M3

In all districts, as indicated, along such portion of the *rear lot line* of a *zoning lot* in a *Manufacturing District* which coincides with a *rear lot line* of a *zoning lot* in an adjoining *Residence District*, an open area not higher than *curb level* and at least 30 feet in depth shall be provided within the *Manufacturing District*. Such an open area shall not be used for storage or processing of any kind; and

WHEREAS, the Board additionally notes that, pursuant to ZR § 73-04, it has prescribed certain conditions and safeguards to the subject special permit to minimize the adverse effects of the special permit upon other property and the 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 recognizes that the subject site is in an M1-2 zoning district and its rear lot line coincides with the rear lot line of an adjoining Residence District (an R7-2 zoning district) such

1 Words in *italics* are defined in Section 12-10 of the Zoning Resolution.

MINUTES

that ZR § 43-302 is applicable and a waiver pursuant to ZR § 73-50 is available; and

WHEREAS, the applicant proposes to develop the subject site with a two-story UG 16 automotive repair building constructed full to the rear lot line; and

WHEREAS, at the subject site, an open area at the rear at least 30 feet deep is required pursuant to ZR § 43-302; and

WHEREAS, accordingly, the applicant seeks the subject relief; and

WHEREAS, the applicant states that the lot located immediately adjacent to its rear, within an R7-2 zoning district, is occupied by an exit ramp of the Robert F. Kennedy Bridge, thus, the special permit requested herein is appropriate because the subject site is not located adjacent to a residential use at its rear that would benefit from a 30 foot deep rear yard; and

WHEREAS, the applicant additionally submits that the lot directly to the west of the subject site, tax lot 47 in an M1-2 zoning district, is occupied by a non-conforming multi-family residential building, that the lot directly to the east, tax lot 43, is occupied by an automotive repair shop and that directly across the street from the subject site is an MTA bus depot, thus, the proposed use, which is permitted at the site as-of-right pursuant to ZR § 42-12, is consistent with the surrounding area and will not adversely affect the privacy, light and air of the immediate neighborhood in satisfaction of ZR § 73-03(a); and

WHEREAS, with regards to the residential building located on adjacent tax lot 47, to the west, the applicant represents that the subject development will be constructed of block with interior finishings that will prevent the travel of noise and notes that the proposed building will not share a party wall with the adjacent residential building and will have windows only at the front wall and not at the rear or the sides to further reduce the potential for adverse noise effects; and

WHEREAS, the applicant additionally submits that any ventilation required for the UG 16 occupancy of the proposed building will be situated to be adjacent to the existing automotive repair shop located to the east of the subject site on tax lot 43, rather than to the west, adjacent to the existing non-conforming residential building; and

WHEREAS, the applicant states that no rear yard is proposed at the subject site to maximize the floor plate of the proposed occupancy and reduce the height of the building; and

WHEREAS, the applicant submits that the accessory parking provided on the second floor of the proposed building will not be open to the public, but, rather, serve as a convenience for patrons having to leave their cars at the facility for repairs; and

WHEREAS, with regards to ZR § 73-03(b), the applicant states that the proposed development will not interfere with any public improvement project approve or pending before the City Council, Site Selection Board or City Planning Commission; and

WHEREAS, with regards to ZR § 73-03(c), the applicant states that while ZR § 73-50 does not require a finding that the special permit is appropriately located in relation to the street system, it is not anticipated that the elimination of a rear yard requirement at the subject site will have any negative impact on the surrounding streets; and

WHEREAS, ZR § 73-03(d) through (g) are inapplicable to the subject application because ZR § 73-50 is not one of the sections expressly named in ZR § 73-03(d); there is no terms of years specified in ZR § 73-50 that would render ZR § 73-03(e) applicable; the subject application is not for a renewal of a special permit, as discussed in ZR § 73-03(f) and the subject application is not for an enlargement or extension of an existing use, as described in ZR § 73-03(g); 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. 18-BSA-084M, dated January 18, 2018; and

WHEREAS, in light of the foregoing, the Board finds that the evidence in the record supports the findings required to be made under ZR §§ 73-50 and 73-03 and that a waiver of ZR § 43-302, pursuant to ZR § 73-50, is appropriate at the subject site; and

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby issue a Type II determination under 6 NYCRR 617.5 and 617.3, §§ 5-02(a) and 5-02(b)(2) of the Rule of Procedure for City Environmental Quality Review and makes each and every one of the required findings under ZR §§ 73-50 and 73-03 to permit, in an M1-2 zoning district, the construction of a development that does not provide an open area not higher than curb level and at least 30 feet in depth at the rear lot line, which coincides with a rear lot line of a zoning lot in an adjoining Residence District, contrary to ZR § 43-302; *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked “Received July 12, 2018”-Nine (9) sheets; and *on further condition*:

THAT the sound attenuation of the western wall of the building, directly adjacent to a non-conforming residential building located on tax lot 47, shall meet the New York City Department of Environmental Protection’s STC minimum performance standards;

THAT ventilation- and noise-emitting elements shall be installed to be closer to the conforming building located to the east of the subject site, tax lot 43, than to the non-conforming residential building located immediately to the west, on tax lot 47;

THAT if a spray booth is provided in the subject development, it shall be operated in compliance with all applicable regulations;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, indicating this approval and calendar number (“BSA Cal. No. 2018-5-BZ”), shall be obtained within four (4) years, by October 30,

MINUTES

2022;

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 30, 2018.

2018-60-BZ

CEQR #18-BSA-130M

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Diamondrock NY Lex Owner, LLC, owner; Crunch LLC, lessee.

SUBJECT – Application April 27, 2018 – Special Permit (§73-36) to permit the operation of a Physical Cultural Establishment (*Crunch*) in portions of the cellar and first floor of an existing 27 story commercial building §32-10. C6-6 and C6-4.5 (MID) Designated as an Individual Landmark Building.

PREMISES AFFECTED – 511 Lexington Avenue, Block 1302, Lot 51, Borough of Manhattan.

COMMUNITY BOARD #8M

ACTION OF THE BOARD – Granted on condition.

THE VOTE TO GRANT –

Affirmative: Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta...4

Negative:0

Absent: Chair Perlmutter1

THE RESOLUTION –

WHEREAS, the decision on behalf of the Manhattan Borough Commissioner, dated March 27, 2018, acting on Department of Buildings (“DOB”) Application No. 122372388, reads in pertinent part:

Proposed physical culture establishment in a C6-6(MiD) and C6-4.5(MiD) is contrary to Sections 32-10 ZR and 81-10 ZR 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 permit, on a site located partially within a C6-6 zoning district and partially within a C6-4.5 zoning district, and in the Special Midtown District, a physical culture establishment (“PCE”) in portions of the cellar floor and first floor of an existing 27-story plus cellar and sub-cellar commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on October 30, 2018, after due notice by publication in *The City Record*, and then to decision on that same date; and

WHEREAS, Community Board 6, Manhattan, recommended approval of this application for a term of five (5) years, as per their standing policy; and

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

WHEREAS, the subject site is located on the southeast corner of Lexington Avenue and East 47th Street, partially within a C6-6 zoning district, partially within a C6-4.5 zoning district, and in the Special Midtown District, in Manhattan; and

WHEREAS, the site has approximately 100 feet of frontage along Lexington Avenue, 175 feet of depth, 17,523 square feet of lot area, and is occupied by a 27-story plus cellar and sub-cellar commercial building, occupied, in part, as a hotel that has been designated by the New York Landmarks Preservation Commission as an individual landmark; 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, the Board notes that, because no portion of the subject PCE is represented as being 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

MINUTES

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 applicant submitted evidence that the subject PCE occupies 240 square feet of floor area on the first floor and 13,500 square feet of floor space in the cellar with a fitness area for group training, treadmills, stationary bikes, elliptical machines, various exercise equipment, men's and women's locker rooms with restrooms and showers, an office, reception area, and storage rooms; and

WHEREAS, the applicant represents that the proposed PCE will operate as Crunch, with the following hours of operation: Monday through Friday, 5:00 a.m. to 11:00 p.m.; Saturday and Sunday, 7:00 a.m. to 9:00 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 the PCE will provide a benefit to community members while preserving the character of the district and the existing landmarked building; and

WHEREAS, the applicant submits that, though the PCE space is not adjacent to any hotel rooms in the subject building, sound mitigation measures, including insulated walls and rubber flooring systems of varying thicknesses in exercise machine and weight areas, will be installed in the portions of the cellar floor occupied by the PCE to mitigate any adverse impacts of the use to other building tenants;

specifically: noise attenuation measures will be provided in the PCE space to ensure that sound levels, including sound emanating from any sound system, do not exceed the maximum interior noise level approved by New York City Department of Environmental Protection or other regulatory authority; music levels will be a maximum of 80dBa for code compliance; an electronic limiter/compressor will be integrated into the music system to ensure that compliant music levels are maintained, and the limiter's setting will be tuned depending on the extent of the noise mitigation provided in the gym; restrained bridge isolators will be used to support wall mounted speakers; subwoofers will be floor mounted atop neoprene waffle pads; and the weight racks will be freestanding and supported atop thicker gym floor tile; 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 weight training and physical training on exercise machines and equipment; and

WHEREAS, accordingly, 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, by letter dated October 29, 2018, the Fire Department submitted a letter of no objection to the application and confirmed that applications for the fire alarm and sprinkler systems in the PCE space have been filed and are being inspected by units in the Bureau of Fire Prevention; and

WHEREAS, the applicant submits that an approved interior fire alarm system – including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms, and a connection of the interior fire alarm system to an FDNY-approved central station – as well as a wet sprinkler system, will be installed within the PCE space; and

WHEREAS, the applicant represents that the PCE will not impact the privacy, quiet, light and air of the neighborhood because it is anticipated that a majority of members will be local neighborhood residents and employees of nearby commercial uses, and it is anticipated that members will walk to the PCE; and

WHEREAS, on May 11, 2018, the New York City Landmarks Preservation, pursuant to Certificates of No Effect Numbers CNE-19-23834 and CNE-19-23835, both expiring May 11, 2022, permitted the installation of vinyl signs reflecting the name of the PCE and hours of operation and exterior alterations to the door of the facility as compliant with Title 63 of the Rules of the City of New York, Section 2-20(c) for signage installations; and

MINUTES

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, 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. 18-BSA-130M, dated April 30, 2018; 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 partially within a C6-6 and partially within a C6-4.5 zoning district, and in the Special Midtown District, a physical culture establishment on a portion of the cellar and first floor of an existing 27-story plus cellar and sub-cellar commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received June 6, 2018”—Six (6) sheets; and *on further condition*:

THAT the term of the PCE grant shall expire on October 30, 2028;

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

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

THAT a sprinkler system shall be installed and maintained;

THAT an approved fire alarm system—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—shall be installed within the 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 the above conditions shall appear on the Certificate of Occupancy;

THAT a Certificate of Occupancy shall be obtained within four (4) years, by October 30, 2022;

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, October 30, 2018.

2016-4272-BZ

APPLICANT – Sheldon Lobel, P.C., for Arwin 74th Street LLC, owner; Ripped Fit, lessee.

SUBJECT – Application October 24, 2016 – Special Permit (§73-36) to permit the operation a Physical Cultural Establishment (*Ripped Fitness*) on the first floor of an existing building. C1-9/R8B Zoning district.

PREMISES AFFECTED – 1432 2nd Avenue, Block 1449, Lot 3, Borough of Manhattan.

COMMUNITY BOARD #8M

ACTION OF THE BOARD – Laid over to November 20, 2018, at 10 A.M., for continued hearing.

2017-43-BZ

APPLICANT – Law Office of Steven Simicich, for CeeJay Real Estate Development Corp., owner.

SUBJECT – Application February 10, 2017 – 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.

PREMISES AFFECTED – 140 Hendricks Avenue, Block 44, Lot 19, Borough of Staten Island.

COMMUNITY BOARD #1SI

ACTION OF THE BOARD – Laid over to January 15, 2019, at 10 A.M., for continued hearing.

MINUTES

2017-268-BZ

APPLICANT – Sheldon Lobel, P.C., for World Chan Buddhist Association, owner.

SUBJECT – Application September 13, 2017– 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 zoning district.

PREMISES AFFECTED – 33-73 154th Street, Block 5239, Lot 9, Borough of Queens.

COMMUNITY BOARD #7Q

ACTION OF THE BOARD – Laid over to January 15, 2019, at 10 A.M., for continued hearing.

2018-56-BZ

APPLICANT – Sheldon Lobel, P.C., for Dmitry Vayner, owner.

SUBJECT – Application April 19, 2018 – 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). R3-1 zoning district.

PREMISES AFFECTED – 83 Coleridge Street, Block 8729, Lot 50, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to January 8, 2019, at 10 A.M., for continued hearing.

Carlo Costanza, Executive Director

BULLETIN

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Thursday, November 8, 2018**

Morning Calendar838

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24-96-BZ	213 Madison Street, Manhattan
429-29-BZ	4801 Kings Highway, Brooklyn
624-68-BZ	188-07/15 Northern Boulevard, Queens
81-74-BZ	97-27 57 th Avenue, Queens
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2018-101-BZ	21 West End Avenue, Manhattan
2018-128-BZ	103 North 10 th Street, Brooklyn
2018-169-BZ	43 West 12 th Road, Queens
2017-313-BZ	853 Kent Avenue, Brooklyn
2018-33-BZ	31-41 97 th Street, Queens
2018-51-BZ	11-01 Plainview Avenue, Queens

DOCKETS

New Case Filed Up to November 8, 2018

2018-172-BZ

46-09 /46-19 31st Avenue, Located on the corner of 47th Street and 31st Avenue, Block 00728, Lot(s) 0001, 0005, Borough of **Queens, Community Board: 1**. Variance (§72-21) to permit the development of multiple dwelling residence comprising of 21 units of Permanent Supportive Housing contrary to ZR §23-142 (open space); ZR §§23-22, 23-24 and 24-20 (maximum number of dwelling units); ZR §23-45 (front yards); ZR §24-35 (side yards); ZR §23-631(d) (maximum building heights); ZR §23-632(b) (side yard setbacks) and ZR §23-841 (outer court dimensions). R5 zoning district. R5 district.

2018-173-BZ

128 Beach 9th Street, Located at the Waterfront property bounded by Beach 9th Street, Beach 8th Street and the water, Block 15612, Lot(s) 0026, Borough of **Queens, Community Board: 14**. Variance (§72-21) to permit the development of a 17-story, mixed-use, community facility and residential building on a waterfront lot contrary to ZR §62-322 (Floor Area and Floor Area Ratio (“FAR”)); ZR §62-341 (Maximum Base Height and Building Height); ZR §62-341(a)(2) (Setbacks) and ZR §§25-23 & 25-31(parking). R6 zoning district. R6 district.

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

CALENDAR

REGULAR MEETING DECEMBER 11, 2018, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, December 11, 2018, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

SPECIAL ORDER CALENDAR

509-37-BZ

APPLICANT – Eric Palatnik, P.C., for Power Test Realty Company Limited Partnership, owner.

SUBJECT – Application May 4, 2018 – Amendment (§11-413) to permit the legalization of a change of use of a previously approved variance permitting an Automotive Service Station (UG 16B) to an Automotive Repair Facility (UG 16B). R3-1 zoning district.

PREMISES AFFECTED – 202-01 Rocky Hill Road aka 202-02 47th Avenue, Block 5561, Lot 10, Borough of Queens.

COMMUNITY BOARD #11Q

176-99-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Marathon Parkway Associates, LLC, owner.

SUBJECT – Application April 3, 2018 – Extension of Term of a previously approved Variance (§72-21) permitting the erection of a cellar and two-story professional retail building which expires on May 2, 2020; Waiver of the Board's Rules. C1-2/R3-1 and R2A zoning district.

PREMISES AFFECTED – 45-17 Marathon Parkway, Block 8226, Lot 10, Borough of Queens.

COMMUNITY BOARD #11Q

48-10-BZ

APPLICANT – Ronald D. Victorio, R.A., for Guido Passarelli, owner; Campbell Fitness, lessee.

SUBJECT – Application August 28, 2017 – Amendment of a previously approved Special Permit (§73-36) which allowed a physical culture establishment (*Campbell Fitness*) in the cellar of a one-story commercial building contrary to ZR §42-10. The amendment seeks to expand the use to a portion of the first floor contrary to the previous approval.

M1-1 zoning district/Special South Richmond District.
PREMISES AFFECTED – 2965 Veterans Road West, Block 7511, Lot 75, Borough of Staten Island.

COMMUNITY BOARD #3SI

APPEALS CALENDAR

2017-263-A

APPLICANT – Tarter Krinsky & Drogin LLP, for Westbroad Company, LLC, owner; Outfront Media, LLC, lessee.

SUBJECT – Application September 7, 2017 – 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.

PREMISES AFFECTED – 62-66 West Broadway, Block 132, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #1M

2017-316-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for AMC Realty Holdings LLC, owner.

SUBJECT – Application December 12, 2017 – 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).

PREMISES AFFECTED – 95 Androvetta Street, Block 7407, Lot 72, Borough of Staten Island.

COMMUNITY BOARD #3SI

REGULAR MEETING DECEMBER 11, 2018, 1:00 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, December 11, 2018, 1:00 P.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

ZONING CALENDAR

43-11-BZ

APPLICANT – Law Office of Lyra J. Altman, for Lorraine Waknin and David Waknin, owners.

SUBJECT – Application April 12, 2011– Special Permit (§73-622) for the enlargement of an existing two family home to be converted to a 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). R3-2 zoning district.

PREMISES AFFECTED – 1926 East 21st Street, Block 6826, Lot 19, Borough of Brooklyn.

COMMUNITY BOARD #15BK

CALENDAR

2016-1208-BZ

APPLICANT – Akerman, LLP, for 300 East 64th Street Partners LLC c/o RFR Holding, LLC, owner; Barry Bootcamp NYC, LLC, lessee.

SUBJECT – Application January 13, 2016 – Special Permit (§73-36) to permit a physical culture establishment (*Barry's Bootcamp*) within a portion of an existing building's ground and second floors. C2-5/R8B & C2-8 zoning districts.

PREMISES AFFECTED – 300 East 64th Street, Block 1438, Lot 7502, Borough of Manhattan.

COMMUNITY BOARD #8M

2016-4240-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Thor 1231 Third Avenue LLC, owner; TSI 1231 Third Avenue dab NYSC, lessee.

SUBJECT – Application August 11, 2016 – Special Permit (§73-36) to legalize the operation of a physical culture establishment (*New York Sports Club*) on a portion of the first floor and cellar of the subject premises. C1-9 zoning district.

PREMISES AFFECTED – 1231 Third Avenue, Block 1426, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #8M

2017-101-BZ

APPLICANT – Carl A. Sulfaro, Esq., for M & R Rockaway, LLC, owner; Burn Fitness 247, LLC, lessee.

SUBJECT – Application April 5, 2017 – Special Permit (§73-36) to permit a physical culture establishment (*Burn Fitness*) within an existing commercial building. C2-3/R5D zoning district.

PREMISES AFFECTED – 104-06 Rockaway Beach Boulevard, Block 16176, Lot 001, Borough of Queens.

COMMUNITY BOARD #14Q

2017-293-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Broadway 32nd Street Realty, owner; Juvenex Spa/Myung Chul Yi, lessee.

SUBJECT – Application November 2, 2018 – 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.

PREMISES AFFECTED – 25 West 32nd Street, Block 834, Lot 26, Borough of Manhattan.

COMMUNITY BOARD #5M

2017-309-BZ

APPLICANT – Eric Palatnik, P.C., for Samnon Associates Inc., owner.

SUBJECT – Application December 1, 2017 – 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.

PREMISES AFFECTED – 406 Remsen Avenue, Block 4663, Lot 4, Borough of Brooklyn.

COMMUNITY BOARD #17BK

2018-48-BZ

APPLICANT – Philip L. Rampulla, for Joseph Marino, owner.

SUBJECT – Application March 30, 2018 – Re-instatement of a previously approved variance which permitted the operation of an Automotive Service Station (UG 16B) with accessory repair facilities which expired on September 13, 2004; Amendment to permit the legalization of an attendant booth and relocation of an existing free standing illuminated sign; Waiver of the Rules. R3X Special South Richmond District (Lower Density Growth Management Area).

PREMISES AFFECTED – 5205 Hylan Boulevard, Block 6499, Lot 1, Borough of Staten Island.

COMMUNITY BOARD #3SI

2018-148-BZ

APPLICANT – Pryor Cashman LLP, for Altair 18 Condominium, owner; CorePower Yoga, lessee.

SUBJECT – Application September 12, 2018 – Special Permit (§73-36) to permit the operation of a Physical Cultural Establishment (*CorePower Yoga*) to be located on portion of first floor of an existing mixed-use building contrary to ZR §32-10. C8-4A Ladies Mile Historic District.

PREMISES AFFECTED – 32 West 18th Street, Block 819, Lot 7503 (fka 82), Borough of Manhattan.

COMMUNITY BOARD #5M

Carlo Costanza, Executive Director

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**REGULAR MEETING
THURSDAY MORNING, NOVEMBER 8, 2018
10:00 A.M.**

Present: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.

SPECIAL ORDER CALENDAR

75-95-BZ

APPLICANT – Law Office of Fredrick A. Becker, for The Rupert Yorkville Towers Condominium, owner; TSI East 91st 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 – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Board's Rules of Practice and Procedure, reopening and an extension of term to a previously granted special permit, which expired on January 28, 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 continued hearings on July 18, 2017, May 1, 2018, and November 8, 2018, and then to decision on that date; and

WHEREAS, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Scibetta 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 east side of Third Avenue, between East 91st Street and East 92nd Street, in a C2-8 zoning district, in Manhattan; and

WHEREAS, the site has approximately 202 feet of frontage on Third Avenue, 366 feet of depth, approximately 153,080 square feet of lot area, and is occupied by a multi-story mixed-use residential and commercial building; and

WHEREAS, the subject PCE is located within portions of the cellar (680 square feet) and the basement

(15,800 square feet) and first floor (15,420 square feet) of the subject building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since January 28, 1997, when, under the subject calendar number, the Board granted a special permit, pursuant to ZR § 73-36, to legalize the subject PCE on the cellar level and first floor of an existing mixed-use high rise development, on condition that all work substantially conform to approved plans filed with the application; there be no change in ownership or operating control of the PCE without prior application to and approval from the Board; 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 11:00 p.m.; noise levels generated by the PCE comply with the New York City Noise Control Code to minimize any potential impacts on the residents in the buildings; the special permit be limited to a term of nine (9) years, from January 28, 1997, to expire on January 28, 2006; the above conditions appear on the certificate of occupancy; the development, as approved, be subject to verification by the Department of Buildings (“DOB”) for compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under the jurisdiction of the Department; and, a certificate of occupancy be obtained within one (1) year, by January 28, 1998; and

WHEREAS, on February 2, 2010, under the subject calendar number, the Board waived its Rules of Practice and Procedure, reopened, permitted modifications to the layout of the PCE, extended the time to obtain a certificate of occupancy, and extended the term of the grant for ten (10) years, to expire on January 28, 2016, on condition that the use and operation of the site substantially conform to approved plans filed with the application; the above condition appear on the certificate of occupancy; a new certificate of occupancy be obtained by February 2, 2012; all conditions from prior resolutions not specifically waived by the Board remain in effect; the approval be limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and, the DOB 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; and

WHEREAS, the previous term of the special permit having expired, the applicant requests the subject relief; and

WHEREAS, the applicant additionally 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 (2) years after the expiration of the term; and

WHEREAS, the applicant represents that there has been no change in ownership or operation since the 1997

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resolution and that New York Sports Club continues to operate the subject PCE; the hours of operation are now 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 and Sunday, 7:00 a.m. to 9:00 p.m.; and, massage services continue to be provided; and

WHEREAS, over the course of the hearings, the Board expressed concern regarding the absence of a fire alarm system in the PCE space; and

WHEREAS, in response, the applicant stated that, while the premises is protected with a sprinkler system, a fire alarm system was not required in the PCE space under the prior grants; however, the applicant demonstrated they have engaged a fire alarm installer and documented their timeline and efforts to install the fire alarm system; and

WHEREAS, the applicant represents that interior fire alarm system—including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms, connection of the interior fire alarm and sprinklers to a FDNY-approved central station—will be maintained throughout the PCE space; and

WHEREAS, by letter dated November 1, 2018, the Fire Department stated that they have reviewed the subject application, the Fire Department's Licensed Public Place of Assembly Unit issued two (2) violation orders, for an operating permit and a Letter of Approval for the fire alarm system in the space, which will be enforced by criminal summonses for non-compliance; and, due to the lead time required to obtain an operating permit from the DOB and a sign-off from the Fire Department Fire Alarm Inspection Unit, the Fire Department recommends conditional approval of the application; and

WHEREAS, pursuant to ZR § 73-03(f), 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 *waives* Rule § 1-07.3(b)(2) of its Rules of Practice and Procedure, *reopens* and *amends* the resolution, dated January 28, 1997, as amended February 2, 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, to expire on January 28, 2026, *on condition* that the use and operation of the site shall conform to drawings filed with this application marked 'Received August 8, 2016 – Five (5) sheets; and *on further condition*:"

THAT the term of this grant shall expire on January 28, 2026;

THAT a public assembly permit shall be obtained expeditiously;

THAT the fire alarm system shall be signed-off within one (1) year, by November 8, 2019;

THAT minimum three (3) foot wide exit pathways to required exits shall always be maintained unobstructed, including that from any gymnasium equipment;

THAT sprinklers and interior fire alarm system—including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms, connection of the interior fire alarm and sprinklers to a FDNY-approved central station—shall be maintained throughout the PCE space as indicated on the Board-approved plans;

THAT Local Law 58/87 compliance 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 referencing this approval and calendar number ("BSA Cal. No. 75-95-BZ") shall be obtained within one (1) year, by November 8, 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 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, November 8, 2018.

24-96-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Legaga LLC, owner.

SUBJECT – Application January 23, 2018 – Extension of Term (11-411) of a previously approved variance permitting the operation of an Eating and Drinking Establishment (*McDonald's*) which expired on October 7, 2017; Extension of Time to obtain a Certificate of Occupancy which expired on July 15, 2015; Waiver of the Rules. R7-2 zoning district.

PREMISES AFFECTED – 213 Madison Street, Block 271, Lot 40, Borough of Manhattan.

COMMUNITY BOARD #3M

ACTION OF THE BOARD – Laid over to December 4, 2018, at 10 A.M. for deferred decision.

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429-29-BZ

APPLICANT – Davidoff Hutcher & Citron LLP, for 4801 Kings Highway Realty LLC, owner.

SUBJECT – Application March 26, 2018 – Amendment (§11-412) of a previously approved variance which permitted the operation of an Automotive Service Station (UG 16B) with accessory uses. The amendment seeks to change the configuration of the existing gasoline dispensing pumps; the addition of a canopy; conversion and enlargement of the accessory building from an accessory lubricatorium to an accessory convenience store with a drive-thru. R4 zoning district.

PREMISES AFFECTED – 4801 Kings Highway, Block 7732, Lot 8, Borough of Brooklyn.

COMMUNITY BOARD #8BK

ACTION OF THE BOARD – Laid over to February 12, 2019, at 10 A.M., for continued hearing

624-68-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for MMT Realty Associates LLC, owner.

SUBJECT – Application February 27, 2018 – Extension of Term of a Variance (§72-21) which permitted the operation of wholesale plumbing supply establishment (UG16) and stores and office (UG6) which expired on February 7, 2017; Extension of Time to obtain a Certificate of Occupancy which expired on February 7, 2013; Waiver of the rules. R3-2 zoning district.

PREMISES AFFECTED – 188-07/15 Northern Boulevard, Block 5364, Lot(s) 1, 5, 7, Borough of Queens.

COMMUNITY BOARD #11Q

ACTION OF THE BOARD – Laid over to January 29, 2019, at 10 A.M., for adjourned hearing.

81-74-BZ

APPLICANT – Gerald J. Caliendo, RA, AIA, for 57 Avenue Market Inc., owner.

SUBJECT – Application December 30, 2016 – Extension of Term /amendment of a previously approved variance which permitted the operation of a supermarket (UG 6) which expires on February 27, 2017. C1-2/R6A & R6B zoning district.

PREMISES AFFECTED – 97-27 57th Avenue, Block 1906, Lot 1, Borough of Queens.

COMMUNITY BOARD #4Q

ACTION OF THE BOARD – Laid over to February 5, 2019, at 10 A.M., for continued hearing

132-04-BZ

APPLICANT – Eric Palatnik, P.C., for Paco East Houston, LLC, owner.

SUBJECT – Application January 27, 2017 – 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. R7-2 zoning district. PREMISES AFFECTED – 310 East Houston Street, Block 384, Lot(s) 4, 40, Borough of Manhattan.

COMMUNITY BOARD #3M

ACTION OF THE BOARD – Laid over to February 5, 2019, at 10 A.M., for continued hearing.

APPEALS CALENDAR

2017-68-A thru 2017-96-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Joline Estates, LLC, owner.

SUBJECT – Applications March 27, 2017 – Proposed construction of twenty-nine (29) two-family residences, not fronting on a legally mapped street, contrary to General City Law 36. R3-X (SRD) zoning district.

PREMISES AFFECTED – 7 to 49 Torrice Loop and 11 to 16 Frosinone Lane, Block 7577, Various Lots, Borough of Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Applications granted on condition.

THE VOTE TO GRANT –

Affirmative: Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Sheta

Negative: Chair Perlmutter and Commissioner Scibetta ...2
THE RESOLUTION –

WHEREAS, the decisions of the Department of Buildings (“DOB”), dated February 23, 2017, acting on New Building Application Nos. 520290827, 520290836, 520290845, 520290854, 520290863, 520290872, 520290881, 520290890, 520290907, 520290916, 520290925, 520290934, 520290943, 520290952, 520290961, 520290970, 520290989, 520290998, 520291005, 520291014, 520291032, 520291041, 520291050, 520291069, 520291078, 520291087, 520291096, 520291158, 520291167, 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 ... No Certificate of Occupancy can be issued pursuant to Article 3, Section 36 of General City Law”; and

WHEREAS, these are applications under General City Law (“GCL”) § 36 to permit, in an R3X zoning district and the Special South Richmond Development District, the development of 29 two-family residences that do not front on a street duly placed on the official map of the City of New York (the “City Map”); and

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WHEREAS, a public hearing was held on these applications on April 10, 2018, after due notice by publication in *The City Record*, with continued hearings on June 19, 2018, August 7, 2018, August 21, 2018, September 27, 2018, and October 23, 2018, and then to decision on November 8, 2018; and

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

WHEREAS, Community Board 3, Staten Island, generally recommends approval of these applications; and

WHEREAS, by letter dated April 12, 2018, Community Board 3 clarifies that it does not support tandem off-street parking for two-family residences, that no parking should be permitted on a 34-foot-wide road, that the street width should be modified to the standard width of 38 feet or each driveway should be a width that will accommodate two vehicles side by side in order to provide an unobstructed parking space and prevent illegal on-street parking and that homeowners' associations do not enforce parking restrictions, are not formed or become non-operational; and

WHEREAS, Staten Island Borough President James S. Oddo submitted testimony in opposition to these applications, including the following concerns: only 29 of 35 detached residences have been disapproved by the DOB, even though none of the 35 detached residences will be accessed primarily from a mapped street¹; constructing a large new development that is not part of the established street grid—one that could potentially create traffic problems or cause other adverse impacts to the community and the overtaxed Page Avenue retail corridor—presents no practical difficulty or unnecessary hardship; the Builders Pavement Plan claims that the existing topography, steep slopes and existing trees were being preserved, though the subject site has been cleared and grubbed; emergency response from a mapped street to the six detached residences not included in these applications is inadequate and will compromise the public health, safety and general welfare; the community is left with unimproved mapped streets and unmapped private roads that degrade the integrity of the City Map and affect the community's quality of life; and purchasers of the proposed residences will call the Borough President's office demanding that the City repair the subject streets and clear the snow from their driveways; and

WHEREAS, the subject site is located on the north side of Richmond Valley Road, between Madsen Avenue and Weiner Street, in an R3X zoning district and the Special South Richmond Development District, on Staten Island; and

WHEREAS, the subject site has approximately 875 feet of frontage along Richmond Valley Road, between 435 and 340 feet of depth, 272,575 square feet of lot area and is vacant; and

WHEREAS, the applicant proposes to develop 29 two-

family residences fronting on Torrice Loop and Frosinone Lane, which are not duly placed on the official map of the City of New York; and

WHEREAS, the applicant submits that the structures on the site will comply with all zoning regulations applicable in the underlying zoning district; and

WHEREAS, Torrice Loop and Frosinone Lane have proposed widths of approximately 34 feet and are accessible from Richmond Valley Road, a mapped street paved to a width of approximately 100 feet; and

WHEREAS, Torrice Loop and Frosinone Lane have sidewalks with widths of 4 feet, and parking on either side of the roadways will be prohibited due to their narrowness; and

WHEREAS, the Board notes that, pursuant to GCL § 36, it may authorize the development of buildings that do not front on a street duly placed on the City Map; and

WHEREAS, the applicant states that a proposed interior roadway plan for Torrice Loop and Frosinone Lane indicates that the interior roadway surface has been designed to match Department of Transportation ("DOT") standards for public streets that would be incorporated into a Builders Pavement Plan and that the roadway will also include street lighting, street signage and crosswalks designed to meet DOT standards for public streets; and

WHEREAS, the applicant states that DOB will review all plans for the proposed interior roadways for compliance with applicable laws as part of the standard construction application and approval process; and

WHEREAS, the applicant states that the submitted theoretical site plan demonstrates the lot configuration and buildings that could be developed at the subject site with all buildings fronting on a mapped street (Richmond Valley Road) and that the resulting development would yield infeasible single-family residences with over 10,000 square feet of floor area and lot depths of 167 to 207 feet, thereby resulting in unnecessary hardship in developing the site with conforming and complying buildings that front on a mapped street; and

WHEREAS, the applicant submits that the proposed homeowners' association has been approved by the New York State Attorney General's Office, including disclosures and budgeting with respect to the private roads and drainage system associated with future maintenance and repairs; and

WHEREAS, by letter dated September 8, 2014, the Department of City Planning ("DCP") states that the following applications were approved in connection with a proposed development of 35 two-family residences at the subject site: an application for certification of future subdivision from one zoning lot into 33 zoning lots, approved by the City Planning Commission on August 20, 2014 (No. N 140224 RCR); an application for certification by the Chair of the City Planning Commission that sufficient school capacity exists to accommodate 70 dwelling units at the subject site, approved on August 20, 2014 (No.

¹ DOB's interpretation and application of GCL § 36 to the other six residences is not before the Board under these applications.

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N 140225 RCR), expiring September 3, 2015; and an application for authorization under ZR § 107-64 for the removal of trees and ZR § 107-65 for the modification of existing topography at the subject site, approved by the City Planning Commission on August 20, 2014 (No. N 140226 RAR); and

WHEREAS, by letter dated September 6, 2017, DCP states that an application for certification by the Chair of the City Planning Commission that sufficient school capacity exists to accommodate 68 dwelling units at the subject site (No. N 180022 RCR) was approved on August 30, 2017, expiring August 30, 2018; and

WHEREAS, by letter dated February 26, 2018, the Department of Environmental Protection (“DEP”) states that it has certified Site Connection Proposal applications for the subject site; and

WHEREAS, by letter dated January 4, 2014, the Fire Department states that it has no objection to the installation of new fire hydrants and water mains in connection with proposed development at the subject site on condition that the following requirements be met: hydrants shall be located within 250 feet of the entrance to each dwelling unit, and hydrants shall be on 8” or greater water mains; the height of the residence shall not exceed 35 feet above grade; under Fire Code Rule 503.7, “no parking” signage shall be installed and maintained at the entrance and along both sides of the fire access roads (the length of Torrice Loop and Frosinone Lane), where parking shall be prohibited, and “no parking” signage shall comply with the requirements of Fire Code Rule 503.7; and, for the subject development, which includes a 34-foot-wide fire apparatus access road, all buildings shall comply with the requirements of ZR § 26-21, which states that, where at least three accessory parking spaces are provided for every two dwelling units and no such spaces are located within the bed of a private road, the minimum width shall be 34 feet, as indicated on the FDNY-approved plan; and

WHEREAS, the applicant states that, prior to the issuance of any certificate of occupancy, a restrictive declaration will be recorded against the subject site to specify the following: that no parking shall be allowed along Torrice Loop or Frosinone Lane; that “no parking” signage shall be installed at the entrance to, and along the length of, Torrice Loop and Frosinone Lane; and that the homeowners’ association formed in conjunction with the proposed development (Torrice Loop Homeowners Association Inc.) shall be the entity responsible for any violations issued by the Fire Department for failure to adhere to said parking restrictions; and

WHEREAS, with respect to the retaining wall located at the subject site, the applicant provided support of excavation and retaining wall design plans and states that construction of the retaining wall was initiated after plans were approved and a permit issued by DOB under Alteration Application No. 520301511 and that the approved retaining wall was illustrated in approval documents issued by DCP in conjunction with applications approved for the removal of trees and modification of existing topography; and

WHEREAS, the applicant further states that, in response to community concerns, crack monitors were installed; that, during the monitoring process, work was halted by DOB within 20 feet of an adjacent site at 11 Butler Street but allowed to continue elsewhere on the subject site; and that the applicant is proposing amendments to the support of excavation and retaining wall plans, subject to approval by DOB, in order to provide permeation grouting of soil adjacent to the support of excavation wall that should fill any remaining voids and stabilize soil in the area, which reflects that the applicant is and will address any issues that arise during the course of construction; and

WHEREAS, with respect to drainage, the applicant states that, under its approval of the above application for modification of topography, the City Planning Commission found that modification would not cause unnecessary disturbance of drainage pattern in the surrounding area; that DEP approved a site connection plan for the proposed development, which includes drainage information; and that the subject site is positive pitch to Richmond Valley Road and the natural area near Mill Creek, south of the subject site; and

WHEREAS, a minority of the Board does not find that the applicant has substantiated a basis to warrant exercise of discretion or made any adequate attempt to address questions from commissioners regarding the appropriateness of applying GCL § 36 to the subject site; and

WHEREAS, at hearing, a minority of the Board expressed concerns with permitting a development of this size on a steeply sloping site when many approvals from other agencies are dated or have expired; and

WHEREAS, a minority of the Board further expressed concerns that, based on inspections of the site and surrounding area and testimony from Borough President Oddo, there are concerns with the practicability of ensuring the enforcement any safeguards and conditions imposed by the Board in the long term for a development of this size; and

WHEREAS, based upon its review of the record and inspections of the site and surrounding neighborhood, the Board has determined that these approvals are appropriate with certain conditions as set forth below and that the applicant has substantiated a basis to warrant exercise of discretion.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *modify* the decisions of the Department of Buildings dated February 23, 2017, acting on New Building Application Nos. 520290827, 520290836, 520290845, 520290854, 520290863, 520290872, 520290881, 520290890, 520290907, 520290916, 520290925, 520290934, 520290943, 520290952, 520290961, 520290970, 520290989, 520290998, 520291005, 520291014, 520291032, 520291041, 520291050, 520291069, 520291078, 520291087, 520291096, 520291158, 520291167, under the powers vested in the Board by Section 36 of the General City Law, to *permit*, in an R3X zoning district and the Special South Richmond Development District, the development of 29

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two-family residences that do not front on a street duly placed on the official map of the City of New York; *on condition* that all work and site conditions shall conform to drawings filed with these applications marked "Received October 24, 2018"-One (1) sheet; and *on further condition*:

THAT prior to the issuance of any certificate of occupancy, including a temporary certificates of occupancy, restrictive declarations shall be recorded in the Office of the Richmond County Clerk against the properties substantially conforming to the form and substance of the following:

DECLARATION made this ____ day of _____ 2018 by Torrice Loop Homeowners Association Inc., hereinafter referred to as the "Declarant," located at 5655 Amboy Road, Staten Island, NY 10309.

WHEREAS, the Declarant is the homeowners association formed in conjunction with the development of certain land located in the City and State of New York, Borough of Staten Island, designated as Block 7577 Lots 39, 40, 41, 42, 43, 44, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 72, 73 as depicted on the Tax Map of the City of New York, hereinafter referred to as the "Subject Premises". WHEREAS, the Declarant has requested the New York City Board of Standards and Appeals (the "BSA") act upon BSA Cal. Nos. 2017-68 to 96-A to appeal the decisions of the Staten Island Borough Commissioner, under application numbers: 520290827, 520290836, 520290845, 520290854, 520290863, 520290872, 520290881, 520290890, 520290907, 520290916, 520290925, 520290934, 520290943, 520290952, 520290961, 520290970, 520290989, 520290998, 520291005, 520291014, 520291032, 520291041, 520291050, 520291069, 520291078, 520291087, 520291096, 520291158, 520291167 (the "Subject Applications"), pursuant to Article III, Section 36 of the General City Law, denying permits as a result of the Street giving access to the proposed buildings not being 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 each of the buildings constructed pursuant to the Subject Applications.

NOW, THEREFORE, in consideration of BSA approvals to allow the proposed construction of buildings 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 private roadways to be known as Torrice Loop and Frosinone Lane within the Subject Premises in compliance with the parking conditions of the Fire Department of New York's letter of no objection dated January 4,

2014 as follows:

1. There shall be no parking of any vehicles on both sides and for the entire length of Torrice Loop and Frosinone Lane as depicted on approved plans associated with BSA Cal. Nos. 2017-68 to 96-A;
2. "NO PARKING" signs shall be installed and maintained at the entrance to, and along both sides of, Torrice Loop and Frosinone Lane pursuant to Fire Code requirements and specifications;
3. The Declarant shall be the entity that will be legally responsible for compliance, subject to enforcement actions of the Fire Commissioner, and Declarant consents to issue of tickets for parking violations on Torrice Loop and Frosinone Lane in the name of the homeowners' association.

With respect to this declaration:

1. This declaration may not be modified, amended or terminated without the prior written consent of the BSA;
2. This declaration is in addition to, and does not replace or revoke, requirements set forth in the declaration of covenants, restrictions, easements, charges and liens associated with the formation of the homeowners' association (Torrice Loop Homeowners Association Inc.) and recorded on July 31, 2018 with the Richmond County Clerk;
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 or any authorization or waiver granted by the BSA; and
5. This declaration shall be recorded at the Richmond County Clerk'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. 201768 TO 96-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.

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IN WITNESS WHEREOF, Declarant has made and executed the foregoing restrictive declaration as of the date hereinabove written.

THAT hydrants shall be located within 250 feet of the entrance to each dwelling unit, and hydrants shall be on 8” or greater water mains; the height of the residence shall not exceed 35 feet above grade; under Fire Code Rule 503.7, “no parking” signage shall be installed and maintained at the entrance and along both sides of the fire access roads (the length of Torrice Loop and Frosinone Lane), where parking shall be prohibited, and “no parking” signage shall comply with the requirements of Fire Code Rule 503.7; and, for the subject development, which includes a 34-foot-wide fire apparatus access road, all buildings shall comply with the requirements of ZR § 26-21, which states that, where at least three accessory parking spaces are provided for every two dwelling units and no such spaces are located within the bed of a private road, the minimum width shall be 34 feet, as indicated on the FDNY-approved plan;

THAT the above conditions shall appear on the certificates of occupancy;

THAT certificates of occupancy, also indicating these approvals and calendar numbers (“BSA Cal No 2017-68-A through 2017-96-A”), shall be obtained within four (4) years, by November 8, 2022;

THAT these approvals are 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 8, 2018.

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2018-63-A

APPLICANT – Fried Frank, LLP, for 25-30 Columbia Heights (Brooklyn), LLC, owner.

SUBJECT – Application May 1, 2018 – Interpretative Appeal of a final determination of the New York City Department of Buildings, set forth in the ZRD1 denial dated April 2, 2018 (Control No. 46921), denying a request for confirmation that existing signs are non-conforming and may be continued as accessory signs, with changes to subject matter, structural alterations, reconstruction, and replacement permitted pursuant to Article V, Chapter 2 of the New York City Zoning Resolution. M2-1 zoning district.

PREMISES AFFECTED – 30 Columbia Heights, Block 208, Lot 2, Borough of Brooklyn.

COMMUNITY BOARD #2BK

ACTION OF THE BOARD – Application granted.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated April 2, 2018, under Zoning Resolution Determination Control No. 46921 (the “Determination”), reads in pertinent part:

The request, to accept the submitted documentation as evidence that the three illuminated rooftop accessory/noncommercial signs at 30 Columbia Heights (the “30 Columbia Building”) are lawful non-conforming uses that may continue at the premises, is hereby denied.

[. . .]

To demonstrate that the installation of the Time and Temperature Sign and the Watchtower Sign were lawfully erected in 1961 at the 30 Columbia Building, the attorney submits the following evidence pertaining to the Watchtower Sign:

- (1) Two photographs of an excerpted portion of the Department of Buildings’ (the “Department”) Alteration (ALT) application ledger from 1961, showing an entry for Application No. 955 to erect a “roof sign” at the 30 Columbia Building. According to the ledger, Alteration Application No. 955 of 1961 was approved by the Department on May 16, 1961;
- (2) A copy of an excerpted portion of the Department’s application docket, describing the proposed work under Alteration Application No. 955 to “erect a roof sign” at the 30 Columbia Building. The copy of the docket indicates “E.R. Squibb & Sons” as the owner of the 30 Columbia Building;
- (3) A copy of a hand-copied plan, dated April 10, 1961, showing the proposed rooftop sign structure and signs;
- (4) Two photographs dated August 13, 1961 from the Thomas Airviews Archive, New York Historical Society showing the sign structure above the roof of the 30 Columbia

Building. As shown in both photographs, no signs are attached to the sign structure. In one of the photographs, a wall sign consisting of individual letters that spell “SQUIBB” is shown on 30 Columbia Building’s wester façade;

- (5) One photograph dated November 22, 1961 from Municipal Archives showing the sign structure above the roof of the 30 Columbia Building;
- (6) One photograph dated April 12, 1970 from the Thomas Airviews Archive, New York Historical Society showing the sign structure above the roof of the 30 Columbia Building. The copy on the sign structure is not visible in the photograph. The Time and Temperature Sign is visible in the photograph;
- (7) Six photographs, including the photographs’ corresponding information sheets, dated September 10, 1970 and “before September 30, 1970,” from the Watchtower Image Services System showing several workers installing the individual letters of the Watchtower Sign;
- (8) One photograph, including the photograph’s corresponding information sheet, dated September 10, 1970 from the Watchtower Image Services System showing the installed Watchtower Sign and the Time and Temperature Sign; and
- (9) One photograph circa 1988 taken by Robert Cameron from “Above New York” showing a structure above the roof of the 30 Columbia Building. The copy on the sign structure is not visible in the photograph.

As per the attorney’s submitted photographs of the Alteration application ledger, several Alteration application entries in the ledger show the names of inspectors with corresponding inspection dates, which are entered into the ledger only after the Alteration applications were issued work permits and after all work filed under the Alteration applications are completed. However, the ledger entry for Alteration Application No. 955 in 1961 does not show the name of the inspector, nor does the ledger indicate the date of the final inspection. As such, the entry for Alteration Application No. 955 in 1961 in the Department’s Alteration application ledger without the inspector’s name and inspection date only demonstrates that the Alteration Application was filed with the Department.

Therefore, sufficient evidence was not submitted by the attorney to support their claim that the 30 Columbia Building’s signs were installed pursuant to a valid Department-issued permit.

In addition, the hand-copied plan from April 10, 1961, which shows an approximately 44’-0” high by 87’-0” wide by 17’-6” deep frame structure above the roof of the 30 Columbia Building, does not show the NYS-licensed design professional’s

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name, professional ink seal, and signature, nor does it show the Department's approval stamp, including the Alteration application number, on the back of the plan. As such, the attorney's submitted copy of the hand-copied plan does not demonstrate that it was approved by the Department.

According to the Department's website, Application No. ALT 955-61 was filed with the Department on April 10, 1961. According to the Department's application docket, E. R. Squibb and Sons were the owners of the 30 Columbia Building at the time of the ALT 955-61's filing. According to the attorney's submitted letter from Watchtower Bible and Tract Society of New York, Incorporated (the "Society") dated November 29, 1969, the Society informed its members, which are the Jehovah's Witnesses, that the Society purchased the "former Squibb property" on November 25, 1969. The letter, which does not state the addresses of the buildings in the former Squibb property, includes an undated photograph of the 30 Columbia Building that shows a roof sign consisting of six individual letters that spell "SQUIBB" (the "Squibb Sign") and above the sign appears to be a rectangular sign. Both signs in the photograph are supported by a frame structure above the roof of the 30 Columbia Building.

The attorney does not submit evidence of the date E. R. Squibb and Sons vacated the premises at the 30 Columbia Building before the Society purchased the building on November 25, 1969 and started to move into the premises. . . . In addition, ZR 52-61 states

If, for a continuous period of two years, either the nonconforming use of land with minor improvements is discontinued, or the active operation of substantially all the non-conforming uses in any building or other structure is discontinued, such land or building or other structure shall thereafter be used only for a conforming use.

If the accessory signs on the 30 Columbia Building discontinued for a continuous period of two years after E. R. Squibb and Sons vacated the building, the non-conforming Squibb Sign and the non-conforming Time and Temperature Signs must thereafter be used only for a conforming use pursuant to ZR 52-61.

At the time Application No. 955-61 was filed on April 10, 1961 to install a roof sign at the 30 Columbia Building, it was subject to the regulations in the 1916 Zoning Resolution, which did not impose restrictions regarding accessory signs. On December 15, 1961, the Zoning Resolution started to impose size and location restrictions to accessory signs. The attorney states that the letters of the "SQUIBB" sign were later changed to spell "WATCHTOWER" in 1970 and that the

change "did nothing to increase its surface area." The attorney further states that such change in the sign's text in "the absence of evidence of a permit for the modification of the [Watchtower Sign] in 1970 should not be a basis for a finding that the Sign is not non-conforming. However, in accordance with ZR 12-10's definition, "[a] 'non-conforming' use is any lawful use, whether of a building or other structure or of a zoning lot, which does not conform to any one or more of the applicable use regulations of the district in which it is located, either on December 15, 1961, or as a result of any subsequent amendment thereto." The term "lawful use," as it is utilized in ZR 12-10's definition for "non-conforming" use, is interpreted to mean any use which has been issued a permit under a Department-approved application. In addition, ZR 42-58 states that

In all districts, as indicated [including M2-1 Districts], a sign erected prior to December 13, 2000, shall have non-conforming use status pursuant to Sections 52-82 (Non-conforming Signs Other Than Advertising Signs) or 52-83 (Non-conforming Advertising Signs) with respect to the extent of the degree of non-conformity of such sign as of such date with the provisions of Sections 42-52, 42-53 and 42-54, where such sign shall have been issued a permit by the Department of Buildings on or before such date.

As the attorney fails to demonstrate that the Watchtower Sign and the Time and Temperature Signs, which were erected prior to December 13, 2000 on the roof of the 30 Columbia Building, were installed based on a Department-issued permit, the signs, which fail to comply with ZR 12-10's definition for "non-conforming" use and fail to comply with ZR 42-58, must thereafter be used only for a conforming use.

Based on the submitted documentation, the Department determined that the 30 Columbia Building's three accessory/non-commercial rooftop signs are not lawful non-conforming uses that may continue at the subject building. Therefore, the applicant's above stated request is hereby denied; and

WHEREAS, this is an appeal for interpretation under Section 72-11 of the Zoning Resolution of the City of New York ("ZR" or the "Zoning Resolution") and Section 666(6)(a) of the New York City Charter, brought on behalf of 25-30 Columbia Heights (Brooklyn), LLC ("Appellant"), alleging errors in the Determination pertaining to whether an existing rooftop accessory sign (the "Illuminated Sign") and existing back-to-back rooftop flashing signs with alternating displays of time and temperature (the "Flashing Signs") affixed to a single sign structure (collectively, the "Signs") are "non-conforming" accessory signs under ZR § 12-10, the use of which may be continued pursuant to ZR § 52-11 or structurally altered, reconstructed or replaced with new accessory signs pursuant to ZR § 52-82; and

WHEREAS, for the reasons that follow, the Board

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grants this appeal; and

WHEREAS, a public hearing was held on this appeal on August 7, 2018, after due notice by publication in *The City Record*, with a continued hearing on October 23, 2018, and then to decision on November 8, 2018; and

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

WHEREAS, Brooklyn Borough President Eric L. Adams submitted testimony in support of this appeal, stating that the Signs have sat atop the subject building for more than 55 years as a highly visible and iconic presence along the Brooklyn waterfront; and

WHEREAS, the Brooklyn Heights Association submitted testimony in opposition to this appeal, stating that the new owners of the subject building should not be entitled to erect replacement signage when DOB has determined that the Signs had not received a permit for their installation; and

WHEREAS, the Downtown Brooklyn Partnership submitted testimony in support of this appeal, stating that the Signs have been an iconic presence along Brooklyn's waterfront for more than fifty-five years, visible to millions crossing the Brooklyn Bridge as they approached the borough, and that new signage of similar dimensions would reflect new investment and energy in the borough; and

WHEREAS, DOB and Appellant have been represented by counsel throughout this appeal; and

BACKGROUND AND PROCEDURAL HISTORY

WHEREAS, the subject site is located on the southwest corner of Columbia Heights and Doughty Street, in an M2-1 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 410 feet of frontage along Columbia Heights, 128 feet of frontage along Doughty Street, 470 feet of frontage along Furman Street, 67,494 square feet of lot area and is occupied by multiple buildings, including a twelve-story, with cellar, commercial building with a sign structure atop its roof (the "subject building"); and

WHEREAS, Edward Robinson Squibb Park is located to the south of the subject site, Hillside Dog Park is located to the east of the subject site, an R6 zoning district is located to the east and to the south of the subject site, the Brooklyn-Queens Expressway is located to the southeast of the subject site and the Brooklyn Bridge is located to the northeast of the subject site; and

WHEREAS, the Signs are located on the roof of the subject building with the Illuminated Sign facing west and with the Flashing Signs facing west and east; and

WHEREAS, the Signs were originally installed between August 13 and November 22, 1961, and the lettering of the Illuminated Sign was changed between November 25, 1969, and September 10, 1970, and was removed from the sign structure on December 6, 2017; and

WHEREAS, nothing in the record indicates that the Signs have been relocated or repositioned since their original installation, and it is undisputed that the Signs do not conform to sign regulations currently applicable to the subject site, *see* ZR §§ 42-50, 32-601; and

WHEREAS, a sheet from DOB's Alteration Application Ledger from 1961 (the "Ledger") states that Application No. 955 for a "roof sign" at the subject site was approved by an individual named Weeks on May 16, 1961; and

WHEREAS, there are no entries for any of the 35 applications listed under the Permits column in the Ledger, and the Permits sub-column entitled "Date" has application numbers re-stated rather than dates; and

WHEREAS, the Ledger has 32 blank fields under the Commenced column, 10 blank fields under the Completed column and Inspector at Completion column and 32 blank fields under the Remarks column; and

WHEREAS, a sheet from DOB's Alteration Docket dated April 10, 1961 (the "Docket"), shows Application No. 955 and describes the proposed work as "erect a roof sign" atop the 12-story building at the subject site with an estimated cost of \$20,000; and

WHEREAS, the Docket has a blank field under the Approved sub-column for Application No. 955 of 1961; and

WHEREAS, a sheet from DOB's Building Notice Docket dated June 13, 1951 (the "1951 BN Docket"), shows application numbers and descriptions for nine Building Notice applications but shows no entries under the Remarks column or its "APPD," "CMCD" or "CMPD" sub-columns; and

WHEREAS, a sheet from DOB's Building Notice Docket dated December 31, 1959 (the "1959 BN Docket"), shows application numbers and descriptions for seven Building Notice applications but shows only three dates total under the Remarks column with its "APPD," "CMCD" or "CMPD" sub-columns (out of a total of 21 fields); and

Whereas, a sheet from DOB's Electric Sign Docket dated April 10, 1961 (the "1961 ES Docket"), shows Electric Sign Application No. 229 for a lighted wall sign at the subject site; and

WHEREAS, on April 2, 2018, DOB issued the Determination, and Appellant commenced this appeal on May 1, 2018, seeking reversal of the Determination; and

ZONING PROVISIONS

WHEREAS, ZR § 12-10 (italicized words in original to indicate defined terms) defines "non-conformity," in part, as follows:

A "non-conforming" *use* is any lawful *use*, whether of a *building or other structure* or of a *zoning lot*, which does not conform to any one or more of the applicable *use* regulations of the district in which it is located, either on December 15, 1961 or as a result of any subsequent amendment thereto; and

WHEREAS, ZR § 52-81 states:

A *non-conforming sign* shall be subject to all the provisions of this Chapter relating to *non-conforming uses*, except as modified by the provisions of Sections 52-82 (Non-Conforming Signs other than Advertising Signs) and 52-83 (Non-Conforming Advertising Signs).

1 In response to questions from the Board at hearing, Appellant and DOB extensively briefed the applicability of

sign regulations to the Signs from their erection in 1961 until today.

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A change in the subject matter represented on a *sign* shall not be considered a change of *use*; and WHEREAS, ZR § 52-11 states that “[a] *non-conforming use* may be continued, except as otherwise provided in this Chapter”; and

WHEREAS, ZR § 52-82 states:

Any *non-conforming sign*, except a *flashing sign* or a *sign* subject to the provisions of Section 52-734 (Non-conforming signs for adult establishments), and except any *advertising signs* may be structurally altered, reconstructed or replaced in the same location and position, provided that such structural alteration, reconstruction or replacement does not result in:

- (a) the creation of a new *non-conformity* or an increase in the degree of *non-conformity* of such *sign*;
- (b) an increase in the *surface area* of such *sign*;
- or
- (c) an increase in the degree of illumination of such *sign*.

However, any structural alteration, reconstruction or replacement of a *non-conforming sign accessory* to a *non-conforming use* shall be subject to the provisions of Section 52-31 (General Provisions).

To the extent that such structural alteration, reconstruction or replacement of *non-conforming signs* is permitted under the provisions of this Section, the provisions of the following Sections are modified:

Section 52-22 (Structural Alterations)

Sections 52-51 to 52-55, inclusive, relating to Damage or Destruction; and

ISSUE PRESENTED

WHEREAS, the issue in this appeal is whether the Signs are “non-conforming” accessory signs under ZR § 12-10, the use of which may be continued pursuant to ZR § 52-11 or structurally altered, reconstructed or replaced with new accessory signs in accordance with ZR § 52-82; and

WHEREAS, because the Board concludes that it is likely that all permits required for illuminated roof signs were issued for the erection of the Signs, the Board need not determine whether a non-conforming use must be established pursuant to a permit to be “lawful” under ZR § 12-10 and accordingly expresses no opinion as to such interpretation; and

APPELLANT’S POSITION

WHEREAS, Appellant states that the Signs were first installed between August and November 1961, as indicated by aerial photographs of the subject site, dated August 13, 1961, which show that erection of the sign structure had begun by that time, and by aerial photographs, dated November 22, 1961, which show that installation of the Signs had been completed; and

WHEREAS, Appellant states that there is substantial documentary evidence of permitting activity for the Signs in 1961, consistent with DOB’s permitting practices of the era; and

WHEREAS, Appellant states that an excerpted portion of DOB’s Ledger from 1961 shows Application No. 955 for

a “roof sign” at the subject site with an estimated cost of \$20,000 and contains a signature for Application No. 955 in the “Approved Signature” column, dated May 16, 1961, indicating that DOB approved the application, but that, like all the other listed applications on the page, there is no entry in the “Permit” column; and

WHEREAS, Appellant states that an excerpted portion of the Docket from 1961 describes the proposed work pursuant to Application No. 955 as “erect a roof sign” at the 12-story building at the subject site with an estimated cost of \$20,000; and

WHEREAS, Appellant states that a structural drawing for the “Proposed Roof Sign for E. R. Squibb & Sons,” dated April 10, 1961, “copied from print on file @ Brooklyn Bldg. Dept. [on] 1-16-70 by Tom Edward Book Watchtower Bible & Tract Society, Inc” (the “Structural Drawing”), contains elevations, sections, a plan and details for a roof sign that corresponds to the Signs in appearance, dimensions, arrangement of structural rails and original subject matter, describing two “time and temperature” signs and “15” letters reading ‘SQUIBB’ and also contains property, ownership and sign engineer information corresponding to the information provided in the Docket (“Proposed Roof Sign for E. R. Squibb & Sons division of Olin Mathieson Chemical Corp. at #18/30 Columbia Heights s.w. cor. Doughty St. B’k’lyn, N.Y. Artkraft Strauss Sign Corp. S. Oberwanger, Engr, N.Y.C. Apr. 10/61”); and

WHEREAS, Appellant states that DOB’s Buildings Information System lists “ALT 955-61,” filed on April 10, 1961, on its Actions page for the subject site; and

WHEREAS, Appellant states that the aforementioned evidence indicates that Application No. 955 was filed for a roof sign at 30 Columbia Heights on April 10, 1961, a few months before the Signs were installed; that the April 10, 1961, date of the Structural Drawing, the same date as the filing date for Application No. 955, shows that Application No. 955 was for the Signs; and that the Ledger contains a signature for Application No. 955 in the “Approval” column dated May 16, 1961, showing that DOB approved the application; and

WHEREAS, Appellant states that this indicates that the previous owner of the subject site followed DOB procedures by having its professional file an application and obtain approval for the Signs, and Appellant states that there is no record of any violation or other enforcement action by DOB at the time of installation—or since then—relating to a failure to comply with any laws or regulations; and

WHEREAS, Appellant states that contemporaneous evidence of DOB’s permitting practices in 1961 reflect incomplete and inconsistent recordkeeping; and

WHEREAS, in support of this contention, Appellant states that the Ledger reflects a blank “Permit” column for every application reflected on the Ledger—either an indication of poor recordkeeping or that permits for every application on the page were recorded elsewhere in DOB’s records; and

WHEREAS, Appellant states that docket entries from this era were often incomplete; and

WHEREAS, in support of this contention, Appellant furnished the 1951 BN Docket and the 1959 BN Docket; and

WHEREAS, Appellant states that not a single

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application listed on the 1951 BN Docket has an entry under the columns for approval, commencement or completion; and

WHEREAS, Appellant states that, on the 1959 BN Docket, only a handful of dates were entered in columns for approval, commencement and completion; and

WHEREAS, Appellant states that, rather than reflecting that none of these applications were approved, the 1951 BN Docket and the 1959 BN Docket substantiate that docket entries were recorded by DOB haphazardly, and DOB's recordkeeping was often incomplete during this time; and

WHEREAS, Appellant further states that DOB's practice in 1961 was to issue all permits required for illuminated roof signs pursuant to a single umbrella application, which is consistent with the evidence in the record with respect to Application No. 955 for a "roof sign" at the subject site, approved on May 16, 1961; and

WHEREAS, Appellant submitted evidence that, in 1961, application materials for Application No. 964 of 1961 included separate permits for both an "entire roof sign" and a sign structure located at 42-25 21st Street, Queens (the "21st Street Sign"), and that the application materials were themselves permits; and

WHEREAS, Appellant submitted evidence that an electrical department log book maintained by Artkraft Strauss, one of New York City's preeminent sign designers and manufacturers whose records are archived, in part, at the New York Public Library, indicates that the 21st Street Sign was illuminated at construction with an entry dated January 17, 1962, showing the voltage and electric current specifications for each of the 21st Street Sign's illuminated letters; and

WHEREAS, Appellant submitted evidence that an underwriter's form by the New York Board of Fire Underwriters further indicates such illumination; and

WHEREAS, in response to DOB's assertions regarding the 1961 ES Docket and electric signs at 25 Columbia Heights, Brooklyn, Appellant states that no Electric Sign permit was required for the Signs because the Signs do not extend over any sidewalk and were not "[i]lluminated signs," defined under Section B26-5.2 of the New York City Building Code in effect in 1961 as "any sign[s] which extend[] over the sidewalk and which is illuminated by electricity or gas"; and

WHEREAS, accordingly, Appellant states that evidence in the record indicates that the Signs were erected pursuant to a permit issued by DOB before December 15, 1961; and

WHEREAS, in response to DOB's argument, raised during hearings, that Appellant had failed to prove continuity of both the Signs and the principal use of the site, Appellant states that the Signs—as lawfully established non-conforming uses—and their associated principal use have existed continuously from 1961 to 2017, as allowed by ZR § 52-11; and

WHEREAS, Appellant additionally points to DOB's Technical Policy and Procedure Notice ("TPPN") # 14/88, issued by DOB Assistant Commissioner George E. Berger to all Borough Superintendents on August 31, 1988, titled "Documentation in Support of Existing Use" that, though not specific to signage, makes reference to the ZR § 12-10

definition of "non-conforming use" and provides a guideline, in order of preference, for the acceptable documentation in support of such existing use for legalization or proof of continual nonconforming use, and such list does not include the submission of an issued permit:

- a) Records or documentation from any City Agency. Such records may include, but not be limited to, tax records, multiple dwelling registration cards, I cards form HPD and cabaret license.
- b) Records, bills, documentation from public utilities indicating name and address of business and time period bills cover.
- c) Any other documentation or bills indicating the use of the building, such as telephone ads, commercial trash hauler invoices, liquor licenses, etc.
- d) Only after satisfactory explanation or proof that the documentation pursuant to (a), (b), or (c) does not exist, affidavits regarding the use of a building will be accepted to support either an application for legalization or as proof concerning whether or not a prior non-conforming use was continual per ZR 52-61. However, where such affidavits are submitted, they may be accepted only after the Borough President has reviewed them with close scrutiny. If such affidavits are accepted, all other affected persons shall have an opportunity to respond to such affidavits; and

WHEREAS, Appellant states that the following evidence demonstrates the Signs' continuous use: aerial photographs, dated August 13, 1961, that show the Signs being erected; an aerial photograph, dated November 22, 1961, from the City's Municipal Archives that shows the Signs in place at the subject site; photographs dated September 10, 1970, that show the installation of new lettering for the Illuminated Sign; an aerial photograph, dated July 15, 1977, that shows the Signs; a photograph of the Signs published in 1988; a photograph of a can of red paint at the subject site with the labels "2003-20" and "DO NOT THROW AWAY! WATCHTOWER Neon Sign Paint"; photographs of extra fuses for the Signs, dated May 24, 2005; instructions entitled "30 CH Time and Temperature Sign Troubleshooting," dated May 3, 2006; an instructions manual on "Sequence of Operations" of the "30 CH Roof—Time and Temperature Sign," dated July 13, 2007; drawings entitled "PLC—Module Layout" and "Power Wiring" for a project entitled "30 CH Watchtower Sign Maintenance," dated June 8, 2009; a drawing entitled "Digital Inputs" for the "30 CH Watchtower Sign," dated December 21, 2009, July 19, 2012, and updated November 4, 2017; a drawing entitled "Power Wiring" for the "30 CH Watchtower Sign" dated December 21, 2009, and July 19, 2012; and Google Street View images of the Signs, taken from the Brooklyn—Queens Expressway, dated September 2007, September 2009, June 2011, June 2012, October 2012, September 2014, October 2014, August 2016, and September 2017; and

WHEREAS, in response to DOB's argument that there

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is no evidence that the Signs were illuminated when installed in 1961, Appellant states that the following evidence demonstrates establishment and continuity of the Signs' illumination: evidence that DOB's practice in 1961 was to issue all permits required for illuminated roof signs pursuant to a single application, consistent with the evidence in the record with respect to Application No. 955 for a "roof sign" at the subject site, approved on May 16, 1961, and the above evidence regarding the 21st Street Sign; nighttime photographs of the Signs as they existed between 1961 and 1969 showing that the original lettering on the Signs were illuminated; and entries in Artkraft Strauss's electrical department log book from October to November 1961, which show the voltage and electric current specifications for each of the illuminated letters; and

WHEREAS, Appellant states that the following evidence demonstrates the continuity of the principal use of the subject building: a news article, dated March 30, 1968, entitled "Squibb Is Closing Brooklyn Plant," stating that "[t]he Squibb plant, on a 2.5-acre site centered at 25 Columbia Heights, now employs more than 800 people" and that the plant would close in "mid-1969"; a deed, dated November 25, 1969, from E. R. Squibb & Sons, Inc. to the Watchtower Bible and Tract Society of New York, Inc., recorded in the Office of the City Register, Kings County, at Reel 378, Page 1240 on November 29, 1969; a letter dated November 29, 1969, on the letterhead of the Watchtower Bible and Tract Society of New York, Inc., office of the president, which states, "We have begun using the buildings"; an article, dated January 1, 1970, entitled "Further Expansion at Watchtower Headquarters," which states, "On Columbia Heights, up the hill from the newly acquired properties, are the administrative offices and missionary school operated by Jehovah's Witnesses, as well as the residence for the more than 1,300 headquarters' personnel. These buildings fill a major part of three city blocks, and are all interconnected by underground tunnels"; an article, dated September 22, 1973, entitled "Expanded Facilities to Spread the Kingdom Message," which states, "In 1972 these presses used over 20,000 tons of paper—800 train carloads of 25 tons each"; a letter from 1978, which states, "We also invite you to tour our [Watchtower] shipping facilities located at 30 Columbia Heights. This tour takes about 20 minutes"; an article dated December 1, 1982, which states, "Then they crossed over the bridge (it can be seen in the photograph on page 24) connecting the 25 Columbia Heights Office Building with the buildings across the street. In this section [at 30 Columbia Heights] they visited the [Watchtower] Building Office, the Gilead School, the Carton-making Department, as well as the Paint and Upholstery Shop, Handbindery and Mechanical Maintenance"; an article, dated June 22, 1983, that describes spectators "gathered at windows of the adjacent 30 Columbia Heights building"; a yearbook of Jehovah's Witnesses from 1987, published in 1986, which states, "[B]uilding renovations in Brooklyn, New York, have included much work at 30 Columbia Heights and 360 Furman Street"; a yearbook of Jehovah's Witnesses from 1993, published in 1992, which states, "In the 30 Columbia Heights office building, the Construction Office is coordinating branch construction projects in some 50 lands, from Antigua to Zimbabwe"; a phone directory,

dated May 1999, listing uses at the subject site; elevator inspection and test reports for the subject building, dated May 18, 1989, June 14, 1989, August 30, 1989, July 23, 1990, December 20, 1990, July 16, 1991, July 18, 1991, August 12, 1991, June 3, 1992, June 8, 1992, August 11, 1992, May 21, 1993, May 28, 1993, December 17, 1993, March 24, 1994, September 15, 1994, August 22, 1995, December 26, 1995, December 28, 1995, June 5, 1996, April 3, 1997, July 17, 1997, September 1, 1997, December 4, 1997, April 21, 1998, May 5, 1998, May 19, 1998, August 24, 1998, December 15, 1998, June 3, 1999, November 16, 1999, November 24, 1999, May 12, 2000, May 17, 2000, October 16, 2000, October 19, 2000, October 25, 2000, April 13, 2001, April 20, 2001, March 12, 2002, March 25, 2002, March 26, 2002, April 1, 2002, December 18, 2002, December 19, 2002, December 20, 2002, April 21, 2003, March 22, 2004, April 7, 2004, April 19, 2004, October 22, 2004, November 16, 2004, April 25, 2005, June 16, 2005, June 28, 2005, September 30, 2005, November 2, 2005, November 28, 2005, May 4, 2006, May 8, 2006, May 12, 2006, May 17, 2006, August 7, 2006, March 5, 2007, March 22, 2007, April 24, 2007, May 9, 2007, May 29, 2007, May 7, 2008, August 24, 2010, and December 8, 2010, indicating the continued occupancy and maintenance of the subject building; Fire Department inspection records, dated December 21, 1994, December 21, 1996, and January 2, 2001, indicating the continued occupancy and maintenance of the subject building; correspondence from the Brooklyn Real Estate Office of the previous owner, dated March 28, 2017, listing annual inspections of cooling towers on November 12, 2001, November 1, 2002, December 15, 2003, October 11, 2004, October 27, 2005, November 1, 2006, November 19, 2007, October 31, 2008, November 1, 2009, November 1, 2010, November 1, 2011, October 1, 2012, November 1, 2013, November 1, 2014, November 1, 2015, and November 1, 2016, listing spring start-up service on April 1, 2001, April 15, 2002, April 1, 2013, April 1, 2004, April 11, 2005, April 1, 2006, April 1, 2007, April 1, 2008, April 1, 2009, April 1, 2010, April 1, 2011, April 1, 2012, April 1, 2013, April 1, 2014, April 1, 2015, and April 1, 2016, and other maintenance items occurring on July 4, 2008, and October 20, 2009, demonstrating continued occupancy and maintenance of the subject building; a yearbook of Jehovah's Witnesses, published in 2012, which states, "Day and night for more than 40 years, the 15-foot-tall red letters atop the world headquarters of Jehovah's Witnesses have been a familiar sight to residents of New York City, many of whom depend on the sign's useful display of the time and temperature"; a yearbook of Jehovah's Witnesses, published in 2015, which states, "On October 6, 2014, a trial arrangement for an English-language Internet television station called JW Broadcasting was launched. . . . Suitable space needed to be found. At the world headquarters of Jehovah's Witnesses in Brooklyn, New York, an ideal location was chosen in the 30 Columbia Heights building"; a lease between 25–30 Columbia Heights (Brooklyn), LLC and the Watchtower Bible and Tract Society of New York, Inc., dated August 3, 2016; and a Bargain and Sale Deed from the Watchtower Bible and Tract Society of New York, Inc. to 25–30 Columbia Heights (Brooklyn), LLC, dated August 3, 2016, and recorded in the Office of City Register,

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Kings County, at CRFN 2016000277229 on August 11, 2016; and

WHEREAS, with regards to evidence of continuity, Appellant states that, as an owner-occupant of the subject building from approximately 1969 to 2017 and a non-profit organization, the previous owner has no records of leases to any third parties and, similarly, because the Signs were not advertising, there are no leases for their use or separate bills for their operation; and

WHEREAS, Appellant states that changing the subject matter of the individual letters of the Illuminated Sign with new letters of like size and illumination affixed to the existing sign structure would not constitute a “structural alteration, reconstruction or replacement” under ZR § 52-82; and

WHEREAS, Appellant produced a letter from a structural engineer indicating that the Signs’ rooftop sign structure, which supports the lettering of the Illuminated Sign, is and was capable of supporting changes to another word of similar total letter weight and that the Illuminated Sign’s letters themselves are not structural; and

WHEREAS, in the alternative, Appellant states that, assuming there is insufficient evidence that a permit was issued for the installation in the Signs in 1961 and that a permit was required for the modification of the lettering of the Illuminated Sign in 1970, the Signs are entitled to “non-conforming use” status under ZR § 12-10, which use may continue under ZR § 52-11—notwithstanding the language of ZR § 42-58 that “a *sign* erected prior to December 13, 2000, shall have *non-conforming use* status . . . where such *sign* shall have been issued a permit by the Department of Buildings on or before such date”; and

WHEREAS, Appellant states that ZR § 42-58 has no relevance to this appeal because, as interpreted by DOB, the requirement for the Signs to have obtained a permit to enjoy “lawful” non-conforming use status derives from the definition of “non-conformity” in ZR § 12-10; and

WHEREAS, accordingly, Appellant states that the Signs are lawfully “non-conforming” under ZR § 12-10, the use of which may be continued under ZR § 52-11 or structurally altered, reconstructed or replaced with new accessory signs pursuant to ZR § 52-82; and

DOB’S POSITION

WHEREAS, DOB states that there is evidence that that the Signs were erected without a permit in 1961 in violation of applicable laws, that the Signs are not non-conforming uses under ZR § 12-10, that use of the Signs may not continue under ZR § 52-11 and that the Signs may not be structurally altered, reconstructed or replaced under ZR § 52-82; and

WHEREAS, DOB states that, in accordance with comprehensive restraints placed on signs in manufacturing districts in 2001, ZR § 42-58 limits the protected “non-conforming use” status of signs located in manufacturing districts to signs that “shall have been issued a permit by the Department of Buildings . . . on or before” December 13, 2000; and

WHEREAS, DOB states that the evidence demonstrates that a permit was never issued and that the Signs were erected unlawfully; and

WHEREAS, DOB states that no copy of a permit for the Signs has been submitted by the Appellant to date; and

WHEREAS, DOB states that the location diagram on the Structural Drawing, allegedly a copy (hand-drawn in 1970) of a drawing submitted in 1961, indicates that the proposed placement of the Signs was at a location at least 243 feet south of Doughty Street; however, the Signs were erected on a different part of the subject building, approximately 57 feet south of Doughty Street, at least 186 feet from the location on the Structural Drawing; and

WHEREAS, DOB states that the Building Code required that all construction be performed in accordance with the approved plans for which a permit was issued and that the significantly different location of the Signs from that indicated on the Structural Drawings indicates that the Signs were not lawfully erected; and

WHEREAS, DOB states that the record does not include any direct evidence that a permit for the Signs was ever obtained or that construction was signed off; and

WHEREAS, DOB states that the Docket contains no notations or entries in the sub-columns denoting when an application is approved, commenced or completed, though there are dates for every other job on that page corresponding to at least one of those fields; and

WHEREAS, DOB states that, in other words, the Docket shows an application filed with no permit issued; and

WHEREAS, DOB states that the Ledger only indicates plan-examination approval and is not direct evidence of a permit but, even if evidence of a permit, the Ledger reflects a permit for a sign placed at a different location, indicating that the Signs were erected contrary to plans and accordingly unlawfully; and

WHEREAS, DOB states that the Ledger shows no notations or entries in the “Commenced,” “Completed” or “Inspector at Completion” columns, though there are dates in the “Completed” field for most other applications on the page, thereby indicating that Application No. 955 was never signed off; and

WHEREAS, DOB states that Section B26-13.0 of the New York City Building Code in effect in 1961 required that, before the issuance of a permit for an electric sign, an application needed approval by the Commissioner of Buildings as well as the Commissioner of Water Supply, Gas and Electricity; and

WHEREAS, DOB states that the absence of notations in the last column of the Docket suggests that approval of the Commissioner of Water Supply, Gas and Electricity was never received; and

WHEREAS, DOB states that there is no evidence that any Electric Sign application was ever submitted for the Signs in contrast to contemporaneous Electric Sign applications submitted for wall signs at 25 Columbia Heights, where the permits themselves demonstrate that the Department approved applications and issued corresponding permits after the processing fee was paid, the application was reviewed with objections issued and the Commissioner of Water Supply, Gas and Electricity approved the application; and

WHEREAS, DOB states that, during this time period, roof signs were required to have separate applications for sign structures (to demonstrate compliance with the Building Code) and for the signs themselves (to demonstrate conformity to the Zoning Resolution); that sign structures

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required either an Alteration application or a Building Notice to be submitted; and that signs required Electric Sign applications and permits for illuminated signs and Sign applications and permits for non-illuminated signs, as corroborated by a sign at 465 Hamilton Avenue, Brooklyn (the “Hamilton Avenue Sign”); and

WHEREAS, DOB states that, in 1972, application materials for the Hamilton Avenue Sign, were filed under both Building Notice No. 4612 of 1971 to “erect sign support on roof” and Electric Sign Application No. 90 of 1972 for the “sign on structure of roof approved under B.N. 4612/71”; and

WHEREAS, with respect to Application No. 964 of 1961, for the 21st Street Sign, DOB states that this application and associated documents, which are incomplete, provide little insight because the permits were issued in connection with a Sign application, not an Alteration application (such as Application No. 955 of 1961 for the Signs); and

WHEREAS, DOB states that, because of the evidence of illegality, the Signs cannot be afforded a presumption of lawful establishment; and

WHEREAS, DOB states, in response to Appellant’s argument that a non-conforming use may be established absent a permit, that there is no support for a right to structurally alter, reconstruct or replace a non-conforming structure without a permit in light of ZR § 42-58, which explicitly requires a permit, and ZR § 12-10, which requires a non-conforming use to be “lawful”; and

WHEREAS, DOB states that, because the Signs were never issued a permit, the Signs are not non-conforming uses pursuant to ZR § 12-10, and their use may not be continued under ZR § 52-11; and

WHEREAS, DOB states that, given the size and weight of the lettering of the Illuminated Sign, which has a height in excess of 15 feet, the letters may not be altered under ZR § 52-21 or ZR § 52-81 because an alteration of the lettering would be a prohibited replacement or structural alteration, contrary to ZR § 52-82, and not a repair or “incidental alteration” under ZR § 52-21; and

WHEREAS, DOB states that photographs in the record indicate that the lettering of the Illuminated Sign was hoisted by more than ten people simultaneously when changed in 1970; and

WHEREAS, DOB states that the certificates of occupancy in the record do not confirm the lawfulness of the Signs because they state only that the subject building “conforms substantially to the approved plans and specifications and to the requirements of all applicable laws rules and regulations for the uses and occupancies specified herein,” and the Signs are not indicated on the certificates of occupancy; and

WHEREAS, DOB states that Appellant has not proven the continued active operation of the Sign’s accessory use; and

WHEREAS, DOB did not challenge, however, any evidence of continuity submitted by Appellant in response, so Appellant’s evidence of continuity is undisputed by DOB in this appeal; and

WHEREAS, accordingly, DOB states that the Signs are not lawfully “non-conforming” under ZR § 12-10, and their use must terminate; and

Discussion

WHEREAS, because this is an appeal for interpretation, pursuant to ZR § 72-11, the Board “may make such . . . determination as in its opinion should have been made in the premises in strictly applying and interpreting the provisions of” ZR §§ 12-10, 52-11 and 52-82; and

WHEREAS, based on DOB’s application records and other evidence presented in this appeal,² the Board concludes that it is reasonable to infer that the Signs were issued all permits required by DOB for illuminated roof signs when erected prior to December 15, 1961, and the Board finds that the Signs are lawfully “non-conforming” under ZR § 12-10 with their use permitted to continue under ZR § 52-11 and may be structurally altered, reconstructed or replaced with new accessory signs in accordance with ZR § 52-82; and

APPLICATION RECORDS

WHEREAS,, the Ledger, the Docket and the Structural Drawing indicate that Application No. 955 was filed for the Signs on the roof of the subject site on April 10, 1961; and

WHEREAS, the Ledger and the Docket—both of which contain erratic and incomplete entries—reflect incomplete and inconsistent recordkeeping on DOB’s part in 1961 with respect to construction applications; and

WHEREAS, the Ledger and the Docket do not themselves constitute affirmative evidence that no permit was issued for the Signs; and

WHEREAS, on the Ledger, there are no entries for any of the 35 applications listed under the Permits column, and the Permits sub-column entitled “Date” has application numbers re-stated rather than dates; and

WHEREAS, the Ledger has 32 blank fields under the Commenced column, 10 blank fields under the Completed column and Inspector at Completion column and 32 blank fields under the Remarks column; and

WHEREAS, on the Docket, none of the applications listed have three dates under the column entitled “Remarks” with the sub-columns “APPD,” “CMCD” and “CMPD”—approved, commenced and completed, respectively; and

WHEREAS, although the Ledger indicates that Application No. 955 of 1961 for the Signs was approved on May 16, 1961, the Docket shows no date under the Approved sub-column; and

WHEREAS, were one to assume that a blank field under the Approved sub-column on the Docket is affirmative evidence that an application was not approved, the Ledger and the Docket would be contradictory on their face; and

WHEREAS, contemporaneous proofs of DOB’s permitting practices in 1961 provided by Appellant further

² Consistent with DOB’s TPPN # 14/88, the record is replete with “Records or documentation from any City Agency,” including the Ledger and the Docket from DOB and photographs from the City’s Municipal Archives, which are “acceptable documentation in support of such existing use for legalization or proof of continual nonconforming use.” Because Appellant refers to DOB’s evidentiary standards as “wholly rational,” they are essentially undisputed, and this appeal ultimately turns on a fact-based evaluation of the record before the Board.

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substantiate DOB's incomplete and inconsistent recordkeeping in 1961; and

WHEREAS, for instance, the 1959 BN Docket is mostly blank with respect to a column entitled "Remarks" with the sub-columns "APPD," "CMCD" and "CMPD"—approved, commenced and completed, respectively—which correspond to the columns on the Docket; and

WHEREAS, nearly all the Remarks column on the 1959 BN Docket is blank, with handwritten notations for two entries; and

WHEREAS, the Remarks column of the Docket for the Signs is similarly incomplete with no entry fully annotated with all three dates corresponding to approval, commencement and completion; and

WHEREAS, on the other hand, with respect to the Hamilton Avenue Sign presented by DOB and the 1951 BN Docket presented by Appellant, application materials from 19723 and recordkeeping materials from 1951 have little probative value with respect to DOB's permitting practices in 1961 because permitting practices may have changed over the course of 10 or 11 years; and

WHEREAS, accordingly, the incomplete and inconsistent recordkeeping reflected in the Ledger and the Docket is further corroborated by the 1959 BN Docket; and

WHEREAS, because of the facial contradiction between the Ledger and the Docket and the incomplete 1959 BN Docket, a blank field on the Docket can be ascribed to inconsistent recordkeeping on DOB's part in 1961, and it is implausible that a blank field on the Ledger or the Docket constitutes affirmative evidence that an event—such as application approval, permit issuance or completion of construction—did not occur; and

WHEREAS, the Ledger thus indicates that erection of the Signs was approved by DOB under Application No. 955 on May 16, 1961, but does not show that no permit was issued for the Signs; and

PERMITS

WHEREAS, notwithstanding that no copies of permits issued under Application No. 955 of 1961 appear in the record, the Board finds that it is likely that the Signs were issued all permits required for illuminated roof signs under Application No. 955 of 1961; and

WHEREAS, although the application materials themselves (besides the copy of drawings reproduced by hand in the Structural Drawings) for Application No. 955 of 1961 do not appear in the record, Appellant produced actual application materials for the 21st Street Sign, filed under Application No. 964 of 1961; and

WHEREAS, the application materials for the 21st Street Sign reflect that, in 1961, approved application materials themselves constituted permits for illuminated roof signs; and

WHEREAS, in further support of the inference that permits for the Signs were issued under Application No. 955 of 1961, both the Signs and the 21st Street sign were erected by the same sign company; and

WHEREAS, the evidence produced by Appellant with respect to the 21st Street Sign evinces that Artkraft Strauss erected the 21st Street Sign; and

WHEREAS, Artkraft Strauss was also hired by the previous owner of the subject site to erect the Signs in 1961, as reflected in the Structural Drawings: "Proposed Roof Sign for E. R. Squibb & Sons division of Olin Mathieson Chemical Corp. at #18/30 Columbia Heights s.w. cor. Doughty St. B'k'lyn, N.Y. Artkraft Strauss Sign Corp. S. Oberwanger, Engr, N.Y.C. Apr. 10/61"; and

WHEREAS, both the Signs and the 21st Street Sign are illuminated roof signs; and

WHEREAS, both the Signs and the 21st Street Sign are reflected in Artkraft Strauss's electrical department log books—indicating that Artkraft Strauss followed similar operating procedures with respect to the Signs and the 21st Street Sign; and

WHEREAS, application materials for the 21st Street Sign indicate that Artkraft Strauss obtained multiple permits under a single application, Application No. 964 of 1961, because the application materials for the 21st Street Sign indicate that the application materials were themselves permits; and

WHEREAS, the Ledger indicates that application materials for the erection of the Signs in conjunction with Application No. 955 were approved by DOB on May 16, 1961; and

WHEREAS, because Artkraft Strauss obtained all necessary permits for the 21st Street Sign, it is reasonable to infer that Artkraft Strauss would have followed similar procedures when erecting the Signs and would have obtained all necessary permits for the Signs; and

WHEREAS, nothing in the record indicates any violation or other enforcement action by DOB at the time of installation relating to the Signs' failure to comply with any laws or regulations—notwithstanding the Signs' illumination and prominent placement along the Brooklyn waterfront by the Brooklyn Bridge; and

WHEREAS, accordingly, a reasonable inference may be made that the Signs were issued all permits required for illuminated roof signs in conjunction with Application No. 955, as approved by DOB on May 16, 1961; and

WHEREAS, with respect to the location of the Signs, it is unclear from the record whether the schematic location diagram depicted in the Structural Drawing was the approved location pursuant to which a permit was issued in 1961 or whether the approved location would have been depicted on another sheet of the approved drawings in 1961; additionally, nothing in the record indicates that the location of the Signs as installed violated any specific provision of law in 1961 with respect to location so as to render the issuance of a permit invalid or that the Signs have been moved to a different location or position since their erection; and

WHEREAS, under subchapter B of Rule 49 (1 RCNY § 49-15), the DOB rule enacted to set forth procedures for registration of advertising signs by outdoor advertising companies, acceptable forms of evidence to establish the size and existence of a non-conforming sign as of the relevant date set forth in the Zoning Resolution to establish its lawful status "may include permits, sign-offs of applications after completion, photographs and leases

3 The City enacted a comprehensive amendment to the New York City Building Code in 1968—its first major revision since 1938. The effect of this 1968 enactment on DOB's permitting practices is unclear from the record in this appeal.

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demonstrating that the non-conforming use existed prior to the relevant date,” 1 RCNY § 49-15(d)(15)(b); and

WHEREAS, additionally, under Rule 49, “permit applications, without other supporting documentation, are not sufficient to establish the non-conforming status of a sign,” 1 RCNY § 49-15(d)(15)(b); and

WHEREAS, Appellant is not an outdoor advertising company and, thus, cannot avail itself of Rule 49, but notes that there is no corresponding rule for non-outdoor advertising companies that would be available to the Appellant and that Rule 49 expressly contemplates the registration of both non-conforming advertising signs and non-conforming non-advertising, i.e., accessory, signs, 1 RCNY § 49-15(d)(5); and

WHEREAS, DOB’s TPPN # 14/88 is consistent with the approach in Rule 49 with regards to its acceptance of proofs other than a permit to establish legal non-conforming use; and

WHEREAS, accordingly, DOB’s position that failing to provide sufficient proof of the issuance of a permit forecloses non-conformity is not only different from the standard imposed on outdoor advertising companies under Rule 49—which permits the submission of photographs and leases, and does not necessarily require the production of a permit, to demonstrate non-conforming use—but imposes a higher standard for non-advertising signs in direct contravention of the public policy that aims to restrict advertising signage, which can pose a nuisance; and

WHEREAS, accordingly, based upon the foregoing, the Board concludes that it is likely that all permits required for illuminated roof signs were issued under Application No. 955 of 1961 for the erection of the Signs; and

NON-CONFORMITY

WHEREAS, the Board finds that the Signs were and are a “lawful” use of the rooftop sign structure at the subject site, “which does not conform to any one or more of the applicable *use* regulations of the district in which it is located, either on December 15, 1961 or as a result of any subsequent amendment thereto”—thereby meeting the definition of “non-conformity” under ZR § 12-10; and

WHEREAS, because the evidence in the record regarding continuity and accessory use of the Signs was unchallenged by DOB in this appeal, it is undisputed that use of the Signs has been continuous and accessory to a principal use at the subject site since 1961; and

WHEREAS, based upon the foregoing, the Board finds the Signs “may be continued” as lawful non-conformities accessory to a principal use at the subject site under ZR § 52-11 and, besides the Flashing Signs, “may be structurally altered, reconstructed or replaced in the same location and position” under ZR § 52-82; and

CONCLUSION

WHEREAS, the Board has considered all of DOB’s arguments on appeal but finds them ultimately unpersuasive with respect to the sole issue in this appeal; and

WHEREAS, for the foregoing reasons, the Board finds that the Signs are “non-conforming” accessory signs under ZR § 12-10, the use of which may be continued pursuant to ZR § 52-11 or structurally altered, reconstructed or replaced with new accessory signs in accordance with ZR § 52-82.

Therefore, it is Resolved, that the decision of the Department of Buildings, dated April 2, 2018, under Zoning

Resolution Determination Control No. 46921, shall be and hereby is *reversed* and that this appeal shall be and hereby is *granted*.

Adopted by the Board of Standards and Appeals, November 8, 2018.

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 February 5, 2019, at 10 A.M., for continued hearing

2016-4473-A

APPLICANT – Law Offices of Marvin B. Mitzner LLC, for 72-74 E. 3rd Street Condo Corp., owner.

SUBJECT – Application December 30, 2016 – 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.

PREMISES AFFECTED – 72-74 East 3rd Street, Block 444, Lot 7501, Borough of Manhattan.

COMMUNITY BOARD #3M

ACTION OF THE BOARD – Laid over to January 15, 2019, at 10 A.M., for continued hearing.

2017-249-A

APPLICANT – Tarter Krinsky & Drogin LLP, for New York Central Line, owner; Outfront Media, LLC, lessee.

SUBJECT – Application August 28, 2017 – 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.

PREMISES AFFECTED – Major Deegan Expressway and S/O Van Cortland, Block 3269, Lot(s) 70/118, Borough of Bronx.

COMMUNITY BOARD #8BX

ACTION OF THE BOARD – Laid over to February 5, 2019, at 10 A.M., for continued hearing

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2017-310-A

APPLICANT – Department of Buildings, for FMA Farragut Road LLC, owner; CMW Industries LLC, lessee.
SUBJECT – Application December 1, 2017 – 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.
PREMISES AFFECTED – 10002 Farragut Road, Block 8169, Lot 31, Borough of Brooklyn.

COMMUNITY BOARD #18BK

ACTION OF THE BOARD – Laid over to April 23, 2019, at 10 A.M., for continued hearing

ZONING CALENDAR

2017-201-BZ

CEQR #17-BSA-136K

APPLICANT – Law Office of Jay Goldstein, for The Cheder, owner.

SUBJECT – Application May 30, 2017 – 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) and 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), ZR §11-561 and ZR §25-31 (accessory off-street parking) 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)).

PREMISES AFFECTED –323 Elmwood Avenue, Block 6503, Lot 103, 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, Commissioner Sheta and Commissioner Scibetta.....5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated February 28, 2018, acting on Department of Buildings (“DOB”) Application No. 321435719 reads in pertinent part:

Obtain variance approval from the Board of Standards and Appeals for the following objections:

1. Proposed floor area ratio is contrary to ZR 113-51;
2. Proposed height is contrary to ZR 113-55 and ZR 23-631;
3. Proposed rear yard setback is contrary to ZR 113-544;
4. Proposed setback ratio is contrary to ZR 113-55 and ZR 23-631;
5. Proposed sky exposure plane is contrary to ZR 113-55 and ZR 23-631;
6. Proposed accessory off street parking spaces is contrary to ZR 113-561 and ZR 25-31;
7. Proposed minimum distance between legally required windows and lot lines is contrary to ZR 23-861; and

WHEREAS, this is an application under ZR § 72-21 to permit, on a site located within an R3-1 zoning district, the Special Ocean Parkway District and the Special Ocean Parkway Subdistrict, in Brooklyn, the construction of three-story, plus basement and cellar, Use Group (“UG”) 3 dormitory that does not comply with the zoning regulations

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relating to floor area ratio, height, rear yard setback, sky exposure plane, accessory off-street parking spaces and minimum distance between legally required windows and lot lines, contrary to ZR §§ 23-631, 23-861, 25-31, 113-51, 113-544, 113-55 and 113-561; and

WHEREAS, this application is filed on behalf of Cheder, a non-profit educational institution (the “Applicant”); and

WHEREAS, the Applicant operates a UG 3 school and accessory dormitory building for approximately 226 high school and post-high school aged students, also known as Yeshiva Sholom Shachna, on the lot located immediately to the east of the premises (Lot 99) permitted pursuant to a variance granted by the Board, pursuant to ZR § 72-21 under BSA Cal. No. 54-06-BZ on February 27, 2007 (the “Adjacent School”); and

WHEREAS, Yeshiva Sholom Shachna is accredited by the Association of Advanced Rabbinical and Talmudic Schools, provides both secular and religious instruction and provides a four-year degree program that enables its students to obtain a bachelor’s degree in Talmudic Law; and

WHEREAS, a public hearing was held on this application on June 19, 2018, after due notice by publication in *The City Record*, with a continued hearing on August 14, 2018, and then to decision on November 8, 2018; and

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

WHEREAS, Community Board Community Board No. 12, Brooklyn, recommends approval of this application; and

WHEREAS, the Board was also in receipt of one letter in support and four letters in opposition the subject application, citing concerns regarding children playing on the roof and amplified noise, the substantial massing of the proposal blocking access to light and air, the lack of parking proposed at the site, which is needed to accommodate parents who visit their children at the site and arrive by car to bring food or pick up laundry and the utilization of public street furniture for bicycle parking and storage; and

WHEREAS, the subject site is located on the north side of Elmwood Avenue, between East 3rd Street and Ocean Parkway, in an R3-1 zoning district, the Special Ocean Parkway District and the Special Ocean Parkway Subdistrict, in Brooklyn; and

WHEREAS, the site has approximately 80 feet of frontage along Elmwood Avenue, a depth of 81 feet at the western lot line and 86 feet at the eastern lot line, 6,673 square feet of lot area and is occupied by a two-story plus cellar and basement building; and

WHEREAS, the Applicant proposes to occupy the site with a three-story, plus cellar and basement, building having 15,132 square feet of floor area, a floor area ratio (“FAR”) of 2.27, a front wall height of 27’-10.5”, total height of 37’-4.5”, a 15 foot rear yard, penetration of the sky exposure plane, a 15 foot setback above the front wall height of 27’-10.5” and zero accessory off-street parking spaces; and

WHEREAS, at the subject site, a maximum of 1.5 FAR

is permitted pursuant to ZR § 113-51; a setback in the perimeter wall is required above a maximum height of 21 feet above the base plane and compliance with a slope plane thereafter to meet at a ridge line of 35 feet are required pursuant to ZR §§ 113-55 and 23-631(b); one rear yard with a minimum depth of 20 feet is required pursuant to ZR § 113-544; one accessory off-street parking space is required for each 6 dormitory beds pursuant to ZR §§ 113-561 and 25-31; and the minimum distance between a legally required window and a rear or side lot line is 30 feet pursuant to ZR § 23-861; and

WHEREAS, accordingly, the Applicant seeks the subject relief to facilitate the development of a dormitory containing 30 rooms with 132 beds for students enrolled in the post-high school seminary program at the Adjacent School; and

WHEREAS, the Applicant submits that a building in full compliance with the Zoning Resolution would be two stories, plus basement and cellar, containing a total of 8 rooms and 31 dormitory beds; and

WHEREAS, the Applicant submits that approximately 90 percent of its post-high school students require dormitory beds and that the beds proposed in the subject application will be utilized in addition to the 30 beds that currently exist in the Adjacent School and have proven to be insufficient to meet student enrollment and demand, which is anticipated to double in the next three years to a total of 190 students; and

WHEREAS, the Applicant represents that the post-high school curriculum, in particular, requires the students to be completely dedicated to their studies and, accordingly, the locating of dormitories in close proximity to the Adjacent School—where the students attend all their classes and eat all their meals—is a programmatic need because without the subject proposal, many students would not choose to attend the Adjacent School; and

WHEREAS, the Board acknowledges that the Applicant, 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 Applicant’s programmatic needs create unnecessary hardship and practical difficulty in developing the premises in compliance with the applicable zoning regulations; and

WHEREAS, because the Applicant 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 to grant the variance requested in this application; and

WHEREAS, the Applicant represents that, pursuant to

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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, to wit, the subject proposal is similar in total height to the Adjacent School, which has a perimeter wall height of 35 feet, and shorter than several multi-family residential buildings in the immediate area; and

WHEREAS, the Applicant originally proposed a front wall and total height of 40'-8.25", without setback, and a total of 150 dormitory beds, but, in response to concerns raised by neighbors and the Board regarding the substantial massing of the proposal, the Applicant revised the proposal to reduce the floor-to-floor height of the second and third floors from more than 11 feet to 9'-6" and provide a 15 foot setback at a height of 27'-10.5", changes that reduced the number of dormitory beds in the proposed building by 18; and

WHEREAS, with regards to other concerns expressed by neighbors in both letters to and testimony before the Board, the Applicant states that there will be no access for students to the roof of the subject building, that students are not permitted to drive or keep a car at the premises and amended the plans to include a laundry room and bicycle parking in the cellar and rear yard; and

WHEREAS, with regards to the requested reduction of the required rear yard by 5 feet, the Applicant submits that the rear of the site abuts Long Island Rail Road tracks, which provide more than adequate separation between the rear of the subject building and the residential building on the other side of the tracks; that the Adjacent School, located on the lot to the immediate east of the premises, was approved with no rear yard and that the Applicant currently rents the building located on the lot to the immediate west of the premises, thus the reduced rear yard will not adversely affect any adjacent property; and

WHEREAS, considering 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 that the practical difficulties 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 Applicant; and

WHEREAS, the Applicant submits that, consistent with ZR § 72-21(e), the subject 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 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 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-136K, received March 12, 2018; 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; or Construction; and

WHEREAS, the New York City Landmarks Preservation Commission conducted an environmental review of the subject site and concluded that it was 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.

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 R3-1 zoning district, the Special Ocean Parkway District and the Special Ocean Parkway Subdistrict, in Brooklyn, the construction of three-story, plus basement and cellar, Use Group ("UG") 3 dormitory that does not comply with the zoning regulations relating to floor area ratio, height, rear yard setback, sky exposure plane, accessory off-street parking spaces and minimum distance between legally required windows and lot lines, contrary to ZR §§ 23-631, 23-861, 25-31, 113-51, 113-544, 113-55 and 113-561; *on condition* that all work shall substantially conform to drawings as they apply to the objections above noted and filed with this application marked "Received November 8, 2018"-Fifteen (15) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum 15,132 square feet of floor area (2.27 FAR), a maximum front wall height of 27'-10.5", a minimum setback of 15 feet from the front wall above 27'-10.5", a maximum total height of 37'-4.5", a rear yard with a minimum depth of 15 feet and zero parking spaces;

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, indicating this

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approval and calendar number (“BSA Cal. No. 2017-201-BZ”) shall be obtained within four (4) years, by November 8, 2022;

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, November 8, 2018.

2017-321-BZ

CEQR #18-BSA-076M

APPLICANT – Rothkrug Rothkrug & Spector LLP, for ERY North Tower RHC Tenant LLC, owner; Equinox Hudson Yards, Inc., lessee.

SUBJECT – Application December 19, 2017 – Special Permit (§73-36) to permit the operation of a Physical Cultural Establishment (*Equinox*) located on the first, fourth, fifth and sixth floors of a proposed 72-story mixed-use building contrary to ZR §32-10. C6-4 Special Hudson Yards District.

PREMISES AFFECTED – 560 W. 33rd Street, Block 702, Lot 150, Borough of Manhattan.

COMMUNITY BOARD #4M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated December 6, 2017, acting on DOB Application No. 121192618, reads in pertinent part:

Proposed physical cultural establishment at floors “1st, 4th, 5th, and 6th,” including the outdoor roof terrace, in a C6-4 (HY) district is not permitted as of right as per ZR § 32-10; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to permit, on a site located in an C6-4 zoning district and in the Special Hudson Yards District, a physical culture establishment (“PCE”) on portions of the first, fourth, fifth, and sixth floor, and fifth floor terrace, of a proposed 71-story mixed-use residential and commercial building, contrary to ZR § 32-10; and

WHEREAS, on August 21, 2018, the Board granted a special permit pursuant to ZR § 73-36 authorizing the operation of a physical culture establishment—a spa operated by Equinox Hotel—in portions of the first and fifth

floors of the subject building under BSA Cal. No. 2018-37-BZ for a term of ten (10) years, expiring August 21, 2028; and

WHEREAS, a public hearing was held on this application on August 14, 2018, after due notice by publication in *The City Record*, with a continued hearing on November 8, 2018, and then to decision on that same date; and

WHEREAS, Community Board 4, Manhattan, recommends approval of this application; and

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

WHEREAS, the subject site is located on the southeast corner of West 33rd Street and 11th Avenue, in a C6-4 zoning district and in the Special Hudson Yards District, in Manhattan; and

WHEREAS, the site has approximately 228 feet of frontage on West 33rd Street, 234 feet of frontage on 11th Avenue, 50,167 square feet of lot area, and will be occupied by a 71-story mixed-use building in which the PCE will be located; 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 I* 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) permits a PCE located on the roof of a commercial building or commercial portion of a mixed-use building, provided the following findings are made:

1 Words in *italics* are defined in Section 12-10 of the Zoning Resolution.

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- (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;

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 applicant submits that the proposed PCE will occupy 42,570 square feet of floor area at the subject site, with 770 square feet of floor area on the first floor with the PCE entrance, elevators, and a juice bar;

21,061 square feet of floor area on the fourth floor with a cycling studio, group fitness area, strength and cardio areas, a reception lobby, offices, and locker rooms; 18,136 square feet of floor area on the fifth floor with an indoor swimming pool, plunge pool and pool areas, areas for yoga and Pilates, a café, and an outdoor terrace with an outdoor swimming pool; and, 2,603 square feet of floor area on the sixth floor with a fitness area, cabanas, and office space; and

WHEREAS, the applicant represents that the proposed PCE will operate as “Equinox” with the following hours of operation: Monday through Friday, 5:00 a.m. to 11:30 p.m.; Saturday and Sunday, 7:00 a.m. to 10:00 p.m.; use of the outdoor terrace will be limited to PCE patrons and will operate from Memorial Day to October, from sunrise to 11:00 p.m.; and

WHEREAS, the applicant provided evidence that the PCE space will provide sound attenuation measures to ensure noise levels in other portions of the building do not exceed 45 dBA; specifically, the applicant proposes to maintain a closed window condition by providing an alternate means of ventilation; limiters will be used on any outdoor music equipment; floating floors and jack slab construction will be utilized in areas beneath the strength area, group fitness area, and cycling studio; and, the outdoor terrace will have a restricted season with limited hours, outdoor music and gatherings will be permitted only between 10:00 a.m. and 8:00 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 the applicant anticipates the PCE will be an asset to the surrounding area and new Hudson Yards development; 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 represents that the PCE will contain facilities for the provision of physical improvement utilizing exercise equipment, individual and group fitness training, and swimming pools; and

WHEREAS, accordingly, 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 applicant states that the PCE use to be located on the roof portion of the subject site, a swimming pool and lounge area, is an incidental part of the PCE; is open and unobstructed to the sky; is not less than 23 feet above curb level; and, the applicant submitted affidavits demonstrating that this application has been made jointly by both the operator of the PCE and the owner of the building; and

WHEREAS, accordingly, the Board finds that the subject PCE use located on the fifth-floor terrace is consistent with those eligible pursuant to ZR § 73-36(b) 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

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satisfactory; and

WHEREAS, the applicant submits that the PCE space will be protected with a wet sprinkler system and an approved interior fire alarm system—including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms, and a connection of the interior fire alarm system to an FDNY-approved central station—will also be installed within the PCE space; and

WHEREAS, by letter dated November 7, 2018, the Fire Department states that an application for a Place of Assembly permit has been filed and is disapproved; several fire alarm applications have been filed and are currently disapproved; the building's fire suppression systems are currently being installed and have been inspected by the Bureau's Construction, Demolition and Abatement unit and found to be satisfactory; and, the Bureau of Fire Prevention recommends that the Board, in granting a special permit, add as a condition that the applicant obtains an operating permit for the place of assembly space, as well as an approval and sign-off for the fire alarm system; an inspector from the Licensed Public Place of Assembly unit will visit the space and will issue violation orders accordingly; and

WHEREAS, the applicant represents that the PCE will not impact the privacy, quiet, light and air of the neighborhood on account that it is anticipated to draw its patronage from the surrounding area within walking distance of the PCE, and, beyond limiting the hours of use and amplification of noise on the fifth-floor terrace, the applicant proposes to integrate the lighting of the outdoor space into the exterior elements, such as the handrails, planters, swimming pool, and exterior trellis structure, and will utilize recessed floor lighting, limited wall fixtures and lanterns in seating areas; 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 that the proposed special permit use will not interfere with any pending public improvement project; 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. 18BSA076M, received December 22, 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 Activities; 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, an (E) designation (No. E-137) has been placed on the subject site for hazardous materials and noise

requiring alternate means of ventilation to maintain a closed window condition and specific window/window-wall attenuation that varies based on the distance of a particular floor from street level (i.e., for the commercial floor of the subject building, window/window-wall attenuation of 32 dB(A) from 0 to 100 feet above street level, window/window-wall attenuation of 28 dB(A) from 100 to 200 feet above street level and window/window-wall attenuation of 26 dB(A) from 201 to 400 feet above street level); and

WHEREAS, on April 7, 2015 a Notice To Proceed was issued by the Office of Environmental Remediation stating that the proposed remedial action plans submitted in connection with the E-designation on the site were acceptable;

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, 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 that permitting the subject PCE space proposed on the first, fourth, fifth, and sixth floor, and fifth floor outdoor terrace of the subject building, is appropriate, with certain conditions as set forth below.

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, 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 a C6-4 zoning district and in the Special Hudson Yards district, a physical culture establishment on portions of the first, fourth, fifth, and sixth floor, and fifth floor outdoor terrace, of a proposed 71-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 “October 17, 2018”– Thirteen (13) sheets; and *on further condition*:

THAT the term of the PCE grant shall expire on November 8, 2028;

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

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

THAT the sprinkler system shall be installed and maintained as indicated on the Board-approved plans;

THAT an approved fire alarm system—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—shall be installed and

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maintained within the 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 a place of assembly permit shall be obtained;

THAT the fire alarm system shall be approved and signed off prior to the issuance of a certificate of occupancy;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy indicating the subject calendar number (“BSA Cal. No. 2017-321-BZ”) shall be obtained within four (4) years, by November 8, 2022;

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 8, 2018.

2018-1-BZ

CEQR #18-BSA-080Q

APPLICANT – Jesse Masyr, Esq., Fox Rothschild LLP, for 11-02 37th Avenue LLC, owner; New York Black Car Operators’ Injury Compensation Fund, Inc., lessee.

SUBJECT – Application January 2, 2018 – Special Permit (§73-44) to permit the reduction of required accessory off-street parking spaces for a UG 6B office use (PRC-B1 parking category) contrary to ZR §44-21. M1-3 zoning district.

PREMISES AFFECTED – 11-02 37th Avenue, Block 361, Lot 18, 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 Sheta and Commissioner Scibetta.....5

Negative:0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated December 6, 2017, acting on New Building Application No. 421535002, reads in pertinent part:

“ZR 44-21 The number of accessory parking spaces provided for Use Group 6B office does not comply. Referred to BSA for a special permit pursuant to ZR 73-44”; and

WHEREAS, this is an application under ZR §§ 73-44 and 73-03 to permit, in an M1-3 zoning district, a reduction

in the number of accessory off-street parking spaces required for office use in parking requirement category B1 (Use Group 6), contrary to ZR § 44-21; and

WHEREAS, a public hearing was held on this application on August 21, 2018, after due notice by publication in *The City Record*, with a continued hearing on November 8, 2018, 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 1, Queens, recommends disapproval of this application, stating that the proposed parking reduction would result in significant traffic impacts on the surrounding area, which has limited mass transit options; and

WHEREAS, residents of the surrounding area submitted testimony in opposition to this application, citing concerns with limited parking in the surrounding area; and

WHEREAS, the subject site is located on the southeast corner of 37th Avenue and 11th Street, in an M1-3 zoning district, in Queens; and

WHEREAS, the subject site has approximately 75 feet of frontage along 37th Avenue, 100 feet of frontage along 11th Street, 7,507 square feet of lot area and is occupied by a two-story manufacturing building to be demolished; and

WHEREAS, ZR § 73-44 provides, in pertinent part, that:

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 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

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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, 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 applicant proposes the develop the subject site with a five-story, with cellar and mezzanine, commercial building with approximately 33,318 square feet of floor area (4.44 FAR), approximately 22,041 square feet of which will be dedicated to traditional administrative office space and 7,418 square feet of which will be dedicated to a training facility that offers classes to professional drivers, with a total of 64 accessory off-street parking spaces; and

WHEREAS, the applicant states that, at the subject site, 111 accessory off-street parking spaces are required under ZR § 44-21, calculated at a rate of one space per 300 square feet of floor area; and

WHEREAS, pursuant to ZR § 73-44, the Board may reduce the required parking for office use in parking requirement category B1 (Use Group 6) 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 commitment letter and an affidavit stating that the building will be occupied by office use in parking requirement category B1 (Use Group 6); 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 office use in parking requirement category B1 (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; and

WHEREAS, the Board finds the commitment letter and affidavit credible and that the applicant has submitted sufficient evidence of good faith in maintaining the proposed office use at the site; and

WHEREAS, in response to community concerns and at the Board's instruction, the applicant increase the number of parking spaces proposed from 54 parking spaces to 64 parking spaces; and

WHEREAS, in response to community concerns, the Board also directed the applicant to provide a parking

demand study (the "Parking Study") to analyze whether the proposed parking reduction would have any adverse impact on the surrounding area; and

WHEREAS, the Parking Study includes a parking demand analysis as well as an off-site parking availability study, determining that the proposed uses will generate a peak hour demand of a maximum of 27 parking spaces on typical weekdays (from 9:00 a.m. to 11:00 a.m.), 50 parking spaces on Wednesday (from 10:00 a.m. to 11:00 a.m.) and 50 parking spaces on weekends (between 10:00 a.m. and 3:00 p.m.)—leaving a minimum of 37 unoccupied parking spaces on a typical weekday and a minimum of 14 unoccupied parking spaces on Wednesdays and weekends; and

WHEREAS, the applicant notes that the Parking Study identifies the parking demand for the proposed building by forecasting the parking demand for the employees of the traditional administrative office use and training facility separately; that, for the traditional administrative office use, a survey was completed to determine the mode choices of current employees; that, for the training facility, parking demand was forecasted based on surveys conducted at an existing training facility approximately ½ mile south of the subject site; and that, even though recent trends indicate a reduction in automotive use, the Parking Study conservatively assumes that all future employees are at work during a typical weekday and that all classes in the training facility are attended at maximum capacity; and

WHEREAS, the applicant notes that the Parking Study also analyzes a generic office use in order to confirm that peak parking demand would be lower under a generic office use than the proposed use; that, under a generic office scenario, parking accumulation would peak with approximately 40 occupied spaces on a typical weekday and 7 occupied spaces on a typical Saturday; and that the use of the proposed building represents the worst-case parking scenario; and

WHEREAS, additionally, although finding that the proposed building would not generate demand for on-street parking space, the Parking Study also surveys the surrounding area to assess on-street parking capacity in the event that the parking demand for the proposed building exceeds capacity; and

WHEREAS, the Parking Study indicates that, during weekday mornings, there are approximately 171 on-street parking spaces available; that, during weekday midday, there are approximately 247 on-street parking spaces available; and that, during Saturday mornings, there are approximately 410 on-street parking spaces available; and

WHEREAS, the applicant states that, in response to questions from the community, the Parking Study includes a second survey of the surrounding area to confirm on-street parking capacity, finding that, during weekday mornings, there are approximately 133 on-street parking spaces available; that, during weekday midday, there are approximately 215 parking spaces available; and that, during evening periods, there are approximately 141 on-street parking spaces available; and

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WHEREAS, the Parking Study concludes that, even during the peak parking demand and utilization periods, the 64 accessory off-street parking spaces proposed is sufficient to satisfy demand; 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 parking 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 parking regulations will not interfere with any pending public improvement project; 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. 18BSA080Q, received November 5, 2018; 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 July 31, 2018, the New York City Department of Environmental Protection (“DEP”) states that the proposed project would not result in any potential for significant air quality or noise impacts; and

WHEREAS, by correspondence dated February 20, 2018, the New York City Landmarks Preservation Commission represents that there are no architectural or archaeological resources of concern at the subject site and that the proposed project would not result in significant adverse impacts to historic or cultural resources; and

WHEREAS, by correspondence dated May 16, 2018, the New York City Department of City Planning’s Waterfront and Open Space Division represents that the proposed project will not substantially hinder the achievement of any Waterfront Revitalization Program (“WRP”) policy and that this action is consistent with WRP policies; and

WHEREAS, by correspondence dated June 18, 2018, DEP states that a Phase II Environmental Site Assessment is necessary to adequately identify and characterize the surface and subsurface soils of the property; and

WHEREAS, by correspondence dated October 17, 2018, the applicant requests that an (E) designation for hazardous materials be assigned for the subject site to allow for the Phase II work to be done after Board approval due to physical, financial, and scheduling reasons; and

WHEREAS, by correspondence dated November 2, 2018, DEP states that it has no objection to the (E)

designation for this project; and

WHEREAS, an (E) designation (E-512) has been placed on the site for hazardous materials, and an environmental review by the New York City Office of Environmental Remediation (“OER”) must be satisfied prior to the issuance of building permits to facilitate the construction of the proposed building; 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 finds that the evidence in the record supports the findings required to be made under ZR §§ 73-44 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion.

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 M1-3 zoning district, a reduction in the number of accessory off-street parking spaces required for office use in parking requirement category B1 (Use Group 6), contrary to ZR § 44-21; *on condition* that all work and site conditions shall conform to drawings filed with this application marked “Received November 5, 2018”-Thirteen (13) sheets; and *on further condition*:

THAT the certificate of occupancy issued for the building within which the office use in parking requirement category B1 (Use Group 6) is located shall state that no certificate shall thereafter 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;

THAT an (E) designation (No. E-512) has been placed on the subject site for hazardous materials;

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 8, 2022;

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.

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Adopted by the Board of Standards and Appeals, November 8, 2018.

2018-4-BZ

CEQR #18-BSA-083K

APPLICANT – Law Office of Lyra J. Altman, for Laura Betesh and Isaac A. Cabasso, owners.

SUBJECT – Application January 16, 2018 – Special Permit (§73-622) for the enlargement of an existing single-family home contrary ZR §23-142 (floor area, open space and lot coverage); ZR §23-48 (side yards) and ZR §23-47 (rear yard). R4 zoning district.

PREMISES AFFECTED – 2213 East 13th Street, Block 7374, Lot 79, 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 Sheta and Commissioner Scibetta.....5

Negative:0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated December 19, 2017, acting on Department of Buildings (“DOB”) Application No. 321636011 reads in pertinent part:

The proposed enlargement of the existing one family residence in an R4 zoning district:

1. Creates non-compliance with respect to floor area by exceeding the allowable floor area ratio and is contrary to Section 23-142 of the Zoning Resolution;
2. Creates non-compliance with respect to the lot coverage and is contrary to Section 23-142 of the Zoning Resolution;
3. Creates non-compliance with respect to the side yards by not meeting the maximum requirement of Section 23-48 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;
5. Creates non-compliance with respect to the open space by not meeting the minimum requirements of Section 23-142 of the Zoning Resolution; and

WHEREAS, this is an application under ZR § 73-622 to permit, in an R4 zoning district, the enlargement of a detached one-family dwelling that does not comply with the zoning requirements for floor area ratio (“FAR”), open space, lot coverage, side yards, and rear yards contrary to ZR §§ 23-142, 23-48, and 23-47; and

WHEREAS, a public hearing was held on this application on August 14, 2018, after due notice by publication in *The City Record*, with a continued hearing on

August 21, 2018, and November 8, 2018, and then to decision on that date; and

WHEREAS, Commissioner Ottley-Brown and Commissioner Scibetta 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 13th Street, between Avenue V and Gravesend Neck Road, in an R4 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 25 feet of frontage, 100 feet of depth, 2,500 square feet of lot area and is occupied by a detached one-story plus cellar one-family dwelling containing 1,085 square feet of floor area (0.43 FAR), 43 percent of lot coverage, 57 percent of open space, two (2) side yards with widths of 2’-11.25” and 3’-5.25”, and a rear yard with a depth of 34’-4”; and

WHEREAS, ZR § 73-622 provides that:

The Board of Standards and Appeals may permit an *enlargement* of an existing *single*1- 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

1 Words in *italics* are defined in Section 12-10 of the Zoning Resolution.

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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 this application located within an area in which the special permit is available; and

WHEREAS, the Board notes further that the subject application seeks to enlarge the detached one-family residence, as contemplated by ZR § 73-622; and

WHEREAS, the applicant proposes to enlarge the existing detached dwelling by horizontally extending the dwelling into the rear yard, constructing a front yard porch, and vertically enlarging the dwelling, resulting in a two-story plus attic and cellar dwelling with 3,106 square feet of floor area (1.24 FAR), 51 percent of lot coverage, 49 percent of open space, and a rear yard with a depth of 24'-11"; and

WHEREAS, the applicant proposes to maintain the two (2) existing side yards with depths of 2'-11.25" and 3'-5.25", and front yard of 6'-6"; and

WHEREAS, the proposed enlargement includes a vertical and horizontal extension of the two (2) existing non-complying side yards with widths of 2'-11.25" and 3'-5.25", and the applicant has submitted a 1929 Desk Atlas map of the immediate area, including the subject site, demonstrating that the subject site was developed with a semi-detached dwelling in approximately the same orientation as the site is occupied

today and, thus, the non-complying side yards predated the 1961 Zoning Resolution and are legal non-compliances; and

WHEREAS, at the subject site, a maximum of 0.75 FAR (1,875 square feet of floor area) or 0.9 FAR (2,250 square feet of floor area), including an increase in the permissible FAR by 20 percent if such increase in floor area is located directly under a sloping roof that rises at least three (3) and one half (1/2) inches in vertical distance for each foot of horizontal distance and the structural headroom of such floor area is between five (5) and eight (8) feet, a maximum of 45 percent lot coverage is permitted, and a minimum of 55 percent open space is required pursuant to ZR § 23-142, two (2) side yards, each with a minimum width of five (5) feet, are required pursuant to ZR § 23-48, and a minimum rear yard depth of 30 feet is required pursuant to ZR § 23-47; and

WHEREAS, the applicant provided an analysis of single- or two-family dwellings located within 400 feet of the subject premises within an R4 zoning district (the "Study Area") concluding that, of the 105 qualifying residences, 49 residences (47 percent) have an FAR greater than 0.75, and 37 residences (35 percent) have FARs ranging from 0.90 to 1.75; and

WHEREAS, with regards to lot coverage and open space, the applicant demonstrated that 60 residences (57 percent) within the Study Area have a lot coverage greater than 45 percent, ranging from 46 percent to 66 percent, and open space of less than 55 percent, ranging from 54 percent to 34 percent; and

WHEREAS, with regards to the proposed rear yard, the applicant provided an analysis of the rear yard conditions on the subject block demonstrating that, of the 43 other lots on the subject block occupied by single- or two-family dwellings, 12 lots (28 percent) have rear yards with a depth of less than 30 feet, with rear yards ranging in depth from 21 feet to 29 feet; and

WHEREAS, the applicant also submitted a photographic streetscape demonstrating that the proposed building will fit in with the built conditions of the surrounding area; and

WHEREAS, based upon its review of the record and inspections of the subject site and surrounding neighborhood, the Board finds that the proposed building as enlarged will not alter the essential character of the neighborhood or district in which the subject building is located, 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 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 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. 18-BSA-083K, dated January 18, 2018; and

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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 R4 zoning district, the enlargement of a detached one-family dwelling that does not comply with the zoning requirements floor area ratio, open space, lot coverage, side yards, and rear yards contrary to ZR §§ 23-142, 23-48, and 23-47; on condition that all work shall substantially conform to drawings as they apply to the objection above-noted, filed with this application and marked “October 18, 2018”—Nineteen(19) sheets; and on further condition:

THAT the following shall be the bulk parameters of the building: a maximum floor area ratio of 1.24 (3,106 square feet of floor area), a minimum of 49 percent open space, a maximum of 51 percent lot coverage, side yards with minimum widths of 2'-11.25" and 3'-5.25", and a rear yard with a minimum depth of 24'-11", as illustrated on BSA-approved plans;

THAT the removal of exterior walls and/or joists in excess of those indicated on the BSA-approved plans is prohibited and shall void the special permit;

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

THAT a certificate of occupancy indicating this approval and calendar number (“BSA Cal. No. 2018-4-BZ”) shall be obtained within four (4) years, by November 8, 2022;

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 8, 2018.

2018-29-BZ

CEQR #18-BSA-103K

APPLICANT – Law Office of Lyra J. Altman, for Brenda Zanziper and Yerachmiel Zanziper, owners.

SUBJECT – Application February 27, 2018 – Special Permit (§73-621) to permit the enlargement of an existing single-family home contrary to ZR §23-142 (floor area ratio, lot coverage and open space). R3-2 zoning district.

PREMISES AFFECTED – 1637 Madison Place, Block 7702, Lot 28, 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, Commissioner Sheta and Commissioner Scibetta.....5

Negative:0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated February 9, 2018, acting on Alteration Application No. 321191090, reads in pertinent part:

1. Proposed plans are contrary to ZR 23-142 in that the proposed Floor Area Ratio (FAR) exceeds the permitted .50 and BSA special permit is required.
2. Proposed plans are contrary to ZR 23-142 in that the proposed Lot Coverage is greater than the maximum permitted 35% and BSA special permit is required.
3. Proposed plans are contrary to ZR 23-142 in that the proposed Open space is less than the required minimum permitted 65% and BSA special permit is required; and

WHEREAS, this is an application under ZR §§ 73-621 and 73-03 to permit, in an R3-2 zoning district, the enlargement of an existing single-family residence that does not comply with zoning regulations for floor area, lot coverage and open space, contrary to ZR § 23-142; and

WHEREAS, a public hearing was held on this application on August 14, 2018, after due notice by publication in *The City Record*, with continued hearings on November 8, 2018, and then to decision on the same date; and

WHEREAS, Commissioner Ottley-Brown and Commissioner Scibetta 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 west side of Madison Place, between Avenue P and Quentin Road, in an R3-2 zoning district, in Brooklyn; and

WHEREAS, the subject site has approximately 31 feet of frontage along Madison Place, 100 feet of depth, 3,100 square feet of lot area and is occupied by an existing single-family residence; and

WHEREAS, ZR § 73-621 provides that:

For a complying or *non-complying building* existing on December 15, 1961, or in R2X, R3, R4 or R5 Districts on June 30, 1989, and containing *residential uses*, the Board of Standards and Appeals may permit an *enlargement*, a change of *use* or (in the case of a *mixed building*) an *extension*, provided that such *enlargement*, change of *use* or *extension* shall not create any new *non-compliance* or increase the amount or degree of any existing *non-compliance* except as provided in this Section.

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In the districts and for the *buildings* for which an *open space ratio* is required, the *open space ratio* permitted under this Section shall not be less than 90 percent of the *open space ratio* required under the applicable *bulk* regulations set forth in Article II or III of this Resolution. In the districts and for the *buildings* to which a maximum *lot coverage* applies, the maximum *lot coverage* permitted under this Section shall not exceed 110 percent of the maximum *lot coverage* permitted under the applicable *bulk* regulations set forth in Article II or III of this Resolution. In all districts, the *floor area ratio* permitted under this Section shall not exceed the *floor area ratio* permitted under such regulations by more than 10 percent. In R2X, R3 or R4 Districts, the additional *floor area* permitted pursuant to this Section may be computed using a base *floor area ratio* including the *floor area* permitted under a sloping roof with a structural headroom between five and eight feet when such space is provided in the *building*.

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 that existed on June 30, 1989, as contemplated in ZR § 73-621; and

WHEREAS, in response to questions from the Board at hearing about the retention of existing building material, the applicant revised the drawings to reflect that adequate amounts of exterior walls will be retained at the exterior of the subject building and that adequate amounts of floor joists will be retained; and

WHEREAS, the applicant proposes to enlarge the existing residence from 1,432 square feet of floor area (0.46 FAR) to 2,045 square feet of floor area (0.66 FAR), increase lot coverage from 26 percent to 37 percent and decrease open space from 74 percent to 63 percent; and

WHEREAS, the applicant states that, under ZR § 23-142, at the subject site, floor area may not exceed 1,860 square feet (0.60 FAR), including the floor area permitted under a sloping roof, lot coverage may not exceed 35 percent and open space must be at least 65 percent; and

WHEREAS, the applicant represents that the proposed building as enlarged is consistent with the built character of the neighborhood; and

WHEREAS, based upon its review of the record and inspections of the subject site and surrounding neighborhood, 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 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. 18BSA103K, dated February 28, 2018; and

WHEREAS, the Board finds 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.

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 §§ 73-621 and 73-03 to *permit*, in an R3-2 zoning district, the enlargement of an existing single-family residence that does not comply with zoning regulations for floor area, lot coverage and open space, contrary to ZR § 23-142; *on condition* that all work and site conditions shall conform to drawings filed with this application marked "Received October 18, 2018"-Fifteen (15) sheets; and *on further condition:*

THAT the bulk parameters of the building shall be as follows: floor area shall be limited to 2,045 square feet (0.66 FAR), lot coverage shall not exceed 37 percent and open space shall be at least 63 percent, as illustrated on the Board-approved drawings;

THAT the maximum allowable floor area granted by the Board shall not exceed the floor area ratio permitted as of right, including the floor area permitted under a sloping roof, by more than 10 percent;

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 8, 2022;

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 8, 2018.

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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 3rd and 4th 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 February 5, 2019, at 10 A.M., for continued hearing.

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 February 5, 2019, at 10 A.M., for continued hearing.

2017-217-BZ

APPLICANT – Akerman, LLP, for Hylan Properties, LLC, owner.

SUBJECT – Application June 20, 2017 – 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).

PREMISES AFFECTED – 4855 Hylan Boulevard, Block 6401, Lot(s) 1, 3, 5 & 6, Borough of Staten Island.

COMMUNITY BOARD #3 SI

ACTION OF THE BOARD – Laid over to February 5, 2019, at 10 A.M., for continued hearing.

2017-291-BZ

APPLICANT – Law Office of Jay Goldstein for Yosef Rabinowitz, owner.

SUBJECT – Application November 2, 2017 – 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.

PREMISES AFFECTED – 1367 East 26th Street, Block 7662, Lot 17, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Laid over to February 12, 2019, at 10 A.M., for continued hearing.

2017-292-BZ

APPLICANT – Law Office of Jay Goldstein, for Baruch Wieder, owner.

SUBJECT – Application November 2, 2017 – 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.

PREMISES AFFECTED – 1363 East 26th Street, Block 7662, Lot 19, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Laid over to February 12, 2019, at 10 A.M., for continued hearing.

2017-298-BZ

APPLICANT – Jay A Segal, Greenberg Traurig LLP, for 14 White Street Owner LLC, owner.

SUBJECT – Application November 9, 2017 – 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.

PREMISES AFFECTED – 14 White Street, Block 191, Lot 8, Borough of Manhattan.

COMMUNITY BOARD #1M

ACTION OF THE BOARD – Laid over to February 12, 2019, at 10 A.M., for continued hearing.

2018-7-BZ

APPLICANT – Law Office of Lyra J. Altman, for Eli Halabi, owner.

SUBJECT – Application January 18, 2018 – Special Permit (§73-622) for the enlargement of an existing single-family home contrary ZR §23-142 (floor area, open space and lot coverage); ZR §23-461 (side yards) and ZR §23-47 (rear yard). R4 zoning district.

PREMISES AFFECTED – 291 Avenue W, Block 7151, Lot 30, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to January 15, 2019, at 10 A.M. for continued hearing.

MINUTES

**REGULAR MEETING
THURSDAY AFTERNOON, NOVEMBER 8, 2018
1:00 P.M.**

Present: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.

ZONING CALENDAR

2018-101-BZ

CEQR #18-BSA-145M

APPLICANT – Kenneth K. Lowenstein, for Riverside Center Parcel 2 BIT Associates, LLC., owner; Central Rock Gym, lessee.

SUBJECT – Application June 27, 2018 – Special Permit (§73-36) to permit the operation of a Physical Culture Establishment (Central Rock Gym) to occupy portions of the cellar and ground floor of an existing 45-story condominium building contrary to ZR §32-10. C4-7 zoning district.

PREMISES AFFECTED – 21 West End Avenue, Block 1171, Lot 164, 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, Commissioner Sheta and Commissioner Scibetta.....5

Negative:0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated June 7, 2017, acting on DOB Application No. 121324717, reads in pertinent part:

Proposed physical culture or health establishment in zoning district C4-7 is not permitted as of right. A special permit is required from the Board of Standards and Appeals as per ZR 32-10, ZR 73-36; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to legalize, on a site located within a C4-7 zoning district, a physical culture establishment (“PCE”) on portions of the cellar level and first floor of an existing 45-story plus cellar and mezzanine mixed-use residential and commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on November 8, 2018, after due notice by publication in *The City Record*, and then to decision on that same date; and

WHEREAS, the Board was in receipt of one letter in support of this application; and

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

WHEREAS, Commissioner Ottley-Brown performed an inspection of the subject site and surrounding neighborhood; and

WHEREAS, the subject site is located on the southwest corner of West End Avenue and West 61st Street, within a C4-7 zoning district, in Manhattan; and

WHEREAS, the site has approximately 260 feet of frontage along West End Avenue, 308 feet of frontage along West 61st Street, and is occupied by a 45-story plus cellar and mezzanine mixed-use residential and commercial building, in which the subject PCE is located; 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 I* 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, the applicant represents that, 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

1 Words in *italics* are defined in Section 12-10 of the Zoning Resolution.

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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 applicant submitted evidence that the subject PCE occupies 1,157 square feet of floor area on the first floor with a reception area, and 9,243 square feet of floor space on the cellar level with a climbing gymnasium area, fitness area, restrooms, changing area, and mechanical areas; and

WHEREAS, the applicant represents that the PCE has been in operation since August 18, 2018, as “Central Rock Gym” with the following hours of operation: Monday through Friday, 6:00 a.m. to 11:00 p.m.; and, Saturday and Sunday, 8:00 a.m. to 9:00 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 the PCE has a minimal presence on the ground floor of the subject building, with a majority of its operations occurring in the cellar, many tenants in the building are members of the PCE, and the PCE expects to draw its patrons from the subject building and surrounding area; and

WHEREAS, the applicant represents that the PCE is located five (5) floors below the closest residential unit, does not utilize weights or exercise equipment, plays music at ambient noise levels, and provides 16-inch-thick “crash” mats in areas where climbers are not rope-assisted; 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 represents that the PCE contains facilities for the provision of physical improvement through rope-assisted climbing, bouldering, and workouts utilizing pull-up bars and hangboards; and

WHEREAS, accordingly, 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 demonstrated that wet sprinkler system and a fire alarm system—including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms and a connection of the building’s interior fire alarm to an FDNY-approved central station—are installed throughout the PCE space; and

WHEREAS, by letter dated November 7, 2018, the Fire Department stated no objection to the application and confirmed that an application for a place of assembly permit has been filed and approved, but no operating permit issued; the fire alarm application is currently disapproved, pending a decision from the Board to permit the PCE; the building fire suppression system for the residential building has been inspected and was found to be satisfactory; there is currently one (1) fire alarm system for the residential building that has been inspected by the Department and a sign-off is pending; the PCE space will be required to have a fire alarm system for their space, which has to be tied back into the residential building fire alarm system; the Bureau of Fire Prevention recommends that the Board, in granting a special permit, add as a condition that the applicant obtains an operating permit for the PA space, as well as an approval and sign-off for the fire alarm system; and that an inspector from the Licensed Public Place of Assembly unit will be visiting the space and will issue violation orders accordingly;

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 impact the privacy, quiet, light and air of the neighborhood on account of its location in the cellar level of the building and because it is operated to minimize any potential noise impacts; 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. 18-BSA-145M, dated August 2, 2018; and

WHEREAS, based upon its review of the record, the Board finds that the requested special permit, legalizing the PCE on the cellar level and first floor, is appropriate, 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

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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 C4-7 zoning district, the operation of a physical culture establishment in portions of the cellar level and first floor of an existing 45-story plus cellar and mezzanine mixed-use residential and commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received August 2, 2018”—Four (4) sheets; and *on further condition*:

THAT the term of the PCE grant shall expire on August 18, 2028;

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

THAT accessibility compliance under Local Law 58/87 shall 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 PCE’s fire alarm system shall be approved and signed-off prior to the issuance of the certificate of occupancy;

THAT a public assembly permit shall be obtained prior to the issuance of the certificate of occupancy;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy shall be obtained within one (1) year, by November 8, 2019;

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

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

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

Adopted by the Board of Standards and Appeals, November 8, 2018.

MINUTES

2018-128-BZ

CEQR #19-BSA-019K

APPLICANT – Rothkrug Rothkrug & Spector LLP, for North 10th Lofts LLC, owner; Unknown Baths LLC, lessee. SUBJECT – Application August 2, 2018 – Special Permit (§73-36) to permit the operation of a physical culture establishment (*The Bathhouse Spa*) on a portion of the cellar and first floor of an existing mixed use commercial and residential building contrary to ZR §42-10. M1-2/R6A (MX-8) zoning district.

PREMISES AFFECTED – 103 North 10th Street, Block 2296, Lot 7501, 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 Sheta and Commissioner Scibetta.....5

Negative:0

THE RESOLUTION –

WHEREAS, the decision on behalf of the Department of Buildings (“DOB”), dated July 3, 2018, acting on DOB Application No. 321383089, reads in pertinent part:

Proposed physical cultural establishment in an M1-6/R6A zoning district (MX-8 Special District) is contrary to ZR § 42-10 and ZR § 123-20, and must be referred to the BSA; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to permit, on a site located partially in an M1-2 zoning district and partially in an M1-6/R6A zoning district and Special Mixed Use District (MX-8), a physical culture establishment (“PCE”) on portions of the cellar level and first floor of an existing five- (5) story plus cellar mixed-use residential and commercial building, contrary to ZR §§ 42-10 and 123-20; and

WHEREAS, a public hearing was held on this application on November 8, 2018, after due notice by publication in *The City Record*, and then to decision on that same date; and

WHEREAS, the Board was in receipt of one (1) form letter in support of this application; and

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

WHEREAS, the subject site is located on the northern corner of North 10th Street and Berry Street, partially in an M1-2 zoning district and partially in an M1-2/R6A zoning district and Special Mixed Use District (MX-8), in Brooklyn;

WHEREAS, the site has approximately 225 feet of frontage, 225 feet of depth, 45,000 square feet of lot area, and is occupied by several buildings;

WHEREAS, the is PCE to be located in a five- (5) story plus cellar mixed-use building located on the southernmost portion of the lot wholly located within an M2-6/R6A zoning district and Special Mixed Use District (MX-8); 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 1* 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, the Board notes that, because no portion of the subject PCE is represented as being 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

1 Words in *italics* are defined in Section 12-10 of the Zoning Resolution.

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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 applicant submitted evidence that the subject PCE will occupy 3,360 square feet of floor area on the first floor with a reception area, dining and lounge area and lockers, and occupy 5,470 square feet of floor space on the cellar level with pools, treatment rooms, laundry, office space, and mechanical and utility rooms; and

WHEREAS, the applicant represents that the proposed PCE will operate as “The Bathhouse,” with the following hours of operation: Sunday through Thursday, 9:00 a.m. to 11:00 p.m.; and, Friday and Saturday, 9:00 a.m. to 2:00 p.m.; and

WHEREAS, the applicant states that, while it is not anticipated that the PCE will produce loud noise levels, sound abatement measures will be provided in the PCE space to ensure that the noise levels in other portions of the building do not exceed 45 dBA, including sound emanating from any sound system, if so installed, in the PCE space; 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 the applicant anticipates the PCE will be an asset to the local community and will be located in an area characterized by similar mixed-use buildings with commercial establishments on the ground level; 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 represents that the PCE will contain facilities for the provision physical improvement utilizing spa services including massage and bathing pools of various temperatures; and

WHEREAS, accordingly, 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 submits that an approved wet sprinkler system and fire alarm system—including area

smoke detectors, manual pull stations at each required exit, local audible and visual alarms, and a connection of the interior fire alarm system to an FDNY-approved central station—will be installed within the PCE space; and

WHEREAS, by letter dated November 7, 2018, the Fire Department confirms that an application for a Place of Assembly permit and fire alarm system needs to be filed with the DOB prior to occupancy of the space; the current fire alarm system at the premises is for a residential and retail space and is not adequate for a PCE; a review of Fire Department records indicates that the premises has a standpipe and sprinkler system that was signed-off by the DOB in 2016, therefore the permits for the systems expires in June 2021; and, the Bureau of Fire Prevention recommends that the Board, in granting a special permit, add as a condition that the applicant files permits for a Place of Assembly and fire alarm system; and

WHEREAS, the applicant represents that the PCE will not impact the privacy, quiet, light and air of the neighborhood on account of its location in the cellar level and ground floor of the premises and the applicant does not anticipate the PCE will generate any noise issues from its spa services; 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, 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, at the hearing, the Board expressed concern regarding whether the subject site was located within a flood plain; and

WHEREAS, in response, the applicant demonstrated, with a Federal Emergency Management Agency Flood Insurance Rate Map, that the existing building is not located within a flood plain; 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. 19-BSA-019K, dated August 7, 2018; and

WHEREAS, based upon its review of the record, the Board finds that the requested special permit, permitting the proposed PCE space on the cellar level and first floor, is appropriate, 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, §§ 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 partially in an M1-2 zoning district and partially in an M1-6/R6A zoning district and Special Mixed Use District (MX-8), a physical culture establishment on a portion of the cellar level and first floor of an existing five- (5) story plus cellar mixed-use commercial and residential building, contrary to

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ZR §§ 42-10 and 123-20; *on condition* that all work shall substantially conform to drawings filed with this application marked “August 7, 2018”– Four (4) sheets; and *on further condition*:

THAT the term of the PCE grant shall expire on November 8, 2028;

THAT a Place of Assembly permit shall be obtained;

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

THAT all massages shall be provided by New York State-licensed massage therapists;

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

THAT the sprinkler system shall be installed and maintained as indicated on the Board-approved plans;

THAT an approved fire alarm system—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—shall be installed and maintained within the PCE space;

THAT the sprinkler and fire alarm systems shall be signed off;

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 certificate of occupancy indicating this approval and calendar number (“BSA Cal. No. 2018-128-BZ”) shall be obtained within four (4) years, by November 8, 2022;

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 8, 2018.

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2018-169-BZ

CEQR #19-BSA-052Q

APPLICANT – NYC Mayor’s Office of Housing Recovery Operation.

SUBJECT – Application October 30, 2018 – Special Permit (§64-92) to waive bulk requirements for the reconstruction of homes damaged/destroyed by Hurricane Sandy for a property registered in the NYC Build it Back Program. Waiver of minimum required side yard (ZR 23-461), waterfront yard (62-332), planting requirement (23-451), visual mitigation (64-61). R3A Special Coastal Risk zoning district.

PREMISES AFFECTED – 43 West 12th Road, Block 15316, Lot 66, Borough of Queens.

COMMUNITY BOARD #

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....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 R3A zoning district and the Special Coastal Risk District, the reconstruction of a single-family detached dwelling in compliance with flood-resistant construction standards that does not comply with the zoning requirements for front yard planting, total side yards, waterfront yard, and visual mitigation, contrary to ZR §§ 23-451, 23-461(a), 62-332, and 64-61; and

WHEREAS, a public hearing was held on this application on November 8, 2018, 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 north side of West 12th Road, west of Cross Bay Boulevard, in an R3A zoning district and the Special Coastal Risk District, in Queens; and

WHEREAS, the site has approximately 25 feet of frontage along West 12th Road, 100 feet of depth and 2,500 square feet of lot area; and

WHEREAS, the Board has exercised jurisdiction over the subject site since March 8, 2018, when, under BSA Cal. No. 2016-3534-A, the Board waived its Rules of Practice and Procedure to grant a waiver of General City Law § 35 and bulk regulations associated with the presence of the mapped but unbuilt street pursuant to ZR § 72-01(g) on condition that the proposed elevation or reconstruction comply with all applicable zoning district requirements; no building or other structure be constructed over an existing Department of Environmental Protection- (“DEP”) managed water or sewer main, as confirmed by a survey prepared by a New York State licensed land surveyor; if a proposed building or other structure be not within the exact footprint of the pre-Hurricane Sandy building or other structure being replaced or repaired, the proposed building or other structure 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 the Department of Buildings (“DOB”) that such limitation does not apply; if a proposed building or other structure be 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; if a proposed building or other structure be 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 be 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 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; all buildings or other structures, including exterior stairs, not be constructed within a planned DEP Capital Project as indicated on the Department of Design and Construction’s (“DDC”) Damages Map and/or Acquisitions plan as of September 15, 2015; all buildings or other structures, including exterior stairs, not be constructed within a planned DOT Capital Project as indicated on the DDC’s Damages Map and/or Acquisitions plan as of September 15, 2015, or as indicated in writing by the DDC; if the curb-to-curb width of the street be less than 34 feet or the building be setback more than 40 feet from the curb line: (1) the building 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 be provided with interconnected smoke and carbon

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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 be not completely closed, 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"; the approval be limited to the Build it Back program; the approval be 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, the waiver be void as unnecessary; 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; DOB 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, DOB 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; and

WHEREAS, ZR § 64-92 provides:

In order to allow for the alteration of existing *buildings*¹ 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, the applicant now seeks a special permit, pursuant to ZR § 64-92 to permit the reconstruction of a single-family residence above the design flood elevation that creates non-compliances with regards to front yard planting, waterfront yard, and visual mitigation, and increases the degree to which the pre-existing total side yards at the subject site do not comply with underlying bulk regulations; and

WHEREAS, specifically, the subject reconstruction has a front yard depth of ten (10) feet, 50 percent of which is utilized by the sidewalk and 40 percent will be utilized by the entryway stairs, leaving ten (10) percent of the front yard available for planting; but, at the subject site, a front yard with 25 percent in-ground planting is required pursuant to ZR § 23-451; and

WHEREAS, the subject reconstruction will maintain pre-existing side yards with widths of 1.9 feet and 4.1 feet but, at the subject site, a total side yard width of eight (8) feet is required pursuant to ZR § 23-461(a); and

WHEREAS, the subject reconstruction has a waterfront rear yard depth of 27 feet but, at the subject site, a waterfront yard depth of 30 feet is required pursuant to ZR § 62-332; and

WHEREAS, additionally, the subject reconstruction will have no visual mitigation elements but, at the subject site, at least two (2) visual mitigation elements (a porch, stair direction change, raised front yard, or trees or shrubs at least three (3) feet high) are required pursuant to ZR § 64-61; and

WHEREAS, in accordance with ZR § 64-92(a), the applicant submits that the composition of the existing placement on the lot creates practical difficulties in complying with flood-resistant construction standards without the modification of requirements for planting, total side yards, waterfront yards, and visual mitigation, and that waivers of the same are the minimum necessary to allow for a building compliant with flood-resistant construction standards; and

WHEREAS, 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 residences, most of which are detached homes, and that the subject reconstruction will help facilitate and guide future

¹ Words in *italics* are defined by ZR §§ 12-10 and 64-11.

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development in the area; and

WHEREAS, accordingly, the Board has reviewed the proposal and determined that the subject application 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. 19BSA052Q, dated October 30, 2018; and

WHEREAS, based upon its review of the record, the Board finds that the requested special permit, permitting the reconstruction of the single-family dwelling, 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 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 R3A zoning district and the Special Coastal Risk District, the reconstruction of a single-family detached dwelling in compliance with flood-resistant construction standards that does not comply with the zoning requirements for front yard planting, total side yards, waterfront yard, and visual mitigation, contrary to ZR §§ 23-451, 23-461(a), 62-332, and 64-61; *on condition* that all work shall substantially conform to the drawings filed with this application and marked "Received October 30, 2018"- Eight(8) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: a minimum of ten (10) percent of front yard planting, side yards with minimum widths of 1.9 feet and 4.1 feet, a minimum waterfront rear yard depth of 27 feet, and a minimum of zero (0) visual mitigation elements, 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 the building is exempt from such requirement;

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 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 authorized use and/or bulk shall be signed off by DOB and all other relevant agencies within four (4) years;

THAT the approved plans shall be considered

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

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

Adopted by the Board of Standards and Appeals, November 8, 2018.

2017-313-BZ

APPLICANT – Moshe M. Friedman, P.E., for 853 Kent Avenue LLC, owner.

SUBJECT – Application December 11, 2017 – Variance (§72-21) to permit the development of a 2-family dwelling contrary to ZR §42-10. M1-1 zoning district.

PREMISES AFFECTED – 853 Kent Avenue, Block 1898, Lot 7, Borough of Brooklyn.

COMMUNITY BOARD #3BK

ACTION OF THE BOARD – Laid over to February 12, 2019, at 10 A.M., for continued hearing.

2018-33-BZ

APPLICANT – Arthur Yellin, for Luisa E. McLennan Benedy, owner.

SUBJECT – Application March 5, 2018 – Variance (§72-21) to permit the construction of a two-family home contrary to ZR §22-00 (building with no side yards); ZR §23-32 (required minimum lot area or width for residences); ZR §23-461(a) (side yards); ZR §23-142 (open space and FAR) and ZR §25-22(a) (parking). R4-1 zoning district.

PREMISES AFFECTED – 31-41 97th Street, Block 1409, Lot 48, Borough of Queens.

COMMUNITY BOARD #3Q

ACTION OF THE BOARD – Laid over to January 15, 2019, at 10 A.M., for postponed hearing.

2018-51-BZ

APPLICANT – Eric Palatnik, P.C., for Abraham Tannenbaum, owner.

SUBJECT – Application April 11, 2018 – Variance (§72-21) to permit the construction of a two-story single-family home with an attic that does not provide the required lot area and lot width, front yard, side yard, setback distance and sky exposure plane, contrary to ZR §§ 23-32, 23-45, 23-461(a) and 23-631(d). R5 zoning district.

PREMISES AFFECTED – 11-01 Plainview Avenue, Block 15618, Lot 8, Borough of Queens.

COMMUNITY BOARD #14Q

ACTION OF THE BOARD – Laid over to January 8, 2019, at 10 A.M., for postponed hearing.

Carlo Costanza, Executive Director

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November 30, 2018

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Tuesday, November 20, 2018**

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2018-95-BZ	120 Avenue M, Brooklyn

DOCKETS

New Case Filed Up to November 20, 2018

2018-175-BZ

2 Bay 25th Street, Located on the corner of 86th Street and Bay 25th Street, Block 6375, Lot(s) 0038, Borough of **Brooklyn, Community Board: 11**. Special Permit (§73-36) to permit the legalization of a Physical Culture Establishment (Sakura Spa) which occupies the second floor of an existing two-story building contrary to ZR §32-10. C4-2 zoning district. C4-2 district.

2018-174-BZ

1440 3rd Avenue, Located on the west side of 3rd Avenue between East 82nd and East 81st Streets, Block 01510, Lot(s) 38, Borough of **Manhattan, Community Board: .** Special Permit (§73-36) to permit the operation of a Physical Culture Establishment (305 Fitness) to occupy the cellar, first and second floors of an existing two-story building contrary to ZR §32-10. C1-9R8B zoning district. district.

2018-176-BZ

116 Dare Court, Located between Bartlett Place and Cyrus Avenue, Block 8914, Lot(s) 0414, 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.

2018-177-BZ

2061 Ocean Parkway, Located on the east side of Ocean Parkway between Avenue T and Avenue U, Block 7109, Lot(s) 0064, Borough of **Brooklyn, Community Board: 15**. Special Permit (§73-622) to permit the enlargement of an existing two-family to be converted to a single-family home, contrary to floor area (§23-142); side yard requirements (§§23-461 & 23-48) and less than the required rear yard (§23-47). R5 (Special Ocean Parkway) zoning district. R5 district.

2018-178-A

2 Oaktree Way, Located on S/S Ocean Terrace distance 587.23" to Elmhurst Avenue, Block 864, Lot(s) 0001, Borough of **Staten Island, Community Board: 2**. Proposed construction of a new two-story detached home not fronting on a mapped street contrary to General City Law §36. R1-1, NA-1 zoning district. R1-1, NA-1 district.

2018-179-BZ

250-10 Grand Central Parkway, The Premises is bound by the Grand Central Parkway Service Road at Exit 24 and Little Neck Road, Block 8401, Lot(s) 7501, Borough of **Queens, Community Board: 2**. Variance (§72-21) to permit the enlargement of a non-profit (UG 3) school (Yeshiva Har Torah) contrary to rear yard (ZR § 24-36), setbacks (ZR § 24-551) and sky exposure plane (ZR § 24-521) regulations. R3-2 zoning district. R3-2 district.

2018-180-BZ

1441G South Avenue, Located at the southeast corner of intersection of South Avenue and Teleport Drive, Block 2165, Lot(s) 120, Borough of **Staten Island, Community Board: 2**. Special Permit (§73-49) to permit roof parking on a public parking garage contrary to ZR §44-11. M1-1 zoning district. M1-1 district.

2018-181-BZ

150 East 55th Street, Located mid block between Lexington Avenue and 3rd Avenue, Block 1309, Lot(s) 7501, Borough of **Manhattan, Community Board: 6**. Special Permit (§73-36) to permit the operation of a Physical Culture Establishment (China Liangtse Wellness Spa) on the first floor of a seven-story commercial building contrary to ZR §32-10. C5-2 Special Midtown District. C5-2 district.

2018-182-BZ

220-05 Hillside Avenue, Located north of intersection of Hillside Avenue and Braddock Avenue, Block 7914, Lot(s) 0055, Borough of **Queens, Community Board: 13**. Special Permit (§73-36) to permit the operation of a Physical Culture Establishment (Blink) in an existing building contrary to ZR §32-10. C4-1 zoning district. C4-1 district.

2018-183-A

7112 Main Street, Located on the westerly side of Main Street, distance 90' feet southerly from the corner formed by the intersection of westerly side of Main Street with the southerly side of 71st Avenue., Block 6619, Lot(s) 0132, Borough of **Queens, Community Board: 8**. Appeal of a New York City Department of Buildings determination. C1-2 in R4 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.

CALENDAR

**REGULAR MEETING
JANUARY 8, 2019, 10:00 A.M.**

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, January 8, 2019, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

SPECIAL ORDER CALENDAR

867-55-BZ

APPLICANT – Nasir J. Khanzada, for Manny Kumar, owner; Channi Singh, lessee.
SUBJECT – Application February 1, 2018 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of an Automotive Service Station (UG 16B) which expired on June 19, 2011: Amendment (§11-411) to permit the conversion of service bays to an accessory convenience store and the enlargement of the building; Extension of Time to Obtain a Certificate of Occupancy which expired on February 10, 2005: Waiver of the Board's Rules. R4-1 zoning district.
PREMISES AFFECTED – 66-15 Borden Avenue, Block 2394, Lot 8, Borough of Queens.
COMMUNITY BOARD #4Q

771-76-BZ

APPLICANT – Stroock & Stroock & Lavan LLP, for Intergate Manhattan LLC, owner.
SUBJECT – Application September 10, 2018 – Amendment of a previously approved Variance (§72-21) that permitted the installation of an illuminated sign that exceeded the surface area along a district boundary and the height above curb level. The Amendment seeks to modify the previously approved sign to permit a digital sign and the new sign will be able to display messages for any principal use on the zoning lot, as opposed to a single principal use on the zoning lot. C6-4 zoning district.
PREMISES AFFECTED – 375 Pearl Street, Block 114 Lot(s) 1001-1005, Borough of Manhattan.
COMMUNITY BOARD #1M

212-97-BZ

APPLICANT – Snyder & Snyder LLP, for Gunther Development Corp., owner; Pinnacle Towers, LLC, lessee.
SUBJECT – Application August 22, 2018 – Amendment of a previously approved Special Permit (§73-30) permitting the operation of a non-accessory radio tower which will expire on September 15, 2018. The amendment seeks to remove the discretionary condition of term and remove a term for the subject use. R1-1 zoning district.
PREMISES AFFECTED – 10 Highpoint Drive aka 140 Merrick Avenue, Block 878, Lot 380, Borough of Staten

Island.
COMMUNITY BOARD #1SI

APPEALS CALENDAR

2018-23-A & 2018-24-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for The Masucci Real Estate Trust, owner.
SUBJECT – February 16, 2018 – Proposed development of a three-story mix-use building not fronting on a mapped street contrary to General City Law 36. C1-1/R3X (SRD) zoning district.
PREMISES AFFECTED – 29 and 31 Herbert Street, Block 6681, Lot (s) 105 & 104, Borough of Staten Island.
COMMUNITY BOARD #3SI

**REGULAR MEETING
JANUARY 8, 2019, 1:00 P.M.**

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, January 8, 2019, 1:00 P.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

ZONING CALENDAR

2016-4469-BZ

APPLICANT – Davidoff Hutcher & Citron, LLP, for Winston Network, Inc., owner.
SUBJECT – Application December 20, 2016 – Variance (§72-21) to permit the legalization of an indirectly illuminated advertising sign contrary to ZR §22-30 (advertising signs not permitted in residential districts) and ZR §52-731 (non conforming advertising signs in residential districts shall be terminated after 10 years from December 15, 1961). R4 zoning district.
PREMISES AFFECTED – 49-23 Astoria Boulevard, Block 1000, Lot 19, Borough of Queens.
COMMUNITY BOARD #1Q

2017-257-BZ

APPLICANT – Law Offices of Marvin B. Mitzner, LLC, for GMI Realty, owner; CorePower Yoga LLC, lessee.
SUBJECT – Application October 23, 2018 – 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.
PREMISES AFFECTED – 159 North 4th Street, Block 2344, Lot 7503, Borough of Brooklyn.

CALENDAR

COMMUNITY BOARD #1BK

2017-272-BZ

APPLICANT – Kalyan Law Firm, for The Drakatos Family LLC, owner; Gantry, LLC, lessee.

SUBJECT – Application September 25, 2017 – Special Permit (§73-36) to permit the operation of physical cultural establishment (*CrossFit*) within an existing one store commercial building contrary to ZR §42-10 located in M1-4 zoning district.

PREMISES AFFECTED – 10-19 46th Road, Block 48, Lot 8, Borough of Queens.

COMMUNITY BOARD #2Q

2018-51-BZ

APPLICANT – Eric Palatnik, P.C., for Abraham Tannenbaum, owner.

SUBJECT – Application April 11, 2018 – Variance (§72-21) to permit the construction of a two-story single-family home with an attic that does not provide the required lot area and lot width, front yard, side yard, setback distance and sky exposure plane, contrary to ZR §§ 23-32, 23-45, 23-461(a) and 23-631(d). R5 zoning district.

PREMISES AFFECTED – 11-01 Plainview Avenue, Block 15618, Lot 8, Borough of Queens.

COMMUNITY BOARD #14Q

2018-53-BZ

APPLICANT – Slater & Beckerman, P.C., for BKLYN11201 LLC, owner.

SUBJECT – Application April 13, 2018 – Variance (§72-21) to permit residential use within a new four-story mixed-use building contrary to ZR §42-10. M1-1 zoning district.

PREMISES AFFECTED – 104 DeGraw Street, Block 329, Lot 26, Borough of Brooklyn.

COMMUNITY BOARD #6BK

2018-119-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 8701 4th Avenue LLC, owner.

SUBJECT – Application July 17, 2018 – Special Permit (§73-36) to permit the operation of a physical cultural establishment (Dolphin Fitness) to be located on a portion of the first floor and the entirety of the second floor of a commercial building contrary to ZR §32-10. C4-2A Special Bay Ridge District.

PREMISES AFFECTED – 8701 4th Avenue, Block 6050, Lot 8, Borough of Brooklyn.

COMMUNITY BOARD #10BK

2018-123-BZ

APPLICANT – Law Office of Jay Goldstein, PLLC, for 251 W87th Street Associates, owner; Broadway Bar Method LLC, lessee.

SUBJECT – Application July 26, 2018 – Special Permit (§73-36) to permit the operation of a Physical Cultural Establishment (Bar Method) to be in a portion of the cellar and first floor of an existing building Contrary to ZR §32-10. C4-6A Special Enhanced Commercial District.

PREMISES AFFECTED – 2381 Broadway aka 2381-2387 Broadway, 251-257 W 87th Street, Block 1235, Lot 10, Borough of Manhattan.

COMMUNITY BOARD #7M

2018-138-BZ

APPLICANT – Law Office of Jay Goldstein PLLC, for 257 Associates Borrower LLC, owner; BBP Fitness LLC, lessee.

SUBJECT – Application August 24, 2018 – Special Permit (§73-36) to permit the legalization of a Physical Cultural Establishment (Brick New York in a portion of the cellar and first floor of an existing building) contrary to ZR 32-10. C6-2A zoning district.

PREMISES AFFECTED – 257 West 17th Street, Block 767, Lot 7502, Borough of Manhattan.

COMMUNITY BOARD #4M

Carlo Costanza, Executive Director

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**REGULAR MEETING
TUESDAY MORNING, NOVEMBER 20, 2018
10:00 A.M.**

Present: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.

SPECIAL ORDER CALENDARS

170-92-BZ

APPLICANT – Gerald J. Caliendo, RA, AIA, for Yeheskel Elias/Northern Boulevard Holding Corp., owner.

SUBJECT – Application August 9, 2017 – Extension of Term and amendment of a previously approved Variance (§72-21) which permitted the operation of an automotive laundry (UG 16B), expiring on December 7, 2018; Waiver of Rules. R1-2 zoning district.

PREMISES AFFECTED – 232-04 Northern Boulevard, Block 8165, Lot 23, 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, Commissioner Sheta and Commissioner Scibetta.....5

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 a variance, previously granted by the Board, which expired on December 7, 2018, and an amendment of the same; and

WHEREAS, a public hearing was held on this application on August 21, 2018, after due notice by publication in *The City Record*, with a continued hearing on November 20, 2018, and then to decision on the same date; and

WHEREAS, Community Board 11, Queens, and the Queens Borough President recommend approval of this application; and

WHEREAS, the Board was also in receipt of one letter in opposition to this application, citing concerns about the environmental impact the subject site has on Alley Pond Park and a nearby creek; and

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

WHEREAS, the subject site is located on the south side of Northern Boulevard, between 234th Street and 231st Street, in an R1-2 zoning district, in Queens; and

WHEREAS, the site has approximately 73 feet of frontage along Northern Boulevard, a depth of 99 feet at the eastern lot line, a depth of 215 feet at the western lot line and is occupied by a Use Group (“UG”) 16 auto laundry;

and

WHEREAS, the Board has exercised jurisdiction over the subject site since December 7, 1993, when, under the subject calendar number, the Board granted a variance, pursuant to ZR § 72-21, permitting the construction of a UG 16 auto laundry contrary to district use regulations for a term of 25 years, expiring December 7, 2018, on condition that all drains be connected to an oil separator in accordance with the approved plans; landscaping be provided in accordance with the approved plans; a chain link gate be provided in accordance with the approved plans; signs be limited to two (2) parapet signs and one (1) pole in accordance with the approved plans; a water reclamation system that recycles 85 percent of the auto wash water be installed and maintained; and that no cars be parked or allowed to stand on the sidewalk; and

WHEREAS, the applicant now seeks a 25-year extension of the term of the variance as well as an amendment to omit the chain link gate and landscaping included as conditions of the prior grant, permit the maintenance of 268 square feet of signage, as indicated on the previously approved plans, and reflect the addition of a canopy at the site; and

WHEREAS, the Board notes that the site is adjacent to a park and that plans approved in connection with the 1993 variance grant indicate only, on the lot adjacent to the subject site at the rear, “continuous row of 3’-0” high hemlocks ‘as permitted’”, thus, it was an error to include the provision of landscaping as a condition of the prior grant and such condition is heretofore removed; and

WHEREAS, in addition, to permit the filing of this application more than one year before the expiration of the term, 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)(1); and

WHEREAS, at hearing, the Board expressed concerns as to whether the area under the canopy constituted “floor area” as defined in ZR § 12-10 and, in response, the applicant requested a reconsideration from the Department of Buildings (“DOB”); and

WHEREAS, in response to the applicant’s submission of site photographs and that the canvas canopy is a temporary structure made of canvas and aluminum tubing, has no permanent walls and is meant to shield the cars and workers from inclement weather, the Queens Borough Commissioner determined on October 29, 2018, that, based on the photos showing a free-standing canopy with no enclosure per ZR 12-10, “O.K. to accept the area covered by the canopy as ‘non zoning floor area’”; and

WHEREAS, with regards to the site’s compliance with the condition that a water reclamation system recycling 85 percent of the auto wash water be installed and maintained, the applicant provided a letter from the company that installed and currently maintains the water reclamation system at the subject site certifying that all water used for washing cars at the subject site goes through the water reclamation system; that 85 percent of the water Is recycled

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after it is treated and filtered by a Cyclomat water reclamation and filtration system; that about 15 percent of the volume of water that is not recycled goes to the existing 18-inch sanitary sewer line on Northern Boulevard; that the water from that sanitary sewer line goes to the sewage treatment plant; that all car washing takes place within the enclosed building; and that there are existing trench drains at the site; and

WHEREAS, the applicant also provided details regarding the operation of the water reclamation system and states that the system is physically inspected by the installer and repaired, if necessary, ever six months and that no water from the site is discharged into Alley Pond Park or any other body of water; and

WHEREAS, with regards to the oil separator, the applicant submitted images of the separator and a letter from the plumbing company verifying that the oil separator was last inspected on October 2, 2018, and is in working condition; and

WHEREAS, with regards to signage, the applicant notes that the 268 square feet of signage currently at the site complies with the plans approved in connection with the 1993 variance, which state that 268 square feet of signage was proposed for the subject site; and

WHEREAS, based on the foregoing, the Board finds that the requested amendment does not disturb the Board's findings made for the original variance and determines that the request to amend the variance and extend its terms is appropriate with certain conditions as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals waives § 1-07.3(b)(1) of its Rules of Practice and Procedure, *reopens* and *amends* the resolution, dated December 7, 1993, so that as amended this portion of the resolution reads: "to grant an extension of the term of the variance for a term of 25 years, expiring December 7, 2043, *on condition* that all work and site conditions shall comply with drawings filed with this application marked "Received October 31, 2018-Eight (8) sheets; and *on further condition*:

THAT all drains shall be connected to an oil separator in accordance with the Board-approved plans;

THAT the signs shall be limited to two (2) parapet signs and one (1) pole sign having a total of 268 square feet of surface area in accordance with the Board-approved plans;

THAT a water reclamation system that recycles 85 percent of the auto wash water shall be installed and maintained;

THAT no cars shall be parked or allowed to stand on the sidewalk;

THAT the term of this variance shall be limited to twenty-five (25) years;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a revised certificate of occupancy, indicating this approval and calendar number ("BSA Cal. No. 170-92-BZ"), 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; 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 20, 2018.

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 217th Street (Block 7739, Lot 3); 73-36 Springfield Boulevard (Block 7742, Lot 3); 219-02 74th Avenue (Block 7754, Lot 3); 73-10 220th Street (Block 7755, Lot 3), Borough of Queens.

COMMUNITY BOARD #11Q

ACTION OF THE BOARD – Laid over to July 16, 2019, at 10 A.M., for continued hearing.

539-66-BZ

APPLICANT – Eric Palatnik, P.C., for Arthur Stein of 173-12 Operating Co. Inc., owner.

SUBJECT – Application March 13, 2018 – Amendment of a Variance (§72-21) to permit the reconstruction of a previously approved automotive service station (UG 16B). C2-2/R4 zoning district.

PREMISES AFFECTED – 61-19 Fresh Meadow Lane aka 173-12 Horace Harding Expressway, Block 6902, Lot 18, Borough of Queens.

COMMUNITY BOARD #8Q

ACTION OF THE BOARD – Laid over to February 5, 2019, at 10 A.M., for continued hearing.

280-01-BZ

APPLICANT – Akerman LLP, for S & M Enterprises, owner.

SUBJECT – Application June 7, 2018 – Extension of Time to complete construction for a previously approved variance (§72-21) to permit a mixed-use building which expired on May 7, 2018. C1-9 zoning district.

PREMISES AFFECTED – 663-673 Second Avenue & 241-249 East 36th Street, Block 917, Lot(s) 21, 24-30, 32, 34, Borough of Manhattan.

COMMUNITY BOARD #6M

ACTION OF THE BOARD – Laid over to February 5, 2019, at 10 A.M., for adjourned hearing.

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APPEALS CALENDAR

2017-251-A & 2017-252-A

APPLICANT – Tarter Krinsky & Drogin LLP, for New York Central Line, owner; Outfront Media, LLC, lessee.

SUBJECT – Application August 28, 2017 – 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.

PREMISES AFFECTED – Brooklyn Queens Expressway at 31st Street and 32nd Avenue, Block 1137, Lot 22, Borough of Queens.

COMMUNITY BOARD #1Q

ACTION OF THE BOARD – Application withdrawn.

THE VOTE TO WITHDRAW –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:0

Adopted by the Board of Standards and Appeals, November 20, 2018.

2017-253-A

APPLICANT – Tarter Krinsky & Drogin LLP, for New York Central Line, owner; Outfront Media, LLC, lessee.

SUBJECT – Application August 28, 2017 – 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.

PREMISES AFFECTED – Brooklyn Queens Expressway at 34th Avenue, Block 125, Lot 1, Borough of Queens.

COMMUNITY BOARD #2Q

ACTION OF THE BOARD – Application withdrawn.

THE VOTE TO WITHDRAW –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:0

Adopted by the Board of Standards and Appeals, November 20, 2018.

2018-22-A

APPLICANT – NYC Department of Buildings, for Eighteen Properties, LLC, owner.

SUBJECT – Application February 14, 2018 – Request for a revocation, by the New York City Building's Department, of Certificate of Occupancy No. 301016898F issued for a four-story walk-up apartment building. R6B zoning district.

PREMISES AFFECTED – 255 18th Street, Block 873, Lot 69, Borough of Brooklyn.

COMMUNITY BOARD #7BK

ACTION OF THE BOARD – Appeal Granted.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:0

THE RESOLUTION –

WHEREAS, this is an appeal, filed by the New York City Department of Buildings (“DOB”), pursuant to New York City Charter §§ 645(b)(3)(e) and 666(6)(a), to revoke Certificate of Occupancy No. 301016898F, dated September 18, 2013, (the “CO”) issued for the subject premises; and

WHEREAS, the CO indicates that the premises are occupied by a four-story plus cellar building classified as building occupancy group J-2 under the 1968 Building Code (“1968 BC”) with Use Group 16 occupancy (“ordinary use and non-combustible storage”) permitted on the cellar and a portion of the first floor, and Use Group 2 occupancy permitted on the first through fourth floors (two dwelling units on the first floor and nine dwelling units on each of the second through fourth floors); and

WHEREAS, DOB submits that the CO was improperly issued due to the unsafe physical condition of the building, its unsuitability for the uses authorized thereon and the fact that the building was not configured to accommodate the uses authorized on the CO at the time of its issuance; and

WHEREAS, specifically, DOB states that the building contains a dry sprinkler system that is unsuitable for residential occupancy; the first floor does not contain two dwelling units, as indicated on the CO; and the cellar is occupied by Use Group 9 artists’ studios, not Use Group 16 “ordinary use and non-combustible storage,” as indicated on the CO; and

WHEREAS, a public hearing was held on this application on October 11, 2018, after due notice by publication in *The City Record*, with a continued hearing on November 20, 2018, and then to decision on that date; and

WHEREAS, the site is located on the north side of 18th Street, between 5th Avenue and 6th Avenue, in an R6B zoning district, in Brooklyn; and

WHEREAS, the site has approximately 100 feet of frontage along 18th Street, a depth of 100 feet, 10,017 square feet of lot area and is occupied by a four-story plus

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cellar building; and

PROCEDURAL HISTORY

WHEREAS, on August 5, 1999, Alteration Type 2 Application No. 300925934 was filed at the subject site for work on the second, third and fourth floors, specifically, to “construct interior partitions, install plumbing fixtures and related piping. All as shown on drawings. No change in use, egress or occupancy” (the “Alt 2 Application”); the application was self-certified and signed off by the architect on May 10, 2010; and

WHEREAS, on April 12, 2000, a second architect filed Alteration Type 1 Application No. 301016898 “to change use on 2nd, 3rd [and] 4th floor to dwelling units. No work to be performed under this application. All work filed under [the Alt 2 Application]” (the “Alt 1 Application”); and

WHEREAS, a Post Approval Amendment (“PAA”) for the Alt 1 Application was subsequently filed by the architect-applicant that filed the Alt 2 Application on October 5, 2000, (the “2000 PAA” or “Alt 1 Doc 2”) to “remo[ve] portion of rear wall, then construct new exterior walls as per plans”; DOB approved the application on October 30, 2000, and issued a permit on November 13, 2000, which expired on August 26, 2001 (the “Alt 1 Permit”); and

WHEREAS, the Alt 1 Permit was not renewed until August 16, 2012, the same day that a DOB inspector conducted a final construction inspection of the premises; and

WHEREAS, on October 19, 2012, DOB sent the owner of the premises (“Owner”) and the architect-applicant of the Alt 1 Application a Notice of Intent to Revoke Approval(s) and Permit(s) related to the Alt 1 Application (the “NOI”) and a Notice of Objections objecting to the indication, on the Alt 1 Application, that no work was to be performed and that all work had been filed under the Alt 2 Application; the introduction of a new applicant on the Alt 1 Application; the indication of an enlargement/repair of exterior and rear walls without a PW-2 for new work and the failure to provide plans, among other things; and

WHEREAS, on March 12, 2013, a PAA related to the Alt 1 Application was filed by the applicant-architect who filed the Alt 2 Application to answer the objections that accompanied the NOI (“Alt 1 Doc 3”) and on August 28, 2013, a PAA related to the Alt 1 Application was filed by the applicant-architect who originally filed that application to amend a PW1 Schedule A (“Alt 1 Doc 4”); and

WHEREAS, the CO was ultimately issued on September 13, 2013, under the Alt 1 Application, though DOB states that it has no record of any plans having accompanied either of the 2013 PAAs; and

WHEREAS, on March 29, 2017, DOB sent an Order of the Commissioner to the applicant-architect of the Alt 1 Application, pursuant to Section 28-208.1 of the Administrative Code of the City of New York and Section

646 of the New York City Charter, ordering the submission of a complete set of drawings for the Alt 1 Application within ten (10) business days; and

WHEREAS, DOB states that the materials submitted in response to that request included a drawing dated October 27, 2007, that had not been approved by DOB and microfiche copies of plans filed with DOB in April and October 2000, none of which reflected the as-built conditions of the building at the subject premises; and

WHEREAS, accordingly, by letter dated December 26, 2017, DOB notified the Owner that additional information was still required in connection with the Alt 1 Application demonstrating that the CO was properly issued; specifically, DOB inquired about a sprinklers application, a certificate of correction relating to ECB Notice of Violation No. 34925271H (dated February 15, 2012, the “2012 NOV”), which charged that the cellar of the building was being occupied as Use Group 9 artists’ studios contrary to the CO, and approved plans indicating Use Group 2 dwelling units on the first floor of the building (the letter stated that the only approved plans in DOB’s possession did not reflect dwelling units on that floor); and

WHEREAS, DOB states that a representative of the Owner met with DOB staff on January 23, 2018, regarding DOB’s remaining objections and this appeal was filed on February 14, 2018; and

WHEREAS, Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Scibetta, accompanied by Board staff and representatives for the Owner, DOB and the Fire Department, performed an inspection of the first floor and cellar of the subject building on September 14, 2018; and

WHEREAS, on October 12, 2018, prompted by testimony from residential tenants of the subject building at the October 11 public hearing, members of the Fire Department’s Bureau of Fire Prevention Task Force conducted a Fire and Life Safety inspection of the entirety of the building at the premises; and

WHEREAS, DOB states that on October 12, 2018, DOB vacated the first floor and cellar levels of the premises at the request of the Fire Department and issued several violations relating to the construction of unlawful partitions on those floors; and

WHEREAS, on October 24, 2018, a DOB inspector observed PVC gas piping, unlawful pursuant to Section 503.4.1 of the Fuel Gas Code, discharging out of an operable window and issued a Stop Work Order, ordering the disconnection of gas at the building; and

WHEREAS, on October 30, 2018, DOB conducted an inspection with the Board’s Compliance Officer, attorney for the tenants of the building, the attorney for the Owner and the Owner’s representatives; and

WHEREAS, a follow-up inspection was conducted by

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Board Commissioners and staff, along with representatives from the Loft Board, DOB and elected officials, on November 14, 2018; and

WHEREAS, the Owner filed an application at DOB to modify the sprinklers in November 2018; and

WHEREAS, the Department of Buildings and the Owner were each represented by counsel for this appeal; and
DOB'S POSITION

WHEREAS, DOB submits that the CO, issued pursuant to approved plans dated August 3, 1999, and May 15, 2000, both filed under the Alt 1 Application and approved October 28, 2000, should never have been issued and must now be revoked; and

WHEREAS, specifically, DOB avers that the following irregularities support the revocation of the CO: (1) non-compliance of the building with Section 27-954(t) of the 1968 BC, which prohibits both automatic dry and dry non-automatic sprinklers in buildings and spaces in occupancy group J-2 with 4 or more dwelling units and not exceeding six stories or 75 feet in height, and Section 277(4) of the Multiple Dwelling Law ("MDL"), which requires a wet-pipe automatic sprinkler system in all areas occupied for manufacturing or commercial purposes and extended to and including public hallways and stairways coincidentally serving residential occupancies; (2) the absence of two dwelling units on the first floor of the building, as represented on the CO, the absence of plans depicting these units and any indication in the Alt 1 Application or Alt 2 Application that plumbing work or a change in use, respectively, were planned for the first floor; (3) occupancy of the cellar with Use Group 9 artists' studios, contrary to the CO, as evidenced by the 2012 NOV, issued prior to the issuance of the CO, and ECB Notice of Violation 35113975Z, dated December 15, 2016 (the "2016 NOV"), issued subsequent to the CO and (4) the absence of 5'-6" recesses in the back wall of the building as indicated on the plans dated August 3, 1999, and required under MDL § 277(7)(b)(i)(E), which states, "in no event shall the distance between [dwelling unit] windows and the rear lot line be less than five feet"; and

WHEREAS, though the plans dated August 3, 1999, indicate, under "Sprinkler Notes" on Drawing No. 3: "Entire building to be sprinklered. Sprinkler application to be filed under separate application," DOB states that it has no records of an associated sprinkler application for the subject premises; and

WHEREAS, DOB states that the presence of a dry sprinkler system is a Class I (Immediately Hazardous) violation that, standing alone, warrants the revocation of the CO; and

WHEREAS, DOB additionally submitted a set of plans dated August 3, 1999, associated with the Alt 2 Application, showing "Existing Storage, Trucking, Shipping

& Receiving (CO # 120140/48) (No Work Done Here)" on the first floor and nine artists' studios on each of the second through fourth floors; and

WHEREAS, accordingly, DOB states that the Alt 2 Application was incorrect in its statement that it would not result in a change in use, egress or occupancy; and

WHEREAS, DOB reiterates that department records reflect outstanding violations at the premises at the time of issuance of the CO (specifically, the 2012 NOV), that certificates of occupancy may not be issued when there are outstanding violations and that that fact additionally necessitates the revocation requested in this appeal; and

WHEREAS, DOB submits that non-compliances at the time of the issuance of the CO cannot be cured by work to correct those non-compliances performed after the CO was issued—the only remedy is to vacate the improperly issued CO, as requested herein, and replace it with a new certificate of occupancy; and

OWNER'S POSITION

WHEREAS, the Owner disputes that the CO did not reflect the as-built conditions of the building at the time of the final construction inspection and that any non-compliances with the CO are more suitably addressed by the issuance of violations and the Owner's correction or, in the alternative, a modified CO; and

WHEREAS, the Owner also disputes that the Alt 2 Application was intended to convert the building to Use Group 9 artists' studios and points to the absence, in the application itself, of any reference to "artist studios" and the express disclaimer, also contained in the application, that there was "No change in use, egress or occupancy" therein proposed; and

WHEREAS, the Owner states that, while the Alt 2 Application was self-certified by the applicant-architect, a Letter of Completion was issued by DOB, stating that the work under the Alt 2 Application was completed and signed off in the Building Information System on May 10, 2000, and that, based on the nature of the work filed on the application, a new certificate of occupancy was not required; and

WHEREAS, the Owner asserts that the PAA filed on March 12, 2013, (Alt 1 Doc 3) and plans associated therewith, were examined and approved by a DOB examiner on April 5, 2013, and that the PAA filed on August 28, 2013, (Alt 1 Doc 4) was examined and approved by a DOB examiner on September 3, 2013, in response to the NOI, and that DOB's failure to locate the plans approved with those PAAs does not lead to the conclusion that plans were not provided by the Owner's representatives, as required; and

WHEREAS, the Owner submits that all four of the objections to the issuance of the CO raised by DOB may be corrected and do not require the revocation of the CO; and

WHEREAS, specifically, the Owner states that, with

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regards to the sprinklers installed at the building: the NOI, generated as the result of an audit of the Alt 1 Application in 2012, mentions neither a deficient sprinkler system nor the requirement of a wet-pipe automatic system; the 2013 PAAs filed in response to the NOI were reviewed and approved by DOB plan examiners; there have been no DOB or ECB violations issued on the basis of a non-compliant sprinkler system at the premises; the first mention of a need for a wet-pipe sprinkler system in the building came in the December 26, 2017, letter from DOB, four years after the approval of the Alt 2 Application; that DOB has neither identified the change in occupancy that prompted the requirement of a wet-pipe sprinkler system nor indicated how the installation of a wet-pipe automatic system at the premises would provide additional protection, MDL § 277 is not applicable at the site and that any non-compliance, which the Owner does not concede, will be remedied by Alteration Type 2 Application No. 340632042, filed on September 12, 2018, by the Owner to modify the existing sprinkler system to a wet-pipe automatic sprinkler system; and

WHEREAS, with regards to the absence of two dwelling units on the first floor, as indicated on the CO, the Owner submits that Schedule As for the Alt 1 Application filed on August 12, 2000, and August 28, 2013, both indicate dwelling units on the first floor of the building at the premises; while dwelling units do not presently exist on the first floor, there is evidence of construction having occurred on that floor (i.e. the installation of electrical outlets, cabling, pipes, patch work on the floors); meters located in the cellar demonstrate that utilities ran to dwelling units once located on the first floor; and the Owner plans to file the appropriate applications at DOB to “reinstall” the two dwelling units on the first floor; and

WHEREAS, with regards to the occupancy of the cellar, the Owner submits that while the 2012 NOV and 2016 NOV are still open and cite “art studios” on the first floor and cellar, the phrases “artist studio” and “ordinary use” are not defined in the Zoning Resolution; the cellar does not include living spaces; uses in Use Group 16 include crafts that artists may also be engaged in, including blacksmith’s shops, sign painting shops and carpentry, custom woodworking or custom furniture making shops, thus the artists’ studios located in the cellar are consistent with Use Group 16 uses; Use Group 16 use at the premises is non-conforming, thus, pursuant to ZR § 52-322, space previously dedicated to such use may be converted as-of-right to any use in Use Groups 6, 7B, 7C, 7D, 8, 9, 10, 11B or 14 or interchanged with Use Groups 11A or 17; that the use of the cellar space is appropriate and may require “the as of right amendment [to the CO] to include permitted alternate uses,” but that the subject application is excessive; and

WHEREAS, with regards to the absence of the 5’-6”

recesses in the rear wall of the building, the Owner reiterates that MDL § 277 does not apply at the subject site because the building is a fire-proof manufacturing building, but, if the Board were to determine that such section is, indeed, applicable at the premises, the Owner can pursue a variety of options—including setting the rear windows back from the property line and obtaining an easement legalizing the lot line windows—to cure this condition; and

ADDITIONAL SUBMISSIONS & TESTIMONY

WHEREAS, the Board was in receipt of 18 letters in support of this application, including 15 letters from tenants of the dwelling units at the site stating that they were surprised by the issuance of the CO, which they surmise to have been obtained by fraudulent means because there had been no work in the building prior to the issuance date and the CO fails to reflect the actual conditions of the building; they have had neither heat nor cooking gas in their units since May 2017; they have been utilizing plug-in heaters, which have caused multiple electrical shorts in the building and left tenants, who are responsible for paying electricity, with thousands of dollars in monthly electricity bills; the building has a long history of code violations and shoddy work, often performed without proper permits; that the building is not satisfactorily maintained, with recurring issues like a malfunctioning entry buzzer, a broken front door, unsanitary trash storage, leaky pipes, mold and “concrete walls” that are not insulated and freeze in the winter; that the landlord failed to abide by a settlement, reached with the tenants in October 2018 pursuant to a negotiation through the New York City Loft Board (the “Loft Board”), which obtained jurisdiction over the building on June 16, 2015, pursuant to 29 RCNY § 2-08(b)(2)(i)(D), to insulate and weatherproof dwelling unit walls prior to heat season; and that the landlord and building management’s consistent failure to address the building’s poor conditions is evidence of neglect and an absence of intention to ever address the objections raised in this appeal, thus, the Applicant should not be permitted more time to correct the non-compliances identified herein by the DOB; and

WHEREAS, tenants additionally complain about the lack of adequate fire safety in the building; the faulty aged electrical wiring in the building; the lack of proper ventilation in their units; cracks in exterior walls; and the removal, rather than repair, of the elevator after the roof of the stairwell and elevator shaft was blown off the building by a tornado in September 2010 and the landlord failed to attend to the condition for months; the tenants also provided photographs of their dwelling units, including mezzanines, rear windows located on the rear lot line, electric heaters, gas exhaust pipes punched through exterior walls venting onto sidewalks and adjacent properties, mold, ice on the interior walls and windows of their dwelling units and digital

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thermometers registering interior temperatures of 50 degrees and below; and

WHEREAS, the Board was also in receipt of three letters from neighbors of the subject building, noting the building's poor physical condition, specifically, the accumulation of trash and graffiti at the exterior, the long-standing presence of a sidewalk shed without any other indicia of construction at the site, mold, loitering at the site and a crumbling façade; and

WHEREAS, tenants also appeared at public hearings and provided oral testimony in support of the application, averring that revocation of the CO would enable the proper operation and maintenance of the building for residential occupancy and questioning how a building, so obviously unfit for residential occupancy, could obtain a certificate of occupancy for such use; and

WHEREAS, specifically, the tenants submit that, if the CO is revoked, the building will return to the jurisdiction of the Loft Board, which would call the tenants and landlord to a narrative conference to finally resolve fire, gas, heat and other safety issues in the building; and

WHEREAS, letters from two separate registered architects who inspected the site separately on May 6, 2014, and September 23, 2016, were also submitted into the record; and

WHEREAS, an architect who inspected the site in 2014 ("Architect 1") states in his signed and sealed letter that during his visit, he visited 6 of the 29 dwelling units and the ground floor, which did not contain dwelling units; surveyed the existing conditions of the cellar, boiler room, public spaces, roof, building exterior and main staircase and observed that the building is built full to the lot lines on three sides; and

WHEREAS, Architect 1 also observed that the records on file at DOB relating to this building contain "bizarre irregularities"; specifically, he alleges that the architect of record for the site indicated on Alt 1 Doc 2 was different from the architect of record indicated on the Alt 1 Application and there was no record of a formal amendment permitting such change; that because an Alteration Type 2 Application can neither result in a change in use or occupancy of a building nor require a change to a certificate of occupancy, if the plans for the Alt 2 Application indicated residential use at the site, it should not have been approved by DOB; and that it would have been very difficult to remove a portion of the rear wall, as indicated in the 2000 PAA, of an occupied building and there was no evidence of this work having occurred at the premises; and

WHEREAS, Architect 1 alleged that the building does not comply with the requirements of the 1968 BC, the Multiple Dwelling Law or the Zoning Resolution for legal light and air in residential occupancies or DOB Technical Policy and Procedure Memo #9/93, which requires either

wire glass or sprinkler heads to be installed at all lot line windows; that the building contains serious fire hazards, including combustible construction at the cellar level, obstruction of means of egress and the absence of a 3-hour rated enclosure in the boiler room; and identified several non-compliances with applicable law of the 6 dwelling units he surveyed, including the absence of legally required windows, the presence of mezzanines that did not provide a minimum of 7 feet headroom and raised platforms that provided neither protective handrails nor sprinklers; the lack of legal mechanical ventilation in bathrooms; the presence of illegal wiring, open plumbing drains and unvented plumbing fixtures; and the presence of illegal gas space heaters; and

WHEREAS, Architect 1 stated that "[t]he most disturbing issue" in the subject building is the lack of legal windows for the dwelling units located at the rear, which have only lot line windows, and that this defect can only be cured by removing portions of the rear wall of the building to provide windows set back from the property line, thus, it is "abundantly clear" that the CO is "significantly flawed"; and

WHEREAS, an architect who inspected the premise in September 2016 ("Architect 2") states in his letter to the Board, which was neither signed nor sealed, that he investigated DOB filings for the site online, as well as observed conditions in the cellar, first floor, public stairs, roof and portions of the subject building exterior visible from the sidewalk and alleged that the Alt 2 Application was used to change the use and occupancy of the building contrary to the job description; the Alt 2 Application falsely states that the work involved would not result in a change in use or occupancy because it subdivided the second through fourth floors, whose legal use was for the manufacturing of burlap bags, into 27 spaces with three-piece bathrooms and dedicated gas meters, uses that were clearly not associated with the existing legal manufacturing use; the Alt 1 Application was a "clumsy attempt to legitimize" the subdivision of the second through fourth floors into dwelling units under the Alt 2 Application as evidenced by the timing of its filing one month prior to the sign off of the Alt 2 Application on May 10, 2000; the work of removing portions of the rear wall and constructing new exterior walls as indicated on Alt 1 Doc 2 was never performed, but the CO was, nevertheless, issued; 15 of the 27 dwelling units existing at the site on the second through fourth floors fail to provide legal windows in compliance with MDL § 277(7)(b)(i); the Alt 1 Application job description was misleading in its indication that no work was to be performed under the application; the renewal of the Alt 1 Application in 2011 after its expiration in 2001 made applicable Chapter 11 of the 2008 New York City Building Code ("2008 BC") and ANSI standards, meaning, among other things, that the elevator in the building must be

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converted to an automatic passenger elevator, or, in the alternative, provide freight elevator service, to provide an accessible route to the building's dwelling units, but the elevator was dismantled under Job No. EBN2441/13 SO, approved by DOB on January 28, 2014; the building fails to comply with Quality Housing requirements set forth in Article II, Chapter 8 of the Zoning Resolution; interior bathrooms, toilets, kitchens and public hallways leading to the stairs lack required mechanical ventilation; refuse storage in the building does not comply with 2008 BC § 1213; and that there are 12 open ECB violations at the site, six of which existed prior to the issuance of CO and should have been corrected and removed prior to the issuance of the CO; and

WHEREAS, with regards to fire safety issues, Architect 2 stated that the dry valve system installed in the building must be removed and replaced with an automatic wet sprinkler system that complies with the 2008 BC; an automatic wet standpipe system must be installed pursuant to 2008 BC § 905.3.1 because the floor area on each floor of the building exceeds 10,000 square feet; a fire alarm and command center must be provided because there are more than 16 dwelling units in the building; lot line windows that are not fireproof self-closing must be provided with sprinkler protection and wire or tempered glass; smoke and carbon monoxide detectors must be provided throughout the building; the skylights at the top of the stairs are wire glass when they must be plain glass with wire screens over and under them, pursuant to MDL § 277(10); wood stud partitions throughout the building must be replaced with non-combustible construction; the gas meter room must be properly enclosed and vented; gas space heaters must be properly vented and supplied with fresh air from the exterior of the building; installation of gas ranges, hot water heaters and gas clothes dryers must be filed with DOB as a legalization; the refuse room must be properly separated from the egress hallway; and paths of egress on the first floor and cellar must be delineated, have adequate light and illuminated exit signs; and

WHEREAS, Architect 2 additionally remarked that the first floor and cellar of the building may be converted to legalize the Use Group 9 artists' studios located thereon, but such application has not yet been filed; and

WHEREAS, in response to the Owner's contention that the issuance of a Letter of Completion is conclusive with regards to the appropriateness of the Alt 2 Application filing, DOB states that the Letter of Completion cited by the Owner is undated, Letters of Completion are automatically generated, do not involve internal review by DOB personnel and any self-certified filing would have resulted in the creation of such letter; and

THE BOARD'S FINDINGS

WHEREAS, pursuant to § 28-118.17 of the

Administrative Code, the Commissioner of the Department of Buildings is authorized to request in writing that the Board "revoke, vacate, or modify a certificate of occupancy . . . whenever the certificate is issued in error . . ."; and

WHEREAS, the Board observes that, as of the date of the vote, there was an active stop work order on the property, 38 open ECB violations, 21 open DOB violations and approximately \$100,000 in penalties owed; and

WHEREAS, the record is devoid of any evidence that the first floor of the subject building was ever converted to residential use or evidence that the first floor was converted to residential occupancy and then converted back, and inspections of the premises reveal that half of the first floor is occupied by Use Group 9 artists' studios; and

WHEREAS, though that space could have been converted from Use Group 16 to Use Group 9 as-of-right, the CO does not reflect Use Group 9 occupancy, therefore, the CO was obviously improperly issued with regards to the first floor; and

WHEREAS, the Owner's argument that DOB has failed to identify a change in use of the building that could necessitate a change in the sprinklers installed at the subject is contrary to the evidence presented in this case, most notably, both Schedule As, filed on April 12, 2000, (Alt 1 Doc 1) and August 28, 2013, (Alt 1 Doc 4), which indicate proposed changes in use of the second, third and fourth floors from Use Group 16 offices and manufacturing of burlap bags, Use Group 16 storage and Use Group 16 manufacturing of burlap bags, respectively, to Use Group 2 dwelling units; and

WHEREAS, nevertheless, the Board is not convinced that the failure to provide a wet-pipe automatic sprinkler system in the building justifies revocation of the CO in its entirety, that such non-compliance may be cured, and that the Owner's intention to cure that defect is evidenced by the November 2018 filing to modify the sprinklers; and

WHEREAS, the Board finds, however, that the failure of the as-built conditions of the building to comply with the August 3, 1999, plans, specifically the 5'-6" recesses indicated (in both plan and section) in the rear wall of the building for the provision of legal light and air to the 15 dwelling units located at the rear of the building in compliance with MDL § 277(7)(b), is incurable absent significant construction that may require temporarily relocating tenants of those dwelling units; and

WHEREAS, the Board finds the Owner's argument that MDL § 277 does not apply at the subject site to also be contrary to the evidence, specifically the August 3, 1999, plans which, on Drawing 1, include handwritten notes regarding compliance with the various sub-parts of that section, including a note that, consistent with the 5'-6" recesses indicated to be constructed on floors two through four, the plans comply with MDL § 277(7)(b); and

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WHEREAS, additionally, there is no evidence that such recesses did, in fact, exist at the time of the CO's issuance and were subsequently removed; and

WHEREAS, accordingly, the Board finds that the as-built conditions of the building at the subject premises do not presently conform to the plans upon which the issuance of the CO was based, nor did they comply at the time the CO was issued; thus, the CO was unlawfully issued and must be revoked.

Therefore, it is Resolved, that the application to revoke Certificate of Occupancy No. 301016898F is *granted*.

Adopted by the Board of Standards and Appeals, November 20, 2018.

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

THE VOTE TO CLOSE HEARING –

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

ACTION OF THE BOARD – Laid over to January 8, 2019, at 10 A.M., for decision, hearing closed.

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 8, 2019, at 10 A.M., for adjourned hearing.

2017-59-A

APPLICANT – Eric Palatnik, P.C., for Yuriy Prakhin, owner.

SUBJECT – Application March 3, 2017 – 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.

PREMISES AFFECTED – 3857 Oceanview Avenue, Block 6955, Lot 5, Borough of Brooklyn.

COMMUNITY BOARD #13BK

ACTION OF THE BOARD – Laid over to February 12, 2019, at 10 A.M., for adjourned 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

THE VOTE TO CLOSE HEARING –

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

ACTION OF THE BOARD – Laid over to January 8, 2019, at 10 A.M., for decision, hearing closed.

ZONING CALENDAR

190-15-BZ

APPLICANT – Francis R. Angelino, Esq., for Carmine Limited, owner.

SUBJECT – Application August 19, 2015 – Variance (§72-21) to propose a new six-story and bulkhead mixed building with ground floor commercial use and residential use on the upper floors located partially within a R6 zoning district and a C2-6 zoning district.

PREMISES AFFECTED – 51-57 Carmine Street, Block 582, Lot 35, Borough of Manhattan.

COMMUNITY BOARD #2M

ACTION OF THE BOARD – Application withdrawn without prejudice.

THE VOTE TO WITHDRAW –

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

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated December 1, 2017, acting on

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New Building Application No. 122378202, reads in pertinent part:

1. Proposed Street Wall Height and Setback is contrary to the provisions of Zoning Resolution Section 23-662.
2. Proposed total Zoning Floor Area permitted on the Zoning Lot exceeds the maximum Zoning Floor Area permitted by the provisions of the Zoning Resolution sections 35-31, 33-12, 22-00 and 23-153.
3. Proposed Inner court does not meet zoning requirements, pertaining to the minimum required area and minimum required dimensions, per the provisions of section 23-851.
4. Proposed ground floor commercial uses in Use Group 6 (ZR 32-15) are not permitted uses in the R6 district; and

WHEREAS, this is an application under ZR § 72-21 to permit, partially in an R6 zoning district and partially in an R6 (C2-6) zoning district, the development of a six-story mixed-used commercial and residential building that does not comply with zoning regulations for street wall height, floor area, inner courts and ground floor uses, contrary to ZR §§ 23-662, 35-31, 33-12, 22-00, 23-153, 23-851 and 32-15; and

WHEREAS, a public hearing was held on this application on May 22, 2018, after due notice by publication in *The City Record*, and then to decision on November 20, 2018; and

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

WHEREAS, Community Board 2, Manhattan, recommends approval of this application on the following conditions: that the Board confirm that 5.22 is the minimum FAR needed to produce a reasonable return on investment to the applicant; that the terms proposed in the January 13, 2016 letter and the January 19 and 20, 2016 correspondence be memorialized in the Board's resolution as consented to by the applicant, namely that the applicant will not rent any of the ground floor retail commercial space to any bars, cabarets or clubs, not have any retail commercial spaces smaller than 1,000 square feet in size and have no less than three different retail spaces in the commercial space, only one of which will be a full-service restaurant, which will not exceed 2,100 square feet; that, to preserve neighborhood architectural context, the windows be switched from tilt and turn to double-hung, the corner windows on the upper floors in the style of Frank Lloyd Wright be redesigned to resemble the other corner window treatments in the neighborhood, the windows above the residential entrance be resized to the proportions of the other windows on the

upper floors of the building and the ratio of glass to brick be decreased to more resemble the surrounding buildings; and that the design of the facade on Bedford Street be altered to reflect the smaller scale of that narrower street; and

WHEREAS, the subject site is located on the northwest corner of Carmine Street and Bedford Street, partially in an R6 zoning district and partially in an R6 (C2-6) zoning district, in Manhattan; and

WHEREAS, the subject site, as originally proposed, has approximately 75 feet of frontage along Carmine Street, 60 feet of frontage along Bedford Street, 5,249 square feet of lot area and is occupied by three existing buildings; and

WHEREAS, two adjacent lots, which were not originally part of the subject site, are held in common ownership with Lot 35; and

WHEREAS, in response to skepticism from the Board about whether including adjacent lots in the subject site would alleviate the applicant's alleged hardship, the applicant revised this application to include Lot 34 as part of the subject site, resulting in a lot with approximately 90 feet of frontage along Carmine Street, 60 feet of frontage along Bedford Street, 6,748 square feet of lot area and is occupied by four existing buildings; and

WHEREAS, at hearing, the Board discussed the configuration of the subject site, noting that by including Lot 34 the applicant eliminates any irregularity in shape and instead creates a rectangular lot that is suitable for development with nearly all of its frontage located in a commercial zoning district and with its remaining Bedford Street frontage suitable for residential development; and

WHEREAS, with respect to uniqueness, the Board further discussed that the applicant's studies of the surrounding area do not demonstrate that the subject site is uniquely burdened with respect to its split-lot condition; and

WHEREAS, with respect to the applicant's financial analysis, the Board noted, among other things, that the applicant failed to include income produced by the existing building on Lot 34 in examining whether as-of-right development on the subject site as reconfigured would realize a reasonable return and that there was no explanation for discrepancies in construction costs between as-of-right development and the proposed development; and

WHEREAS, lastly, the Board discussed whether the applicant was, in fact, seeking the highest and best use of the subject site rather than the minimum variance necessary to bring a reasonable return; and

WHEREAS, in response to community support for the proposed development, the Board notes that the Board may only grant a variance where it "make[s] each and every one" of five required findings under ZR § 72-21, and "each finding shall be supported by substantial evidence or other data considered by the Board in reaching its decision"; however, in this application, there was no such evidentiary

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support based on the record and the Board’s inspections of the site and surrounding area; and

WHEREAS, by letter dated November 19, 2018, the applicant requests withdrawal of this application without prejudice.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *permit* withdrawal of this application without prejudice.

Adopted by the Board of Standards and Appeals, November 20, 2018.

2016-4272-BZ

CEQR #17-BSA-030M

APPLICANT – Sheldon Lobel, P.C., for Arwin 74th Street LLC, owner; Ripped Fit, lessee.

SUBJECT – Application October 24, 2016 – Special Permit (§73-36) to permit the operation a Physical Cultural Establishment (*Ripped Fitness*) on the first floor of an existing building. C1-9/R8B Zoning district.

PREMISES AFFECTED – 1432 2nd Avenue, Block 1449, Lot 3, Borough of Manhattan.

COMMUNITY BOARD #8M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Manhattan Borough Commissioner, dated September 29, 2016, acting on Department of Buildings (“DOB”) Application No. 122720476, reads in pertinent part:

Proposed change of use to a physical culture establishment, as defined by ZR 12-10 is not permitted as of right in a C1-9 zoning district pursuant 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 site located partially within a C1-9 zoning district and partially within an R8B zoning district, a physical culture establishment (“PCE”) on a portion of the first floor of an existing 33-story plus cellar and sub-cellar mixed-use commercial and residential building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on October 30, 2018, after due notice by publication in *The City Record*, with a continued hearing on November 20, 2018, and then to decision on that date; and

WHEREAS, Community Board 8, Manhattan,

recommends approval of this application; and

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

WHEREAS, the subject site is located on the southeast corner of Second Avenue and East 75th Street, partially within a C1-9 zoning district and partially within an R8B zoning district, in Manhattan; and

WHEREAS, the site has approximately 162 feet of frontage along Second Avenue, 100 feet of frontage long East 74th Street, 200 feet of frontage along East 75th Street, 35,400 square feet of lot area, and is occupied by a 33-story plus cellar and sub-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* 1 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, the Board notes that, because no portion of the subject PCE is represented as being located on the

1 Words in *italics* are defined in Section 12-10 of the Zoning Resolution.

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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 applicant submits that the subject PCE occupies 2,644 square feet of floor area on the first floor, entirely within the portion of the site and building located in a C1-9 zoning district with a fitness area for treadmills, floor space for training, men's and women's restrooms and showers, an office, and a reception area; and

WHEREAS, the applicant represents that the PCE has been in operation since November 2016, as "Ripped Fitness," operating daily from 6:00 a.m. to 8:00 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 the PCE is located on a heavily trafficked commercial street with retail stores and eating and drinking establishments in commercial and mixed-use buildings, and the applicant anticipates that patrons will walk or use public-transportation to access the PCE; and

WHEREAS, though the PCE space is separated from residential uses in the subject building by the residential tenant play room, tenant exercise room, tenant laundry room, and mechanical equipment room, all of which are on the second floor above the PCE, sound mitigation measures, including a gypsum ceiling, padding, and a rubber and tile floor system under the treadmills, have been installed in the portions of the first floor occupied by the PCE to mitigate any adverse impacts of the use to other building tenants; specifically, the applicant has provided laminated wall finishes with rubber flooring on the walls, and a three-layer floor system comprised of rubber underlayment, gypsum concrete slab, and rubber flooring in the PCE space; 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 improvement with fitness instruction, including group-based treadmill training and personal physical training; and

WHEREAS, accordingly, 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 submits that an approved interior fire alarm system—including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms, and a connection of the interior fire alarm system to an FDNY-approved central station—has been installed within the PCE space; and

WHEREAS, by letter dated October 29, 2018, the Fire Department submitted a letter of no objection, confirming that the premises has a dry sprinkler system covering the parking garage, a standpipe system and residential sprinkler system covering the compactor room, and current Fire Department permits for said systems; and, requesting that the Board not have the applicant install a fire alarm and sprinkler system in the PCE space, as it is not a fire hazard load and therefore the systems are not required; and

WHEREAS, the applicant represents that the PCE will not impact the privacy, quiet, light and air of the neighborhood on account of its location within a mixed-use building and compatibility with surrounding commercial eating and drinking and retail establishments; 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, 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 in which the PCE has operated at the premises without a 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-030M, dated July 16, 2018.

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 within a C1-9 zoning district and partially located within an R8B zoning district, a physical culture establishment on a portion of the first floor of an existing 33-story mixed-use commercial and residential building wholly located within a C1-9 zoning district, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked “Received May 11, 2018”– Six (6) sheets; and *on further condition*:

THAT the term of the PCE grant shall expire on November 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 accessibility compliance under Local Law 58/87 shall be as reviewed and approved by DOB;

THAT an approved fire alarm system—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—shall be maintained within the 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 the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy indicating this approval and calendar number (“BSA Cal. No. 2016-4272-BZ”) shall be obtained within one (1) year, by November 20, 2019;

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

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

THAT DOB must ensure compliance with all of the

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

Adopted by the Board of Standards and Appeals, November 20, 2018.

2016-4275-BZ
CEQR #17-BSA-033Q

APPLICANT – Gerald J. Caliendo, R.A., AIA, for Joseph G. Ciampa/Ciampa North Co., owner; Push Fitness Club, lessee.

SUBJECT – Application October 31, 2016 – Special Permit (§73-36) to permit the legalization of a physical cultural establishment (*Push Fitness Club*) located on the first floor, basement and mezzanine levels of the existing commercial building contrary to ZR §42-10. M1-1 zoning district.

PREMISES AFFECTED – 132-15 14th Avenue, Block 4012, Lot(s) 45 & 30, Borough of Queens.

COMMUNITY BOARD #7Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

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

THE RESOLUTION –

WHEREAS, the decision of the Queens Borough Commissioner, dated October 7, 2016, acting on Department of Buildings (“DOB”) Application No. 420812892, reads in pertinent part:

Respectfully request denial for objections as stated for filing at the Board of Standards and Appeals. Proposed use as a Physical Culture Establishment, as defined by ZR 12-10, in an M1-1 zoning district, is contrary to ZR 42-10 and requires a Special Permit pursuant to ZR 73-36. Refer to the Board of Standards and Appeals for approval; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to legalize, on a site located within an M1-1 zoning district, a physical culture establishment (“PCE”) on portions of the basement, first, and mezzanine floors of an existing one- (1) story plus basement and mezzanine with accessory rooftop parking commercial building, contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on May 15, 2018, after due notice by publication in *The City Record*, with continued hearings on July 24, 2018, and November 20, 2018, and then to decision on that date; and

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WHEREAS, the Board was in receipt of one (1) form letter in support of this application; and

WHEREAS, Community Board 7, Queens, recommends approval of this application on condition that the owner provide reasonable accommodations for persons with disabilities in compliance with handicap accessibility; provide a canopy above all exterior handicap accessible entrances for protection while patrons are waiting; and, provide a door buzzer and camera to alert employees that patrons may be waiting at handicap accessible entrances; and

WHEREAS, Melinda Katz, Queens Borough President, recommends approval of this application; and

WHEREAS, Commissioner Ottley-Brown performed an inspection of the subject site and surrounding neighborhood; and

WHEREAS, the subject site is located on the north side of 14th Avenue, bound by 11th Avenue to the north, between 132nd Street and 133rd Place, within an M1-1 zoning district, in Queens; and

WHEREAS, the site has approximately 246 feet of frontage along 14th Avenue, 561 feet of frontage along 11th Avenue, 167,874 square feet of lot area and is occupied by a one- (1) story plus basement and mezzanine with accessory roof parking commercial building, in which the subject PCE is located; 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 1* 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

1 Words in *italics* are defined in Section 12-10 of the Zoning Resolution.

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, the applicant represents that, 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 applicant submitted evidence that the subject PCE occupies approximately 1,681 square feet on the first floor with a juice bar, sales area, reception area and offices; 3,065 square feet on the mezzanine floor with a space for exercise machines, an exercise room, a trainer's

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office, and storage; and, 8,751 square feet on the basement floor with spaces for exercise machines, spin cycling, a workout floor and free weights, and men's and women's locker rooms with saunas and showers; and

WHEREAS, the applicant represents that the PCE has been in operation since January 2013, as "Push Fitness Club" with the following hours of operation: Monday through Thursday, 4:30 a.m. to 12:00 a.m.; Friday, 4:30 a.m. to 11:00 p.m.; Saturday, 6:30 a.m. to 9:00 p.m.; and, Sunday, 7:30 a.m. to 8:00 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 the PCE is located in a manufacturing district on a thoroughfare characterized by commercial retail establishments, offices, banks, manufacturing uses and mixed use buildings, and the PCE is located within a shopping center complex; the applicant represents that a majority of its members are local residents or employees who are within walking distance or use public transportation, and the members who drive are served by the existing 189 on-site rooftop accessory parking spaces; and

WHEREAS, the applicant submits that because the PCE is located in a commercial building in a retail area within a manufacturing zoning district and there are no residential uses at the subject site, no adverse noise impacts are anticipated; 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 represents that the PCE contains facilities for classes, instruction and programs for the provision of physical improvement through personal training, kickboxing, and body building; and

WHEREAS, accordingly, 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 demonstrated that a wet sprinkler system and a fire alarm system—including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms and a connection of the building's interior fire alarm to an FDNY-approved central station—are installed throughout the PCE space; and

WHEREAS, by letter dated November 17, 2018, the Fire Department states that it has no objection to the application; that inspections have been performed by various units in the Bureau of Fire Prevention; that violations were issued to test the sprinkler system (scheduled for December

11, 2018), obtain an operating permit for the Public Assembly space and obtain a "Letter of Approval" for fire alarm system; and that, if the Board grants the subject special permit application, the Bureau of Fire Prevention will enforce the Board's resolution and violations issued for this establishment; and

WHEREAS, over the course of the hearings, in response to Community Board concerns, the Board expressed concern over the installation of a handicap accessible wheelchair lift throughout the floors of the PCE space; and

WHEREAS, in response, the applicant produced an Alteration Type 2 application filed with the DOB, plans, and a proposal for the installation of the wheelchair lift; 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 impact the privacy, quiet, light and air of the neighborhood on account of its location in a commercial retail complex in a manufacturing district with existing accessory parking on-site; 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-033Q, dated October 31, 2016; and

WHEREAS, based upon its review of the record, the Board finds that the requested special permit, legalizing the PCE on portions of the basement, first, and mezzanine floors, is appropriate, 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, §§ 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 an M1-1 zoning district, the operation of a physical culture establishment in portions of the basement, first, and mezzanine floors of an existing one- (1) story plus basement and mezzanine with accessory roof parking commercial building, contrary to ZR § 42-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "July 2, 2018"-Fourteen (14) sheets; and

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on further condition:

THAT the term of the PCE grant shall expire on January 1, 2023;

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

THAT accessibility compliance under Local Law 58/87 shall 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 compliance with Fire Department sprinklering and fire alarm system requirements shall be made;

THAT a public assembly permit shall be obtained to the extent that it is required;

THAT a handicap accessibility wheelchair lift shall be 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 November 20, 2019;

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

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

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

Adopted by the Board of Standards and Appeals, November 20, 2018.

2016-4472-BZ

CEQR #17-BSA-058Q

APPLICANT – Sheldon Lobel, P.C., for Marino Plaza 63-12, LLC, owner; Body By Fitness Health Club 1 Inc., lessee. SUBJECT – Application December 28, 2016 – 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 zoning district.

PREMISES AFFECTED – 245-01–245-13 Jamaica Avenue aka 245-13 Jericho Turnpike, Block 8659, 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 Sheta and Commissioner Scibetta.....5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision on behalf of the Queens Borough Commissioner of the Department of Buildings (“DOB”), dated December 2, 2016, acting on DOB Application No. 421320305, reads in relevant part:

A physical culture establishment, as defined by ZR 12-10, is not permitted in a C1-3/R4 Zoning district as-of-right pursuant to ZR 32-10 or by special permit pursuant to ZR 32-31. Refer to the Board of Standards and Appeals for approval; and

WHEREAS, this is an application under ZR § 72-21 to legalize, on a site located within an R4 (C1-3) 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 April 10, 2018, after due notice by publication in *The City Record*, with continued hearings on September 13, 2018, and November 20, 2018, and then to decision on that date; and

WHEREAS, performed inspections of the site and surrounding neighborhood; and

WHEREAS, Community Board 13, Queens, recommends approval of this application; and

WHEREAS, Queens Borough President, Melinda Katz, and New York City Councilmember Barry S. Grodenchik recommend approval of this application; and

WHEREAS, the Board was also in receipt of 33 form letters in support of approval of this application; and

WHEREAS, the subject site is bound by Jamaica Avenue to the south, Braddock Avenue to the southwest, 246th Street to the east and 245th Street to the west, within an R4 (C1-3) zoning district, in Queens; and

WHEREAS, the site has approximately 144 feet of frontage along Jamaica Avenue, 54 feet of frontage along Braddock Avenue, 76 feet of frontage along 246th Street, 70 feet of frontage along 245th Street, 15,513 square feet of lot area and is occupied by one-story plus cellar commercial building divided into seven commercial units; and

WHEREAS, the Board has exercised jurisdiction over the subject site since July 19, 1994, when, under BSA Cal. No. 12-94-BZ, the Board granted a special permit, pursuant to ZR § 73-36, permitting the locating of a PCE, operating as American Physique of Bellerose, in the cellar and on the first floor of an existing one-story plus cellar commercial building on the subject site, which was then located in an R4 (C2-2) zoning district, on condition that all work substantially conform to drawings approved by the Board;

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there be no change in ownership or operating control of the PCE without prior application to and approval from the Board; the special permit be limited to a term of ten (10) year, expiring July 19, 2004; the conditions appear on the certificate of occupancy; the development, as approved, be subject to verification by DOB for compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under their jurisdiction; and substantial construction be completed in accordance with ZR § 73-30; and

WHEREAS, a subsequently filed application for a waiver of the Board's Rules of Practice and Procedure, an extension of the term of the special permit and an extension of time to obtain a certificate of occupancy was dismissed for lack of prosecution by the Board on August 18, 2009; and

WHEREAS, in or around June 2013, the subject site was rezoned to an R4 (C1-3) zoning district, wherein a special permit pursuant to ZR § 73-36 is not available; thus, the applicant seeks the subject relief; and

WHEREAS, the existing physical culture establishment, which continues to operate as American Physique of Bellerose, occupies 5,564 square feet of floor space in the cellar, including a free weight area, weight lifting machines and mechanical space, and 5,635 square feet of floor area on the first floor, which includes a reception area, a spin studio, an aerobics room, cardiovascular exercise equipment and office space; and

WHEREAS, the applicant submits that, pursuant to ZR § 72-21(a), the history of PCE use at the site since 1994 and the build-out of the commercial unit at the cellar and first floor levels of the subject site to accommodate the PCE are physical conditions that create a practical difficulty in complying with the existing zoning regulations because such compliance would require costly renovations to the commercial unit in which the PCE is now located and the current configuration of the space would further frustrate as-of-right uses; and

WHEREAS, the applicant submits that the PCE has continuously operated at the site since the special permit approval in 1994, despite the expiration of the special permit on July 19, 2004, and the rezoning in or around June 2013, and provided evidence of this continuity of use including building management records showing real estate taxes paid by the PCE in 1993/1994, 1997/1998 and 2005-2012; correspondence between the PCE and building management from 1997, 2002, 2003 and 2004; a page from the October 1999-September 2000 Queens Yellow Pages listing the subject site address as the location for "American Physique Fitness Club"; certificates of liability insurance for "American Physique of Bellerose, Inc.," located at the subject site address, for the policy periods of May 22, 2000, through May 22, 2001, May 22, 2001, through May 22,

2002; and photographs of the premises showing the presence of the PCE dated August 2016 and September 2017; and

WHEREAS, with regards to the hardship involved with configuring the space for an as-of-right use, the applicant notes that the cellar portion of the space has neither direct access to the street nor windows, making the space unappealing to retail tenants as sales space because of the lack of visibility; further, the floor space located in the cellar is not currently accessible from any other commercial unit located in the building, thus, conversion of the PCE space to an as-of-right use would require costly renovations; and

WHEREAS, in addition, the applicant states that the subject building is the only building within 1,000 feet subject to the 2013 rezoning rendered non-conforming and, therefore, unique; and

WHEREAS, the Board finds that the history of the use of the site, in part, as a PCE is a unique condition that creates unnecessary hardship and practical difficulty in developing the site in conformance with applicable zoning regulations; and

WHEREAS, in satisfaction of ZR § 72-21(b), the applicant states that there is no reasonable possibility that a conforming development at the site will bring a reasonable return and, in support of that contention, submitted a financial analysis for (1) an as-of-right commercial use (the "AOR Scenario") and (2) the subject legalization; and

WHEREAS, the financial analyses submitted with the application conclude that only the subject legalization will generate a reasonable return, approximately 0.3 percent, while the AOR Scenario would result in a loss of approximately 23 percent of the projected development costs; 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 legalization will not substantially impair the appropriate use or development or adjacent properties and will not be detrimental to the public welfare in accordance with ZR § 72-21(c); specifically, the PCE is wholly contained within an existing building on a busy commercial thoroughfare, has operated at the site continuously for over two decades and the PCE use is consistent with other commercial uses in the area—primarily small retail store—in that it serves neighbors living in its immediate vicinity; and

WHEREAS, the Board finds that the subject legalization will neither 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;

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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 legalization 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 legalization is the minimum necessary to afford the owner relief; and

WHEREAS, by letter dated March 30, 2018, the Fire Department states that the fire alarm system at the subject site was inspected by members of the Bureau's Fire Alarm Inspection Unit; the existing sprinkler system tested satisfactory in a hydrostatic pressure test performed on May 17, 2017, and witnessed by the Fire Suppression Unit; and the Licensed Public Place of Assembly ("LPPA") Unit, responsible for the inspection of Public Assembly spaces, issued five criminal summons to the premises for occupying the space without a valid Public Assembly permit; accordingly, the Fire Department requests that the plans for the premises and the Public Assembly ("PA") Permit be reconciled to reflect the actual number of persons that can be accommodated in the PCE space and that an amended PA be filed prior to the Board vote; and

WHEREAS, the Fire Department also inquired as to whether the travel distance and egress plan were compliant with Fire Code; and

WHEREAS, the applicant subsequently revised the plans to indicate that the PCE space has an occupancy of 120 persons at the cellar and 75 persons at the first floor; the applicant also altered the egress plan to indicate both primary and secondary travel distances from the cellar to the first floor and out of the subject building; and

WHEREAS, by letter dated November 19, 2018, Fire Department states that no PA application had not yet been filed; that the LPPA Unit has visited the site and issued a violation order; and that, once a decision is rendered by the Board, units of the Bureau of Fire Prevention will be notified to perform the required re-inspection and enforce all orders, if not complied with; and

WHEREAS, accordingly, the Board has incorporated, as a condition of the grant, the curing of all outstanding Fire Department violation orders, the compliance with all inspection requirements and the obtaining of a PA permit; and

WHEREAS, in addition, the Board requested that the plans be amended to provide ADA access to the cellar of the PCE and the applicant revised the plans to provide an ADA-compliant lift; 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-058Q, dated December 28, 2016; and

WHEREAS, the EAS documents that the project, as currently 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, 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 legalize, on a site located within an R4 (C1-3) 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 November 1, 2018"-Nine (9) sheets; and *on further condition*:

THAT the handicapped lift shall be installed as indicated on the BSA-approved plans;

THAT the site shall cure all outstanding Fire Department violations orders, comply with Fire Department inspection requirements; and

THAT the fire alarm and sprinkler systems at the premises shall obtain Fire Department approval;

THAT an amended PA application shall be submitted as requested by the Fire Department and the appropriate PA permit obtained for the subject PCE space;

THAT a certificate of occupancy, indicating this approval and calendar number ("BSA Cal. No. 2016-4472-BZ") 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

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

Adopted by the Board of Standards and Appeals, November 20, 2018.

2017-47-BZ

CEQR #17-BSA-092K

APPLICANT – Law Office of Lyra J. Altman, for Susan Nabet and Benjamin Nabet, owners.

SUBJECT – Application February 17, 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) and less than the required rear yard (ZR §23-47). R2 zoning district.

PREMISES AFFECTED – 1052 East 22nd Street, Block 7585, Lot 77, 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 Sheta and Commissioner Scibetta.....5
Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated February 1, 2017, acting on Department of Buildings (“DOB”) Application No. 321354618, 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 enlargement of a detached

single-family dwelling 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, 23-461(a), and 23-47; and

WHEREAS, a public hearing was held on this application on August 21, 2018, after due notice by publication in *The City Record*, with a continued hearing on November 20, 2018, and then to decision on that same date; and

WHEREAS, Commissioner Ottley-Brown performed an inspection of the site and surrounding area; and

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

WHEREAS, the subject site is located on the west side of East 22nd Street, between Avenue I and Avenue J, in an R2 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 40 feet of frontage, 100 feet of depth, 4,000 square feet of lot area, and is occupied by a two- (2) story plus cellar and attic detached single-family dwelling containing 2,800 square feet of floor area (0.7 FAR), an open space ratio of 0.96, a front yard depth of 26’-6.25”, two (2) side yards with widths of 3’-9” and 7’-9”, a rear yard with a depth of 19’-5” at the first floor and 23’-2” at the second floor, a perimeter wall height of 20’-9” and a total building height of 30’-6”; and

WHEREAS, ZR § 73-622 provides that:

The Board of Standards and Appeals may permit an *enlargement*¹ 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

¹ Words in *italics* are defined in Section 12-10 of the Zoning Resolution.

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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 this application located within an area in which the special permit is available; and

WHEREAS, the Board notes further that the subject application seeks to enlarge the detached one-family

residence, as contemplated by ZR § 73-622; and

WHEREAS, the applicant proposes to enlarge the existing dwelling with horizontal extensions in the front yard and side yard and increase the ceiling heights on each floor, resulting in a two- (2) story plus cellar and attic single-family detached dwelling with 4,016 square feet (1.00 FAR), an open space ratio of 0.59 (2,362 square feet of open space), a front yard with 15 feet of depth, two (2) side yards with widths of 3'-9" and 9'-1", a rear yard with a depth of 19'-5" at the first floor and 23'-2" at the second floor, a perimeter wall height of 22'-11" and a total building height of 35'; and

WHEREAS, specifically, the applicant states that the proposed enlargement would increase the floor area on the first floor from 1,318 square feet to 1,638 square feet, the second floor from 1,131 square feet to 1,585 square feet, and the attic from 352 square feet to 757 square feet; and

WHEREAS, the proposed enlargement includes a vertical and horizontal extension of the existing non-complying 3'-9" side yard and the applicant has submitted a Sanborn map of the immediate area, including the subject site, demonstrating that the subject site was developed with a semi-detached dwelling in approximately the same orientation as the site is occupied today and, thus, the non-complying side and rear yards predated the 1961 Zoning Resolution and is a legal non-compliance; and

WHEREAS, at the subject site, a maximum of 0.5 FAR (2,000 square feet of floor area) is permitted and a minimum open space ratio of 1.50 is required pursuant to ZR § 23-141; two (2) side yards each with minimum widths of 5 feet and total width of 13 feet are required pursuant to ZR § 23-461(a); and, a rear yard with a depth of 30 feet is required pursuant to ZR § 23-47; and

WHEREAS, the applicant provided an analysis of single- or two-family dwellings located within 400 feet of the subject premises within an R2 zoning district (the "Study Area") concluding that, of the 83 qualifying residences, 72 (87 percent) have an FAR of greater than 0.5, ranging from 0.51 FAR to 1.56 FAR, including three (3) dwellings located on the same social block as the subject premises, which have FARs of 1.0 or greater; and

WHEREAS, with regards to the proposed side yard, the applicant provided an analysis of the side yard conditions on the two blocks fronting on East 22nd Street, between Avenue I and Avenue J, two (2) of which are located in an R4 zoning district and one (1) of which is located partially in an R2 zoning district and partially in an R4 zoning district but subject to the same side yard regulations as the subject site pursuant to ZR § 23-461(a), demonstrating that, of the 30 other lots occupied by single- or two-family detached dwellings, 18 lots (60 percent) have side yards with a width of less than 5 feet, with widths ranging in width from 0 feet to 4 feet; and

WHEREAS, with regards to the proposed rear yard, the

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applicant provided an analysis of rear yard conditions of the social block, three (3) of which are located in an R4 zoning district and one (1) of which is located partially in an R2 zoning district and partially in an R4 zoning district but subject to the same rear yard regulations as the subject site pursuant to ZR § 23-47, demonstrating that, of the 39 other lots occupied by single- or two-family dwellings, 30 lots (77 percent) have rear yards with a depth less than 30 feet, ranging from 0 feet to 29 feet, including the lot abutting the subject property at the rear and the adjacent lot to the south of the subject property, which have rear yards with depths of 20'-3" and 19 feet, respectively; 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; 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-092K, dated February 17, 2017.

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 enlargement of a one-family detached dwelling that does not comply with the zoning requirements with regards to 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 as they apply to the objection above-noted, filed with this application and marked Received "November 20, 2018*"—Fourteen (14) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area ratio of 1.00 (4,016 square feet of floor area), a minimum open space ratio of 0.59 (2,362 square feet of open space), two (2) side yards with minimum widths of 3'-11" and 9'-1", and a rear yard with a minimum depth of 19'-5", as illustrated on BSA-approved plans;

THAT the removal of exterior walls and/or joists in excess of those indicated on the BSA-approved plans is prohibited and shall void the special permit;

THAT substantial construction shall be completed pursuant to ZR § 73-70;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, indicating this approval and calendar number ("BSA Cal. No. 2017-47-BZ") shall be obtained within four (4) years, by November 20, 2022;

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 20, 2018.

2017-235-BZ

APPLICANT – Snyder & Snyder LLP on behalf of T-Mobile Northeast LLC, for 111th Avenue LLC, owner; T-Mobile Northeast LLC, lessee.

SUBJECT – Application August 9, 2017 – 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.

PREMISES AFFECTED – 111-02 Sutphin Boulevard, Block 11965, Lot 188, Borough of Queens.

COMMUNITY BOARD #12Q

ACTION OF THE BOARD – Application withdrawn without prejudice.

THE VOTE TO WITHDRAW –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:.....0

Adopted by the Board of Standards and Appeals, November 20, 2018.

2017-266-BZ

CEQR #18-BSA-032K

APPLICANT – Law Office of Lyra J. Altman, for Chedvah Rabinovich & Jeffrey Rabinovich, owners.

SUBJECT – Application September 12, 2017 – 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.

PREMISES AFFECTED – 2302 Avenue K aka 1093 East 23rd Street, Block 7605, Lot 8, 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 Sheta and Commissioner Scibetta.....5

Negative:.....0

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THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated August 22, 2017, acting on Department of Buildings (“DOB”) Application No. 321545869, reads in pertinent part:

Proposed plans are contrary to:

ZR 23-141 . . . in that the propose 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 enlargement of a detached single-family dwelling that does not comply with the zoning requirements for floor area ratio (“FAR”) and open space ratio contrary to ZR § 23-141; and

WHEREAS, a public hearing was held on this application on August 21, 2018, after due notice by publication in *The City Record*, with a continued hearing on November 20, 2018, 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 14, Brooklyn, recommends approval of this application; and

WHEREAS, the subject site is located on the northeast corner of Avenue K and East 23rd Street, in an R2 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 60 feet of frontage along Avenue K, 100 feet of frontage along East 23rd Street, 6,000 square feet of lot area, and is occupied by a two (2) story plus attic and cellar single family dwelling containing 3,877 square feet of floor area (0.65 FAR), an open space ratio of 1.08 (4,193 square feet of open space), a front yard on Avenue K with 8.4 feet of depth, a front yard on East 23rd Street with 10.6 feet of depth, side yards with widths of 6.6 feet and 32.3 feet, and detached brick and stucco garage in the rear; and

WHEREAS, ZR § 73-622 provides that:

The Board of Standards and Appeals may permit an *enlargement*¹ 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

¹ Words in *italics* are defined in Section 12-10 of the Zoning Resolution.

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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 this application located within an area in which the special permit is available; and

WHEREAS, the Board notes further that the subject application seeks to enlarge the detached one-family residence, as contemplated by ZR § 73-622; and

WHEREAS, the applicant proposes to lower the cellar slab and enlarge the existing detached dwelling with horizontal extensions at the first, second, and attic floors, resulting in a two- (2) story plus attic and cellar dwelling with 5,904 square feet of floor area (0.98 FAR), an open space ratio of 0.57 (3,387 square feet of open space), a front yard with 8.4 feet of depth on Avenue K, a front yard with 10.6 feet of depth on East 23rd Street, and side yards with widths of five (5) feet and 20 feet; and

WHEREAS, specifically, the applicant states that the proposed enlargement would increase the floor area on the first floor from 1,807 square feet to 2,613 square feet, the second floor from 1,470 square feet to 2,018 square feet, and the attic from 600 square feet to 1,273 square feet; and

WHEREAS, at the subject site, a maximum of 0.5 FAR (3,000 square feet of floor area) is permitted and a minimum open space ratio of 1.50 is required pursuant to ZR § 23-141; and

WHEREAS, the applicant provided an analysis of single- or two-family dwellings located within 400 feet of the subject premises within an R2 zoning district (the “Study Area”) concluding that, of the 98 qualifying residences, 84 residences (86 percent) have an FAR of greater than 0.5, ranging from 0.51 to 1.14, and 11 residences (11 percent) have an FAR of 0.98 or greater; and

WHEREAS, with regards to open space, the applicant demonstrated that, within the Study Area, 95 residences (97 percent) have an open space ratio less than 1.50, ranging from 0.38 to 1.45; and

WHEREAS, the Board notes that the subject application did not receive objections with regards to the front yards and the Board has no authority under ZR § 73-622 to grant a waiver of front yard requirements; therefore, the Board has neither made any findings nor granted any waivers with regards to the front yard regulations applicable at the subject site; 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; and

WHEREAS, this project is classified as a Type II action

pursuant to 6 NYCRR Part 617.6; and

WHEREAS, the Board has conducted a review of the proposed Checklist action discussed in the CEQR Checklist No. 18-BSA-032K, dated September 13, 2017.

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 enlargement of a one-family detached dwelling that does not comply with the zoning requirements with regards to floor area ratio and open space ratio, contrary to ZR § 23-141; *on condition* that all work shall substantially conform to drawings as they apply to the objection above-noted, filed with this application and marked Received “November 1, 2018”—Thirteen (13) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area ratio of 0.98 (5,904 square feet of floor area), and a minimum open space ratio of 0.57 (3,387 square feet of open space), as illustrated on BSA-approved plans;

THAT the removal of exterior walls and/or joists in excess of those indicated on the BSA-approved plans is prohibited and shall void the special permit;

THAT substantial construction shall be completed pursuant to ZR § 73-70;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, indicating this approval and calendar number (“BSA Cal. No. 2017-266-BZ”) shall be obtained within four (4) years, by November 20, 2022;

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 20, 2018.

268-14-BZ

APPLICANT – Akerman LLP, for Kenfa Madison, LLC; Two Deer Group, LLC, owner.

SUBJECT – Application October 31, 2014 – Variance (§72-21) proposed enlargement of the existing Use Group 6,

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eating and drinking establishment at the subject site. R1-2 zoning district.

PREMISES AFFECTED – 231-06/10 Northern Boulevard, Block 8164, Lot(s) 22,122, 30, 130, 43 15, 230, Borough of Queens.

COMMUNITY BOARD #11Q

ACTION OF THE BOARD – Laid over to February 5, 2019, at 10 A.M., for continued hearing.

2016-4273-BZ

APPLICANT – Akerman LLP, for S & M Enterprises, owner.

SUBJECT – Application October 25, 2016 – Variance (§72-21) to permit the legalization of an existing non-conforming replacement advertising sign based upon good-faith reliance. C1-9 zoning district.

PREMISES AFFECTED – 669 Second Avenue, Block 917, Lot(s) 21, 24, 30, 32, 34, Borough of Manhattan.

COMMUNITY BOARD #6M

ACTION OF THE BOARD – Laid over to February 5, 2019, at 10 A.M., for adjourned hearing.

2017-224-BZ

APPLICANT – Tuttle Yick LLP, for Two Spring Associates LLC, owner.

SUBJECT – Application July 6, 2017 – 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.

PREMISES AFFECTED – 2-4 Spring Street, Block 478, Lot 22, Borough of Manhattan.

COMMUNITY BOARD #2M

THE VOTE TO CLOSE HEARING –

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

ACTION OF THE BOARD – Laid over to December 4, 2019, at 10 A.M., for decision, hearing closed.

2017-247-BZ

APPLICANT – Law Office of Lyra J. Altman, for Eli Leshkowitz and Rachel Leshkowitz, owners.

SUBJECT – Application August 22, 2017 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area ratio and open space ratio (ZR 23-141); and less than the required rear yard (ZR 23-47). R2 zoning district.

PREMISES AFFECTED – 1367 East 24th Street, Block 7660, Lot 17, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Laid over to December 4, 2018, at 10 A.M., for adjourned hearing.

2017-288-BZ

APPLICANT – Lisa M. Orrantia, for JMDH Real Estate Offices, LLC, owner.

SUBJECT – Application October 30, 2017 – 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.

PREMISES AFFECTED – 17-10 Whitestone Expressway, Block 4127 & 4148, Lot(s) 20 & 78, Borough of Queens.

COMMUNITY BOARD #19Q

ACTION OF THE BOARD – Laid over to February 5, 2018, at 10 A.M., for continued hearing.

REGULAR MEETING

TUESDAY AFTERNOON, NOVEMBER 20, 2018

1:00 P.M.

Present: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.

ZONING CALENDAR

2017-278-BZ

CEQR #18-BSA-041M

APPLICANT – Law Offices of Marvin B. Mitzner, LLC, for Pacific Fifth Avenue Corporation, owner.

SUBJECT – Application October 12, 2017 – 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.

PREMISES AFFECTED – 400 5th Avenue, Block 838, Lot 7501, 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 Sheta and Commissioner Scibetta.....5
Negative:.....0

THE RESOLUTION –

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WHEREAS, the decision on behalf of the Manhattan Borough Commissioner, dated September 26, 2017, acting on Department of Buildings (“DOB”) Application No. 122891932, reads in pertinent part:

Proposed change of use to a physical culture establishment, as defined by ZR 12-10, is not permitted as of right in a C5-3 zoning district pursuant 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 site located in a C5-3 zoning district and in the Special Midtown District, a physical culture establishment (“PCE”) on portions of the fourth floor of an existing 58-story plus cellar and sub-cellar mixed-use residential and commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on November 20, 2018, after due notice by publication in *The City Record*, and then to decision on that same date; and

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

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

WHEREAS, the subject site is located on the northwest corner of Fifth Avenue and West 36th Street, in a C5-3 zoning district and in the Special Midtown District, in Manhattan; and

WHEREAS, the site has approximately 132 feet of frontage on Fifth Avenue, 125 feet of frontage along West 36th Street, 16,351 square feet of lot area and is occupied by a 58-story plus cellar and sub-cellar mixed-use residential and commercial building, occupied, in part, as a Use Group 5 hotel on the fifth through twenty-sixth floors; 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*¹ 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, the Board notes that, because no portion of the subject PCE is represented as being 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

¹ Words in *italics* are defined in Section 12-10 of the Zoning Resolution.

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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 applicant submitted evidence that the subject PCE occupies 2,106 square feet of floor area on the fourth floor with individual treatment rooms, locker rooms with bathrooms, showers, saunas, steam rooms, and a reception area with a lounge; and

WHEREAS, the applicant represents that the subject PCE opened in April 2017, as “Chuan Body + Soul Spa,” operating daily from 10:00 a.m. to 8:00 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 the spa occupies less than one (1) percent of the total square footage of the building and the applicant anticipates the spa will enhance the local area through providing mental and physical health benefits to hotel guests, residents, and members of the public; 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 represents that the PCE will contain facilities for the provision of spa services including the practice of massage; and

WHEREAS, accordingly, 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 submits that an approved wet sprinkler system and fire alarm system—including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms, and a connection of the interior fire alarm system to an FDNY-approved central station—are installed within the PCE space; and

WHEREAS, the applicant represents that the PCE will not impact the privacy, quiet, light and air of the neighborhood on account of its location, wholly within the fourth floor of the existing building, its fit with the mixed-use character of the neighborhood and the physical and mental benefits to be derived from the spa services provided; 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, 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, by letter dated November 17, 2018, the Fire Department stated no objection to the application and confirmed that the building has a fire alarm, sprinkler and standpipe systems that have been tested satisfactory and have current permits; and

WHEREAS, at the hearing, the Board expressed concern regarding access to the PCE and the sharing of elevators by PCE patrons with residential tenants and hotel guests; and

WHEREAS, in response, the applicant explained that the PCE patrons will only access the PCE via the shared elevator, but residential tenants and hotel guests access other areas and floors of the building through keycards not available to PCE patrons; 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. 18-BSA-041M, dated February 8, 2018; and

WHEREAS, based upon its review of the record, the Board finds that the requested special permit, legalizing the PCE on the fourth floor, is appropriate, 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, §§ 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 C5-3 zoning district and in the Special Midtown District, a physical culture establishment on a portion of the fourth floor of an existing 58-story plus cellar and sub-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 “December 12, 2017”– Five (5) sheets; and *on further condition*:

THAT the term of the PCE grant shall expire on April 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 all services, included but not limited to massages and esthetics, shall be provided by individuals duly-licensed in New York State to perform such services;

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

THAT the sprinkler system shall be maintained as

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indicated on the Board-approved plans;

THAT an approved fire alarm system—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—shall be maintained within the 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 the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, indicating this approval and the subject calendar number (“BSA Cal. No. 2017-278-BZ”) shall be obtained within one (1) year, by November 20, 2019;

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

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

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

Adopted by the Board of Standards and Appeals, November 20, 2018.

2017-305-BZ

CEQR #18-BSA-065Q

APPLICANT – Gerald J. Caliendo, RA, AIA, for Vetricol Industrial Park Assoc., owner; Fit Nation Health Club dba Matrix Sports Club LLC, lessee.

SUBJECT – Application November 21, 2017 – 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.

PREMISES AFFECTED – 66-26 Metropolitan Avenue, Block 3605, Lot 1, Borough of Queens.

COMMUNITY BOARD #5Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision on behalf of the Queens Borough Commissioner, dated June 6, 2018, acting on

Department of Buildings (“DOB”) Application No. 421544680, reads in pertinent part:

Proposed change of use from retail to physical culture establishment is contrary to Section ZR 42-10 and requires a special permit by the BSA, pursuant to Section ZR 73-36; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to permit, on a site located partially within an M1-2 zoning district, partially within an R4B, and partially within an R4B(C1-3), a physical culture establishment (“PCE”) on the cellar level of an existing two- (2) story plus mezzanine and cellar commercial building with accessory parking, contrary to ZR § 42-10; and

WHEREAS, a public hearing was held on this application on November 20, 2018, after due notice by publication in *The City Record*, and then to decision on that same date; and

WHEREAS, the Board was in receipt of three (3) form letters in support of this application; and

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

WHEREAS, Melinda Katz, Queens Borough President, recommends approval of this application; and

WHEREAS, the subject site is bound by Metropolitan Avenue to the north, 65th Lane to the west, the Long Island Rail Road to the south, and Rentar Plaza to the east, partially within an M1-2 zoning district, partially within an R4B, and partially within an R4B(C1-3), in Queens; and

WHEREAS, the site has approximately 1,270 feet of frontage along Metropolitan Avenue, 956,664 square feet of lot area, and is occupied by a two- (2) story plus mezzanine and cellar commercial building with accessory parking; and

WHEREAS, the subject PCE is proposed to be located on the cellar level in a portion of the building located wholly within the portion of the subject site located in an M1-2 zoning district;

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* 1 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,

1 Words in *italics* are defined in Section 12-10 of the Zoning Resolution.

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- 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, the applicant represents that, 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 applicant submitted evidence that the subject PCE will occupy 27,265 square feet of floor space in the cellar with areas for exercise machines, free weights, and fitness instruction classes for yoga, aerobic dance, cardio, kickboxing, body sculpting, and spin cycling, men's and women's locker rooms with bathrooms and showers, a juice bar, storage, sales areas, a lobby and offices; and

WHEREAS, the applicant submits that the proposed PCE will operate as "Fit Nation Health Club" with the following hours of operation: Monday through Friday, 5:00 a.m. to 12:00 a.m.; Saturday and Sunday, 7:00 a.m. to 10:00 p.m.; and

WHEREAS, the applicant anticipates that the proposed PCE use will neither impair the essential character nor the future use or development of the surrounding area because it will be located on a heavily commercial thoroughfare in a commercial shopping mall complex and expects to draw a majority of its patronage from the local area residents and employees; and

WHEREAS, while the proposed PCE will be located on the cellar level of a commercial building in a major retail area in a manufacturing district, the applicant proposes to institute sound-attenuation measures in the PCE including rubber-encased free-weights and weight plates, and sound-attenuating flooring; specifically, the applicant plans to install high performance rubber floor tiles in weightlifting and training areas, artificial turf flooring in fitness areas, suspended hardwood flooring in the group fitness area, and all flooring in the PCE will be shock and sound absorbing; 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 represents that the PCE contains facilities for classes, instruction and programs for the provision of physical improvement through personal training, fitness classes, and body building; and

WHEREAS, accordingly, 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 sprinkler system and fire alarm system—including area smoke detectors, manual pull stations at each required exit,

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local audible and visual alarms and a connection of the building's interior fire alarm to an FDNY-approved central station—are installed throughout the PCE space; and

WHEREAS, by letter dated November 16, 2018, the Fire Department stated no objection to the application and confirmed that the subject building has a fire alarm, sprinkler (wet and dry) and standpipe systems that have been tested satisfactory and have current permits; and

WHEREAS, at the hearing, the Board raised concerns regarding the ability for individuals with mobility-impairment to access the PCE; and

WHEREAS, in response, the applicant demonstrated the accessible means of access to the PCE through a proposed new ramp, as well as the main entrance to the PCE which is also accessible; 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 impact the privacy, quiet, light and air of the neighborhood on account of its location on the cellar level of a commercial retail complex in a manufacturing district with existing accessory parking on-site, in an area well served by mass transit, and anticipates most members will walk or use public transportation to the PCE; 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. 18-BSA-065Q, dated August 28, 2018; and

WHEREAS, based upon its review of the record, the Board finds that the requested special permit, permitting the PCE on portions of the cellar level, is appropriate, 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, §§ 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 partially within an M1-2 zoning district, partially within an R4B, and partially within an R4B(C1-3), the operation of a physical culture establishment, wholly within the M1-2 zoning district portion of the building, in a portion of the cellar level of an existing two- (2) story plus mezzanine and cellar commercial building with accessory parking, contrary to ZR § 42-10; *on condition* that all work shall substantially conform to drawings filed with this application marked

“Received August 1, 2018”—Twelve (12) sheets; and *on further condition*:

THAT the term of the PCE grant shall expire on November 20, 2028;

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

THAT accessibility compliance under Local Law 58/87 shall 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 certificate of occupancy, indicating the subject approval and calendar number (“BSA Cal. No. 2017-305-BZ”), shall be obtained within four (4) years, by November 20, 2022;

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 20, 2018.

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2018-133-BZ

CEQR #19-BSA-022M

APPLICANT – Sahn Ward Coschignano, PLLC, for 450 Partners LLC c/o Brookfield Properties, Inc., owner; Peloton Interactive, Inc., lessee.

SUBJECT – Application August 7, 2018 – Special Permit (§73-36) to permit the operation of a physical culture establishment (fitness facility) on a portion of the first and second floor of an existing building contrary to ZR §32-10. C6-4 Special Hudson Yards District.

PREMISES AFFECTED – 450 West 33rd Street, Block 729, Lot 9001 (aka 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, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:0

THE RESOLUTION –

WHEREAS, the decision on behalf of the Department of Buildings (“DOB”), dated July 10, 2018, acting on DOB Application No. 121184725, reads in pertinent part:

Proposed physical cultural establishment is not permitted as-of-right in C6-4 zoning district per ZR 32-30, and therefore requires a special permit from the Board of Standards and Appeals pursuant to ZR 73-36; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to permit, on a site located in an C6-4 zoning district and in the Special Hudson Yards District, a physical culture establishment (“PCE”) on portions of the first and second floor of an existing 15-story plus cellar and mezzanine commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on November 20, 2018, after due notice by publication in *The City Record*, and then to decision on that same date; and

WHEREAS, Community Board 4, 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 southeast corner of West 33rd Street and Tenth Avenue, in a C6-4 zoning district in the Special Hudson Yards District, in Manhattan; and

WHEREAS, the site has approximately 302 feet of frontage, 455 feet of depth, 137,352 square feet of lot area, and is occupied by a 15-story plus cellar and mezzanine commercial building, in which the subject PCE is to be located; and

WHEREAS, the Board has exercised jurisdiction over the subject site since December 5, 1972, when, under BSA Cal. No. 590-72-A, the Board granted an appeal of the decision of the Fire Commissioner, of Order No. 72-1634, regarding the storage of gasoline and fueling of motor vehicles on site, on condition that the 15th floor substantially comply to the drawings marked “Received October 25, 1972,” one (1) sheet, and that all laws, rules and regulations be complied with; and

WHEREAS, on October 29, 1974, under BSA Cal. No. 148-74-A, the Board granted an appeal of the decision of the Fire Commissioner, of Violation Order B-930898, regarding stair re-entry requirements, on condition that re-entry be provided on the fifth, eighth, and twelfth floors of the premises, the building substantially conform to drawings marked “Received March 11, 1974—5 Sheets,” and all laws, rules and regulations be complied with; and

WHEREAS, on May 20, 1975, under BSA Cal. No. 148-74-A, the Board corrected its October 29, 1974 resolution to reflect re-entry to be provided on the fifth, eighth, and eleventh floors on condition that the building substantially conform to drawings marked “Received March 11, 1974—5 Sheets,” and all laws, rules and regulations be complied with; 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 1* 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

1 Words in *italics* are defined in Section 12-10 of the Zoning Resolution.

MINUTES

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, the applicant represents that, 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 applicant represents that the proposed PCE will occupy 25,288 square feet of floor area at the subject site, comprised of 15,761 square feet of floor area on the first floor with a treadmill studio, spin cycling studio, rowing studio, a space for yoga, flex and auxiliary exercises, a lounge, locker rooms, bathrooms, showers, mechanical spaces, and reception; and, 9,527 square feet of floor area on

the second floor with an accessory retail showroom, a lounge, locker rooms with bathrooms and showers, mechanical spaces, and a laundry room; and

WHEREAS, the applicant submits that the proposed PCE will operate as “Peleton” with the following hours of operation: Monday through Friday, 5:30 a.m. to 9:45 p.m.; and, Saturday and Sunday, 7:00 a.m. to 8:00 p.m.; and

WHEREAS, the applicant provided evidence that the PCE space will provide sound mitigation measures to ensure a high level of noise isolation and vibration isolation; specifically, all of the studios will be constructed as boxes-within-boxes with floating concrete floor slabs on jack-up spring-isolators, isolated partitions, full-height secondary wall enclosures, noise-barrier ceilings, acoustic column enclosures, sound absorbing wall and ceiling treatments, rubber flooring, acoustically rated doors with a rating of STC 54+, and, minimized through-penetrations for ducts and lighting in the isolated ceiling; 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 the PCE is compatible with the mixed-use nature of the neighborhood, which is characterized by offices, residences, industrial and utility, transportation, and mixed-use buildings, and the applicant does not anticipate the PCE to draw any additional traffic to the area; 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 represents that the PCE will contain facilities for classes, instruction and programs for physical improvement utilizing instructed treadmill, spin cycle, and row machine exercises, and exercise classes; and

WHEREAS, accordingly, 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 submits that the PCE space will be protected with a wet sprinkler system, and an approved interior fire alarm system—including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms, and a connection of the interior fire alarm system to an FDNY-approved central station—will be installed within the PCE space; and

WHEREAS, by letter dated November 17, 2018, the Fire Department states that it has no objection to this application and confirmed that the building has fire alarm, sprinkler and standpipe systems, all of which were tested satisfactory and have current permits; an application for an

MINUTES

operating permit (PA 123456369) has been filed with the DOB and is awaiting approval pending the Board's decision; and, once granted, units of the Bureau of Fire Prevention will be notified and perform the required inspections; and

WHEREAS, the applicant represents that the PCE will not impact the privacy, quiet, light and air of the neighborhood on account that it is located entirely within an existing building, and the proposed isolated acoustic construction will prevent sound and vibration from impacting adjoining tenants and properties; 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, 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. 19-BSA-022M, dated August 9, 2018; and

WHEREAS, based upon its review of the record, the Board finds that the requested special permit, permitting the proposed PCE space on the first and second floor, is appropriate, 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, §§ 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 within a C6-4 zoning district and in the Special Hudson Yards district, a physical culture establishment on portions of the first, and second floor of an existing 15-story plus cellar and mezzanine commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked Received July 26, 2018"– Fourteen (14) sheets; and *on further condition*:

THAT the term of the PCE grant shall expire on November 20, 2028;

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

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

THAT the sprinkler system shall be installed and maintained as indicated on the Board-approved plans;

THAT an approved fire alarm system—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—shall be installed and

maintained within the 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 the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, indicating this approval and calendar number ("BSA Cal. No. 2018-133-BZ") shall be obtained within four (4) years, by November 20, 2022;

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 20, 2018.

231-15-BZ

APPLICANT – Mitchell S. Ross, Esq., for Destem Realty and Petra Broadway, LLCs, owner.

SUBJECT – Application September 25, 2015 – Variance (§72-21) Propose nine story, mixed use (residential, community facility and retail building) 120 unit multiple dwelling with UG 4 doctor's office, and UG 6 retail pharmacy, contrary to ZR 22-10 (UG 6 in a Res ZD), ZR 23-145 (Residential Floor Area), ZR 23-22 (Permitted Dwelling Units), and ZR 23-633 (wall height and total height). R6 zoning district.

PREMISES AFFECTED – 5278 Post Road, Block 5835, Lot(s) 3055/3060, Borough of Bronx.

COMMUNITY BOARD #8BX

ACTION OF THE BOARD – Laid over to February 26, 2019, at 10 A.M., for postponed hearing.

2017-258-BZ

APPLICANT – Eric Palatnik, P.C., for Aftab Hussain, owner.

SUBJECT – Application September 1, 2017 – 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.

PREMISES AFFECTED – 6161 Broadway, Block 5814, Lot 1182, Borough of Bronx.

COMMUNITY BOARD #8BX

MINUTES

ACTION OF THE BOARD – Laid over to February 12, 2019, at 10 A.M., for continued hearing.

2018-95-BZ

APPLICANT – Sheldon Lobel, P.C., for HASC Center, Inc., owner.

SUBJECT – Application May 22, 2018 – Variance (§72-21) to permit the development of a four-story educational institution (UG 3) (HASC Center) contrary to ZR §23-142 (floor area and lot coverage), ZR §23-45 (front yard), ZR §23-631 (height and setback), ZR §23-632 (side setback), and ZR §36-21 (parking). C2-3/R5 Special Ocean Parkway District.

PREMISES AFFECTED – 120 Avenue M, Block 6564, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #12BK

ACTION OF THE BOARD – Laid over to February 12, 2019, at 10 A.M., for continued hearing.

Carlo Costanza, Executive Director

BULLETIN

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Tuesday, December 4, 2018**

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DOCKETS

New Case Filed Up to December 4, 2018

2018-184-A

87-15 Palermo Street, Palermo Street/Dunton Avenue/Clover Place/Clover Hill Road/Foothill Avenue, Block 10509, Lot(s) 54, Borough of **Queens, Community Board: 8**. Proposed construction of six two-story, single-family detached residential buildings seeking waivers of General City Law §§ 35 & 36, two of which are partially within the bed of a mapped but unbuilt portion of Clover Place, which runs through the Premises, and four of which do not front on a mapped street, but instead will be accessed by a 30-foot wide access driveway that connects Palermo Street to Clover Hill Road. R1-2 zoning district R1-2 district.

2018-185-A

87-19 Palermo Street, Palermo Street/Dunton Avenue/Clover Place/Clover Hill Road/Foothill Avenue, Block 10509, Lot(s) 154, Borough of **Queens, Community Board: 8**. Proposed construction of six two-story, single-family detached residential buildings seeking waivers of General City Law §§ 35 & 36, two of which are partially within the bed of a mapped but unbuilt portion of Clover Place, which runs through the Premises, and four of which do not front on a mapped street, but instead will be accessed by a 30-foot wide access driveway that connects Palermo Street to Clover Hill Road. R1-2 zoning district R1-2 district.

2018-186-A

87-23 Palermo Street, Palermo Street/Dunton Avenue/Clover Place/Clover Hill Road/Foothill Avenue, Block 10509, Lot(s) 156, Borough of **Queens, Community Board: 8**. Proposed construction of six two-story, single-family detached residential buildings seeking waivers of General City Law §§ 35 & 36, two of which are partially within the bed of a mapped but unbuilt portion of Clover Place, which runs through the Premises, and four of which do not front on a mapped street, but instead will be accessed by a 30-foot wide access driveway that connects Palermo Street to Clover Hill Road. R1-2 zoning district R1-2 district.

2018-187-A

87-27 Palermo Street, Palermo Street/Dunton Avenue/Clover Place/Clover Hill Road/Foothill Avenue, Block 10509, Lot(s) 57, Borough of **Queens, Community Board: 8**. Proposed construction of six two-story, single-family detached residential buildings seeking waivers of General City Law §§ 35 & 36, two of which are partially within the bed of a mapped but unbuilt portion of Clover Place, which runs through the Premises, and four of which do not front on a mapped street, but instead will be accessed by a 30-foot wide access driveway that connects Palermo Street to Clover Hill Road. R1-2 zoning district R1-2 district.

2018-188-A

194-28 Dunton Avenue, Palermo Street/Dunton Avenue/Clover Place/Clover Hill Road/Foothill Avenue, Block 10509, Lot(s) 160, Borough of **Queens, Community Board: 8**. Proposed construction of six two-story, single-family detached residential buildings seeking waivers of General City Law §§ 35 & 36, two of which are partially within the bed of a mapped but unbuilt portion of Clover Place, which runs through the Premises, and four of which do not front on a mapped street, but instead will be accessed by a 30-foot wide access driveway that connects Palermo Street to Clover Hill Road. R1-2 zoning district R1-2 district.

2018-189-A

194-32 Dunton Avenue, Palermo Street/Dunton Avenue/Clover Place/Clover Hill Road/Foothill Avenue, Block 10509, Lot(s) 61, Borough of **Queens, Community Board: 8**. Proposed construction of six two-story, single-family detached residential buildings seeking waivers of General City Law §§ 35 & 36, two of which are partially within the bed of a mapped but unbuilt portion of Clover Place, which runs through the Premises, and four of which do not front on a mapped street, but instead will be accessed by a 30-foot wide access driveway that connects Palermo Street to Clover Hill Road. R1-2 zoning district R1-2 district.

DOCKETS

2018-190-A

32-18 Union Street, Located on the west side of Union Street between 32nd Avenue and 33rd Avenue, Block 4954, Lot(s) 0035, Borough of **Queens, Community Board: 7.** Common Law Vesting application requesting that the Board determine that the property owner secured a vested right to complete construction of a proposed development under the prior R6 zoning prior to a rezoning which occurred on April 22, 2009. R5D zoning district. R5D district.

2018-191-BZ

215 North 10th Street, Located on the northwest corner of North 10th Street and Roebling Street, Block 2299, Lot(s) 0021, Borough of **Brooklyn, Community Board: 1.** Special Permit (§73-44) to permit a reduction in the required parking spaces for offices (UG 6B) with an PRC-B1 parking category within a proposed development of a new mixed use residential, office and retail building contrary to ZR §36-21. M1-2/R6A (MX-8) zoning district. M1-2/R6A (MX-8) district.

2018-192-BZ

229 Lennox Avenue, Located between West 121st Street and West 122nd Street, Block 1906, Lot(s) 0032, Borough of **Manhattan, Community Board: 10.** Variance (§72-21) to permit the legalization of a conversion of an existing mixed-use building to a two-home in which the glanced windows and doors facing the rear lot line do not comply with the minimum distance for legally required windows for natural light and ventilation contrary to ZR 23-861. C1-4/R7-2 zoning district. R7-2/C1-4 district.

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

CALENDAR

**REGULAR MEETING
JANUARY 15, 2019, 10:00 A.M.**

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, January 15, 2019, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

SPECIAL ORDER CALENDAR

645-59-BZ

APPLICANT – Eric Palatnik, P.C., for Blue Hills Fuels, LLC, owner; PMG Northeast, LLC, lessee.
SUBJECT – Application September 27, 2018 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of an Automotive Service Station (UG 16B) which expired on October 7, 2015; Waiver of the Board’s Rules. C2-3/R5 zoning district.
PREMISES AFFECTED – 10824 Flatlands Avenue, Block 8235, Lot 2, Borough of Brooklyn.
COMMUNITY BOARD #18BK

58-99-BZ

APPLICANT – Eric Palatnik, P.C., for Blue Hills Fuels, LLC, owner; PMG Northeast, LLC, lessee.
SUBJECT – Application September 25, 2018 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of an automotive service station (UG 16B) with accessory automotive repair which expires on October 26, 2019. C1-2/R3-2 zoning district.
PREMISES AFFECTED – 18-10 Utopia Parkway, Block 5743, Lot 75, Borough of Queens.
COMMUNITY BOARD #7Q

159-07-BZ

APPLICANT – Eric Palatnik, P.C., for AYRES Associates and MG Stillwell 86th LLC, owner; Dolphin Fitness Club, lessee.
SUBJECT – Application September 28, 2018 – Extension of Time to Obtain a final Certificate of Occupancy a previously approved Special Permit (§73-36) which allowed a physical cultural establishment (*Dolphin Fitness Club*) which expired on October 28, 2015; Waiver of the Board’s Rules. C8-2 zoning district.
PREMISES AFFECTED – 2402 86th Street, Block 6864, Lot 37, Borough of Brooklyn.
COMMUNITY BOARD #11BK

93-08-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for LGA Hospitality LLC, owner.
SUBJECT – Application September 14, 2018 – Extension of Time to Complete Construction of a Variance (§72-21) permitting the construction of a six-story transient hotel (UG 5) which expired on June 4, 2017; Waiver of the Board’s Rules.
PREMISES AFFECTED – 113-16 Astoria Boulevard, Block 1706, Lot 11, Borough of Queens.
COMMUNITY BOARD #3Q

245-15-BZ

APPLICANT – Eric Palatnik, P.C., for New York Communications Center Assoc., LP c/o SL Green Realty Corp., owner.
SUBJECT – Application September 27, 2018 – Extension of Time to Obtain a final Certificate of Occupancy a previously approved Special Permit (§73-36) which allowed a physical cultural establishment (TMPL Gym) which expired on November 1, 2017; Waiver of the Board’s Rules. C6-4 Special Clinton District.
PREMISES AFFECTED – 350 West 50th Street, Block 1040, Lot(s) 1002, 1003, Borough of Manhattan.
COMMUNITY BOARD #4M

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 July 27, 2018 – Amendment of a previously approved Special Permit (§73-36) which permitted the operation of a physical culture establishment (Four Seasons Hotel New York Downtown) on a portion of the first and third floors of a mixed-use hotel and residential building. The amendment seeks to permit the expansion of the use include an existing accessory fitness center, dance studio and pool on the third-floor level for a total of 18,980 square feet. C5-3 (LM) zoning district.
PREMISES AFFECTED – 27 Barclay Street, Block 123, Lot(s) 1101-1260, 3, 18, Borough of Manhattan.
COMMUNITY BOARD # 1M

CALENDAR

REGULAR MEETING JANUARY 15, 2019, 1:00 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, January 15, 2019, 1:00 P.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

ZONING CALENDAR

2017-34-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Cee Jay Real Estate Development Corp., owner.

SUBJECT – Application February 3, 2017 – 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 (Plantings on Corner Lots). R3-1 zoning district.

PREMISES AFFECTED – 311 Adams Avenue, Block 3679, Lot 29, Borough of Staten Island.

COMMUNITY BOARD #2SI

2017-98-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Riverside Center Parcel 2 BIT Associates, LLC, owner; SoulCycle 21 West End Avenue, LLC, lessee.

SUBJECT – Application March 29, 2017 – Special Permit (§73-36) to operate a physical culture establishment (*SoulCycle*) within an existing building. C4-7 zoning district.

PREMISES AFFECTED – 21 West End Avenue, Block 1171, Lot 164, Borough of Manhattan.

COMMUNITY BOARD #7M

2017-270-BZ

APPLICANT – Edward Lauria, P.E., for Daniel Apice, owner.

SUBJECT – Application September 21, 2017 – 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.

PREMISES AFFECTED – 1434 Utica Avenue, Block 4784, Lot 44, Borough of Brooklyn.

COMMUNITY BOARD #17BK

2018-21-BZ

APPLICANT – Law Office of Lyra J. Altman, for Saeed Azarfar, owner.

SUBJECT – Application February 13, 2018 – Special Permit (§73-622) to permit the enlargement of an existing single-family home contrary to ZR §23-141 (floor area, open space and lot coverage) and ZR §23-461(a) (required side yard). R3-2 zoning district.

PREMISES AFFECTED – 1773 East 22nd Street, Block 6805, Lot 78, Borough of Brooklyn.

COMMUNITY BOARD #15BK

2018-33-BZ

APPLICANT – Arthur Yellin, for Luisa E. McLennan Benedy, owner.

SUBJECT – Application March 5, 2018 – Variance (§72-21) to permit the construction of a two-family home contrary to ZR §22-00 (building with no side yards); ZR §23-32 (required minimum lot area or width for residences); ZR §23-461(a) (side yards); ZR §23-142 (open space and FAR) and ZR §25-22(a) (parking). R4-1 zoning district.

PREMISES AFFECTED – 31-41 97th Street, Block 1409, Lot 48, Borough of Queens.

COMMUNITY BOARD #3Q

2018-39-BZ

APPLICANT – Law Office of Lyra J. Altman, for Jackie Cohen-Arazi, owner.

SUBJECT – Application March 16, 2018 – Special Permit (§73-622) to permit the enlargement of a one family home contrary to ZR §23-141 (FAR and Open Space); ZR §23-461 (a) (side yard) and ZR §23-47 (rear yard). R2 zoning district.

PREMISES AFFECTED – 1249 East 23rd Street, Block 7641, Lot 23, Borough of Brooklyn.

COMMUNITY BOARD #14BK

2018-98-BZ

APPLICANT – Akerman LLP, for GC Cross Bay Realty LLC, owner; 140 Cross Bay Boulevard Fitness Group, LLC, lessee.

SUBJECT – Application May 24, 2018 – Special Permit (§73-36) to operate a physical culture establishment (*Planet Fitness*) on a portion of the ground floor and the entire second floor of an existing commercial building contrary to ZR §32-10. C2-2/R3-1 zoning district.

PREMISES AFFECTED – 160-10 Cross Bay Boulevard, Block 14030, Lot(s) 6, 20, Borough of Queens.

COMMUNITY BOARD #10Q

CALENDAR

2018-104-BZ

APPLICANT – Law Office of Lyra J. Altman, for Daniella Karfunkel and Robert Karfunkel, owners.

SUBJECT – Application June 28, 2018 – Special Permit (§73-622) to permit the enlargement of an existing single-family home, contrary to floor area and open space (§23-141); side yard requirements (§23-461) and less than the required rear yard (§23-47). R2 zoning district.

PREMISES AFFECTED – 1234-1238 East 22nd Street, Block 7621, Lot(s) 72 and 74, Borough of Brooklyn.

COMMUNITY BOARD #14BK

Carlo Costanza, Executive Director

MINUTES

**REGULAR MEETING
TUESDAY MORNING, DECEMBER 4, 2018
10:00 A.M.**

Present: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.

SPECIAL ORDER CALENDARS

24-96-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Legaga LLC, owner.

SUBJECT – Application January 23, 2018 – Extension of Term (11-411) of a previously approved variance permitting the operation of an Eating and Drinking Establishment (*McDonald's*) which expired on October 7, 2017; Extension of Time to obtain a Certificate of Occupancy which expired on July 15, 2015; Waiver of the Rules. R7-2 zoning district. PREMISES AFFECTED – 213 Madison Street, Block 271, Lot 40, 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 Sheta and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, this is an application for a waiver of the Board's Rules of Practice and Procedure, reopening, an extension of term to a previously granted variance, which expired on October 7, 2017, and an extension of time to obtain a certificate of occupancy, which expired on July 15, 2015; and

WHEREAS, a public hearing was held on this application on August 7, 2018, after due notice by publication in *The City Record*, with a continued hearing on October 23, 2018, and then to decision on December 4, 2018; and

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

WHEREAS, the subject site is located on the north side of Madison Street, between Rutgers Street and Jefferson Street, in an R7-2 zoning district, in Manhattan; and

WHEREAS, the site has approximately 26 feet of frontage, 100 feet of depth, 2,612 square feet of area and is occupied by a one-story plus cellar eating and drinking establishment (Use Group ("UG") 6); and

WHEREAS, the Board has exercised jurisdiction over

the subject site since April 19, 1955, when, under BSA Cal. No. 664-54-BZ, the Board granted a variance to permit, in a residence district, the construction and use of a one-story plus cellar retail store for a term of 15 years, expiring April 19, 1970, on condition that the building not be higher than proposed; that a rear yard of the depth shown be maintained at the rear; in all other respects the building and occupancy comply with all laws, rules and regulations applicable thereto; the use of such building and the cellar be as permitted in a local retail district; suitable fences be maintained along the lot lines at the rear and either side beyond the building; signs be restricted to such signs as would be permitted in a local retail district; and all permits required be obtained, including a certificate of occupancy and all work completed within one (1) year, by April 19, 1956; and

WHEREAS, on October 7, 1997, under the subject calendar number, the Board granted an application, pursuant to ZR § 11-411 to re-establish and extend the term of the expired variance, granted under BSA Cal. No. 664-54-BZ, which permitted a one-story retail store (UG6), on condition that all work substantially conform to drawings as they apply to the objections cited in the application; the term of the variance be limited to ten (10) years, to expire on October 7, 2007; a rear yard no less than 14'-2" in depth be provided in accordance with the BSA-approved plans, which yard will be maintained free and clear of debris and any other encroachments; the premises be maintained clean and free of graffiti; signage at the premises conform to C1 district regulations; the above conditions appear on the certificate of occupancy; the development, as approved, be subject to verification by the Department of Buildings for compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under the jurisdiction of the Department; and a certificate of occupancy be obtained within one (1) year, by October 7, 1996; and

WHEREAS, on November 18, 2008, under the subject calendar number, the Board waived its Rules of Practice and Procedure, approved an amendment to the variance legalizing a change in use from UG 6 retail store to a UG 6 eating and drinking establishment, and granted an extension of term for a period of ten (10) years, to expire on October 7, 2017, on condition that any and all use substantially conform to drawings as they apply to the objections cited in the application; a rear yard no less than 11 feet in depth be provided in accordance with BSA-approved plans, which yard will be maintained free and clear of debris and any other encroachments; the premises be maintained clean and free of graffiti; all signage comply with C1 district regulations; the above conditions be listed on the certificate of occupancy; a certificate of occupancy be obtained by May 18, 2009; all conditions from prior resolutions not specifically waived by the Board remain in effect; the approval be limited to the relief granted in response to specifically cited and filed DOB/other jurisdiction objection(s) only; the approved plans be considered

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

WHEREAS, on July 22, 2014, under the subject calendar number, the Board waived its Rules of Practice and Procedure, reopened, and granted an extension of time to obtain a certificate of occupancy, on condition that any and all use will substantially conform to drawings associated with the prior approval; the grant will expire on October 7, 2017; a rear yard no less than 11 feet in depth be provided in accordance with BSA-approved plan and be maintained free and clear of debris and any other encroachments; the premises be maintained clean and free of graffiti; all signage comply with C1 district regulations; the above conditions and all other relevant conditions from prior approvals will be listed on the certificate of occupancy; a certificate of occupancy be obtained by July 15, 2015; all conditions from prior resolutions not specifically waived by the Board remain in effect; the approval be limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; the approved plans be considered approved only for the portions related to the specific relief granted; and the Department of Buildings 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; and

WHEREAS, the term of the variance and the time to obtain a certificate of occupancy having expired, the applicant seeks an extension of the term of the variance and an extension of time to obtain a certificate of occupancy; and

WHEREAS, the applicant additionally requests waivers, pursuant to § 1-14.2 of the Board's Rules of Practice and Procedure, of Rules §§ 1-07.3(b)(2) and 1-07.3(d)(2) to permit the filing of this application less than two (2) years after the expiration of the term, and more than 30 days after the expiration of the time to obtain a certificate of occupancy; and

WHEREAS, the applicant represented that the use has been continuous since expiration of the term, no changes in operator, operation or structure are proposed or have occurred since expiration of the term, and the site is compliant with all prior conditions imposed by the Board, with the exception of the subject relief requested; and

WHEREAS, the applicant explained that the delay in compliance was due to an issue with a prior architect and a new professional has been retained to obtain a certificate of occupancy, and estimated that the certificate of occupancy would be obtained within six (6) months to one (1) year from the date of the grant; and

WHEREAS, pursuant to ZR §11-411, the Board may, in appropriate cases, permit an extension of a term of the variance previously authorized pursuant to the 1916 Zoning

Resolution; and

WHEREAS, over the course of the hearings, the Board expressed concerns regarding the presence of illegal flag signs and flag support structures on the front of the building; and

WHEREAS, in response, the applicant provided photographs to demonstrate that the flags and flag structures were removed; and

WHEREAS, by letter dated October 3, 2018, the Fire Department stated that it had no objection to this application and noted that a review of Fire Department records show that the operating permit for the rangehood system has expired, and recommends that the applicant have their client contact the Fire Department to renew the operating permit for their rangehood system; and the Fire Department will inform the Board once the permits have been updated; and

WHEREAS, the Board finds that the requested extension of term and extension of time to obtain a certificate of occupancy are appropriate, subject to conditions 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 October 7, 1997, as amended through July 22, 2014, 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, and an extension of time to obtain a certificate of occupancy; and *on condition* that all work and site conditions shall conform to drawings filed with this application marked "Received November 15, 2018"-Six (6) sheets; and *on further condition*:

THAT the term of this grant shall expire on October 7, 2027;

THAT the rear yard, which ranges in depth from 10'-10.5" to 11'-5.57", shall be maintained free and clear of debris and any other encroachments;

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

THAT all signage shall comply with C1 zoning regulations;

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 indicating this approval and calendar number ("BSA Cal. No. 24-96-BZ") shall be obtained within one (1) year, by December 4, 2019; and

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

Adopted by the Board of Standards and Appeals, December 4, 2018.

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490-72-BZ

APPLICANT – Gerald J. Caliendo, RA, AIA, for Eran Gohari, owner.

SUBJECT – Application June 27, 2017 – Amendment of a previously approved Variance (§72-21) which permitted the operation of a commercial bank (UG 6). The amendment seeks to permit a change in use from commercial bank to retail grocery store (UG 6); Extension of Term which expired on March 13, 2008; Waiver of the Rules. R4 zoning district.

PREMISES AFFECTED – 4200 Baychester Avenue, Block 5023, Lot 29, Borough of Bronx.

COMMUNITY BOARD #12BX

ACTION OF THE BOARD – Laid over to February 5, 2019, at 10 A.M., for continued hearing.

332-79-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Northern Spots LLC, owner.

SUBJECT – Application June 11, 2018 – Extension of Term of a previously approved Variance (§72-21) which permitted the construction and maintenance of an accessory parking facility which expired on February 13, 2015; Waiver of the Board’s Rules. R2A zoning district.

PREMISES AFFECTED – 43-20 Little Neck Parkway, Block 8129, Lot 44, Borough of Queens.

COMMUNITY BOARD #11Q

ACTION OF THE BOARD – Laid over to April 30, 2019, at 10 A.M., for continued hearing.

85-99-BZ

APPLICANT – Walter T. Gorman, P.E., P.C., for Silvestre Petroleum Corp., owner; Mobil Oil Corporation, lessee.

SUBJECT – Application March 12, 2018 – Extension of Term of a previously approved Variance (§72-21) permitting the operation of an automotive service station (Use Group 16B) with an accessory convenience store which is set to expire on June 27, 2020; Waiver of the Board’s Rules to permit the early filing. R6 zoning district.

PREMISES AFFECTED – 1106 Metcalf Avenue, Block 3747, Lot 88, Borough of Bronx.

COMMUNITY BOARD #9BX

ACTION OF THE BOARD – Laid over to April 30, 2019, at 10 A.M., for continued hearing.

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 3rd Avenue, Block 980, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #6BK

ACTION OF THE BOARD – Laid over to January 29, 2019, at 10 A.M., for continued hearing.

223-00-BZ

APPLICANT – Sheldon Lobel, P.C., for Village Community School, owner.

SUBJECT – Application July 2, 2018 – Amendment of a previously approved variance (§72-21) which permitted the development of a five-story plus cellar Use Group (“UG”) 3 School (Village Community School) (VCS). The amendment seeks to permit a three-story plus cellar and play-yard enlargement contrary ZR §24-11 (maximum permitted lot coverage). R6 zoning district.

PREMISES AFFECTED – 272 West 10th Street, Block 630, Lot(s) 9& 10, Borough of Manhattan.

COMMUNITY BOARD #2M

ACTION OF THE BOARD – Laid over to April 30, 2019, at 10 A.M., for continued hearing.

177-06-BZ

APPLICANT – Law Office of Steven Simicich, for 1840 EMAB, LLC, owner.

SUBJECT – Application September 27, 2018 – Extension of Term (§11-411) to permit the continued operation of an Automotive Repair Facility (UG 16B) with the sale of cars which expired on April 10, 2017; Amendment to permit the conversion of accessory storage area into an additional automotive service bay and changes to on-site planting; Waiver of the Board’s Rules. C2-2R3-2 zoning district.

PREMISES AFFECTED – 1840 Richmond Terrace, Block 201, Lot 32, Borough of Staten Island.

COMMUNITY BOARD #1SI

ACTION OF THE BOARD – Laid over to April 30, 2019, at 10 A.M., for continued hearing.

67-13-A

APPLICANT – NYC Department of Buildings, for ESS PRISA II LLC, owner; OTR Media, lessee.

SUBJECT – Application June 8, 2018 – Request for a Rehearing to provide new evidence to demonstrate that the advertising sign never existed at the premises as of November 1, 1979, and therefore was never granted legal non-conforming status pursuant to ZR §42-55.

PREMISES AFFECTED – 945 Zerega Avenue, Block 3700, Lot 31, Borough of Bronx.

COMMUNITY BOARD #9X

ACTION OF THE BOARD – Laid over to January 29, 2019, at 10 A.M., for adjourned hearing.

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67-13-AIV

APPLICANT – Goldman Harris LLC, for ESS Prisa II LLC, owner; OTR Media Group, Inc. & OTR 945 Zerega LLC, lessee.

SUBJECT – Application June 12, 2018 – Appeal of Department of Building’s determinations *a) denying the registration for an advertising sign located at 945 Zerega Avenue, Bronx, NY; and (b) revoking permit numbers 201143253 and 210039224 for the aforementioned sign. This is a remand from New York State Supreme Court limited to review of the BSA’s prior resolution in light of its decision in BSA Calendar Numbers 24-12-A and 147-12-A.

PREMISES AFFECTED – 945 Zerega Avenue, Block 3700, Lot 31, Borough of Bronx.

COMMUNITY BOARD #9BX

ACTION OF THE BOARD – Laid over to January 29, 2019, at 10 A.M., for adjourned hearing.

231-14-BZ

APPLICANT – Bryan Cave Leighton Paisner, for Orangetheory Fitness, owner; OTF Man One LLC c/o dba Orange Theory Fitness, lessee.

SUBJECT – Application May 11, 2018 – Extension of Term of a previously approved Special Permit (§73-36) which permitted the operation of a physical culture establishment (Orangetheory Fitness) within a portion of an existing commercial building which expired on April 12, 2018. C6-3X zoning district.

PREMISES AFFECTED – 124 West 23rd Street, Block 798, Lot 7507, Borough of Manhattan.

COMMUNITY BOARD #4M

ACTION OF THE BOARD – Laid over to February 26, 2019, at 10 A.M., for continued hearing.

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 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 February 26, 2019, at 10 A.M., for adjourned hearing.

2017-16-A thru 2017-19-A

APPLICANT – Gerald J. Caliendo, RA, AIA, for Mario Ferazzoli, owner.

SUBJECT – Application January 18, 2017 – 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.

PREMISES AFFECTED – 15-58/62 Clintonville Street, 150-93/95 Clintonville Court, Block 4699, Lot(s) 20, 21, 23 & 24, Borough of Queens.

COMMUNITY BOARD #7Q

ACTION OF THE BOARD – Laid over to February 26, 2019, at 10 A.M., for adjourned hearing.

2017-248-A

APPLICANT – Tarter Krinsky & Drogin LLP, for New York Central Line, owner; Outfront Media, LLC, lessee.

SUBJECT – Application August 28, 2017 – 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.

PREMISES AFFECTED – Long Island Expressway and 74th Street, Block 2814, Lot 4, Borough of Queens.

COMMUNITY BOARD #5Q

ACTION OF THE BOARD – Laid over to January 15, 2019, at 10 A.M., for adjourned hearing.

2018-105-A

APPLICANT – Gerald J. Caliendo, RA, AIA, for Mario Ferazzoli, owner.

SUBJECT – Application July 3, 2018 – 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.

PREMISES AFFECTED – 150-87 Clintonville Court, Block 4699, Lot(s) 22, Borough of Queens.

COMMUNITY BOARD #7Q

ACTION OF THE BOARD – Laid over to February 26, 2019, at 10 A.M., for adjourned hearing.

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ZONING CALENDAR

2017-289-BZ & 252-06-BZ & CEQR #18-BSA-050X

APPLICANT – Sheldon Lobel, P.C., for MHSP Walton Owner LLC, owner.

SUBJECT – Application October 27, 2017 –

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).

Amendment of a previously approved Variance (§72-21) which permitted the construction of a four-story Use Group 4 community center facility contrary to underlying bulk regulations. The amendment seeks to allow for a modified design of the gymnasium building approved in the original variance. R8 zoning district.

PREMISES AFFECTED – 1761 Walton Avenue, Block 2850, Lot(s) 34, 38, 63 & 160, 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 Sheta and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated October 11, 2017, acting on New Building Application No. 220152607, reads in pertinent part:

“Proposed distance between the wall of the existing building and legally required windows in the proposed development is below the required distance of 50 feet contrary to ZR § 23-711.

“Proposed base height and building height exceed the maximum heights permitted pursuant to ZR § 23-662”; and

WHEREAS, this is an application under ZR §§ 73-623 and 73-03 to permit, in an R8 zoning district, the development of a fourteen-story, with cellar, mixed-use residential and community-facility building that does not comply with zoning regulations for window-wall distance and height, contrary to ZR §§ 23-711 and 23-662, and an application for an amendment to a variance, previously granted by the Board, to permit modifications to the design of the gymnasium building; and

WHEREAS, a public hearing was held on this

application on July 24, 2018, after due notice by publication in *The City Record*, with continued hearing on October 11, 2018, and then to decision on December 4, 2018; and

WHEREAS, Chair Perlmutter, Commissioner Ottley-Brown and Commissioner Scibetta performed inspections 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 Townsend Avenue and East 175th Street, with frontage along the west side of Walton Avenue, in an R8 zoning district, in the Bronx; and

WHEREAS, the subject site has approximately 125 feet of frontage along Walton Avenue, 140 feet of frontage along Townsend Avenue, 100 feet of frontage along East 175th Street, 26,500 square feet of lot area and is occupied by a four-story community-facility building; and

Whereas, the Board has exercised jurisdiction over the subject site since January 9, 2007, when, under BSA Calendar Number 252-06-BZ, the Board granted a variance to permit the development of a four-story community-facility building (Use Group 4) on condition that the total floor area not exceed 41,985 square feet (1.58 FAR), as illustrated on the Board-approved drawings; and

Whereas, the applicant now seeks a special permit under ZR §§ 73-623 and 73-03 to permit the development of a fourteen-story, with cellar, mixed-use residential and community-facility building with a window-wall distance of 40 feet between the existing community-facility building and the third, fourth and fifth stories of the proposed building and with a base height of 100’-8” and a building height of 138’-0”;

and
Whereas, the applicant states that, at the subject site, a minimum window-wall distance of 50 feet is required under ZR § 23-711, and that a maximum base height of 85 feet and a maximum building height of 115 feet are permitted under ZR § 23-662; and

WHEREAS, ZR § 73-623 provides, in pertinent part:

Bulk modifications for certain Quality Housing buildings on irregular sites

For *developments* or *enlargements* of *Quality Housing buildings* in which at least 50 percent of the *dwelling units* are *income-restricted housing units*, or at least 50 percent of its total *floor area* is a *long-term care facility* or philanthropic or non-profit institution with sleeping accommodation, the Board of Standards and Appeals may modify the underlying *bulk* regulations, other than *floor area ratio*, provided that in no event shall such *building* height or the number of *stories* therein exceed those set forth in paragraph (b) of Section 23-664 (Modified height and setback regulations for certain Inclusionary Housing buildings or affordable independent residences for seniors), and provided that the Board finds that:

(a) there are physical conditions, including

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irregularity, narrowness or shallowness of lot size or shape, or topographical features that create practical difficulties in complying with the *bulk* regulations for *Quality Housing buildings* and would adversely affect the *building* configuration or site plan;

- (b) the practical difficulties of developing on the *zoning lot* have not been created by the owner or by a predecessor in title;
- (c) the proposed modifications will not unduly obstruct access of light and air to adjoining properties or *streets*;
- (d) the proposed scale and placement of the *development* or *enlargement* relates harmoniously with the surrounding area; and
- (e) the requested modification is the least amount necessary to relieve such practical difficulties.

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 preliminary matter, the applicant represents that the proposed building would include affordable housing, namely that a minimum of 50 percent of the dwelling units in the proposed building would be income-restricted housing units, as contemplated by ZR § 73-623; and

WHEREAS, by letter dated January 17, 2018, the Department of Housing Preservation and Development (“HPD”) states that the proposed residential development at the subject site is in HPD’s pipeline and as proposed is consistent with the goals set forth in Housing New York; that, at closing, the proposed development will be made subject to a regulatory agreement with HPD through 2048, during which time the development’s 103 dwelling units (not including one superintendent’s unit) will remain subject to a legally binding restriction limiting rents through the Extremely Low and Low-Income Affordability (“ELLA”) financing program; and that at closing HPD may require the proposed development to include additional units to remain affordable in perpetuity in accordance with ELLA term sheet requirements; and

WHEREAS, in support of the applicability of the subject special permit and in response to questions from the Board at hearing, the applicant proposes to record a restrictive declaration against the property stating that at least 50 percent of the dwelling units will be income-restricted housing units, as defined in ZR § 12-10, prior to the issuance of the Board’s resolution; and

WHEREAS, the applicant states that there are physical conditions, including irregularity of lot shape, that create practical difficulties in complying with bulk regulations for Quality Housing Buildings and would adversely affect the configuration of the proposed building or site plan; and

WHEREAS, more particularly, the applicant states that complying with the bulk regulations would prevent development of a gymnasium but that the proposed bulk modifications would facilitate an improved site plan; and

WHEREAS, accordingly, the Board finds that the requirements of ZR § 73-623(a) are met; and

WHEREAS, the applicant states that the above practical difficulties of developing the subject site have not been created by the owner or predecessor in title; and

WHEREAS, the applicant states that, rather, the above practical difficulties stem from the physical conditions inherent in the subject site; and

WHEREAS, accordingly, the Board finds that the requirements of ZR § 73-623(b) are met; and

WHEREAS, the applicant states that the proposed bulk modifications would not unduly obstruct access to light and air to adjoining properties or streets; and

WHEREAS, the applicant notes that the proposed building would provide a rear yard with a depth of approximately 40 feet at the interior lot to ensure adequate light and air to adjacent properties and that the proposed building would comply with the modified height and setback regulations for affordable Quality Housing buildings under ZR § 23-664 to ensure adequate light and air to Walton Avenue; and

WHEREAS, in support of this contention, the applicant submitted a shadow analysis of the proposed building, concluding that the proposed building would not affect the vitality or usage of sunlight sensitive resources (two community gardens) in the vicinity and that there would be no significant adverse impacts from shadows resulting from the proposed bulk modifications; and

WHEREAS, the applicant further analyzed potential mobile source air quality impacts, concluding that the proposed bulk modifications would not result in any significant adverse impacts related to HVAC emissions, based upon the size of the proposed building and its distance from surrounding buildings of similar or greater height; and

WHEREAS, accordingly, the Board finds that the requirements of ZR § 73-623(c) are met; and

WHEREAS, the applicant states that the proposed scale and placement of the proposed building relates harmoniously with the surrounding area; and

WHEREAS, in support of this contention, the applicant studied the surrounding area, finding that it is characterized by medium-density apartment buildings and that the proposed building will be of similar use, appearance and bulk to adjacent uses on Walton Avenue; and

WHEREAS, with respect to height, the applicant studied heights in the surrounding area, finding that there are several buildings with heights ranging from 12 to 14 stories, including a new 13-story residential building located directly across the street, a 12-story building located less than one block east of the subject site and a 14-story building located less than one block east of the subject site; and

WHEREAS, accordingly, the Board finds that the requirements of ZR § 73-623(d) are met; and

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WHEREAS, the applicant states that the proposed bulk modifications to window-wall distance and height are minimal and the minimum necessary to provide a gymnasium at the subject site; and

WHEREAS, accordingly, the Board finds that the requirements of ZR § 73-623(e) are met; and

WHEREAS, in response to questions from the Board at hearing, the applicant notes that the proposed basketball court in the gymnasium meets published design standards, including standard minimum-clearance ceiling height; and

WHEREAS, the applicant made changes to improve clearance to the basketball court and overall heights and layouts of the proposed building, including adding a dwelling unit to the second story and removing a dwelling unit from the third story, thereby dramatically improving the recreation room and access to the roof deck; and

WHEREAS, asked about the façade of proposed building, the applicant amended the drawings to reflect exterior building materials for the exterior of the proposed building, which would include cast stone, brick, stucco and precast concrete but not exterior insulation and finish system; 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 finds that the evidence in the record supports the findings required to be made under ZR §§ 73-623 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion; and

WHEREAS, additionally, the applicant seeks an amendment to the variance granted under BSA Calendar Number 252-06-BZ to permit modifications to the design of the previously approved gymnasium building; and

WHEREAS, pursuant to ZR §§ 72-01 and 72-22, the Board may, in appropriate cases, permit an amendment to a variance; and

WHEREAS, the applicant states that the proposed amendment would not implicate any additional provisions of the Zoning Resolution or increase the variances previously granted with respect to rear yard equivalents and rear yard encroachments; and

WHEREAS, the applicant states that the portions of the subject site under which the variances were granted would substantially maintain the same conditions with respect to the use of the gymnasium for indoor recreation, while the proposed amendment would facilitate minor modifications to the gymnasium design; and

WHEREAS, based upon its review of the record and the discussion herein, the Board has determined that the requested amendment is appropriate with certain conditions set forth below; and

WHEREAS, the project is classified 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 (“EAS”) CEQR No. 18BSA050X, dated November 12, 2018; 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 August 21, 2017, the New York City Landmarks Preservation Commission represents that the proposed project will not result in any significant architectural or archaeological impacts; and

WHEREAS, by letter dated July 31, 2018, the New York City Department of Environmental Protection (“DEP”) states that the proposed project will not result in significant noise impacts; and

WHEREAS, the development will use natural gas as the type of fuel for heating, ventilating and air conditioning to avoid any potential significant adverse air quality impacts; and

WHEREAS, by correspondence dated July 2, 2018, the New York City Department of Parks and Recreation represents that, regarding open space and shadows, it has no objection to this application; and

WHEREAS, by correspondence dated June 18, 2018, the New York City Department of City Planning represents that, with respect to potential impacts on community facilities, it has no objection to this application; and

WHEREAS, by correspondence dated July 31, 2018, DEP states that the Phase II Environmental Site Assessment and Health and Safety Plan for the proposed investigation are acceptable and requests that a detailed Phase II report be submitted to DEP for review and approval; and

WHEREAS, by correspondence dated October 4, 2018, the applicant requests that an (E) designation for hazardous materials be assigned to the subject site to allow for the Phase II work to be done after Board approval due to physical, financial and scheduling reasons; and

WHEREAS, by correspondence dated October 5, 2018, the Department of Environmental Protection states that it has no objection to assigning an (E) designation for this application; and

WHEREAS, an (E) designation (No. E-508) has been placed on the site for hazardous materials and an environmental review by the New York City Office of Environmental Remediation (“OER”) must be satisfied prior to the issuance of building permits to facilitate the

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construction of the proposed building; 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 §§ 73-623 and 73-03 *to permit*, in an R8 zoning district, the development of a fourteen-story, with cellar, mixed-use residential and community-facility building that does not comply with zoning regulations for window-wall distance and height, contrary to ZR §§ 23-711 and 23-662, and does hereby *reopen* and *amend* the resolution, dated January 9, 2007, under BSA Calendar Number 252-06-BZ, so that as amended this portion of the resolution shall read: “*to permit* modifications to the design of the previously approved gymnasium building”; *on condition* that all work and site conditions shall conform to drawings filed with this application marked “Received December 4, 2019”-Twenty (20) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: a minimum window-wall distance of 40 feet, a maximum base height of 100’-8”, a maximum building height of 138’-0” and community-facility floor area of no more than 41,985 square feet (1.58 FAR), as illustrated on the Board-approved drawings;

THAT an (E) designation (No. E-508) has been placed on the subject site for hazardous materials;

THAT the HVAC shall utilize natural gas;

That a minimum of 50 percent of dwelling units in the building shall remain income-restricted housing units for the life of the building;

THAT there shall be no lighting on the roof of the building except as necessary for security;

THAT access to the roof of the building shall be closed at dusk;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also indicating this approval and calendar numbers (“BSA Cal. Nos. 2017-289-BZ and 252-06-BZ”), shall be obtained within four (4) years, by December 4, 2022;

THAT a restrictive declaration shall be recorded against the property (City Register File No. 2019000014545) prior to the issuance of the Board’s resolution and shall substantially conform to the form and substance of the following:

THIS DECLARATION OF RESTRICTIVE COVENANTS (the “Declaration”), dated this _____ day of _____ ,

2018, is entered into by HP WALTON AVENUE HOUSING DEVELOPMENT FUND COMPANY, INC. (the “Declarant”), a New York not-for-profit corporation organized pursuant to Article XI of the Private Housing Finance Law of the State of New York and Section 402 of the Not-for-Profit Corporation Law of the State of New York, having its office at 242 West 36th Street, 3rd Floor, New York, New York 10018 and MOUNT HOPE COMMUNITY CENTER, INC., (the “Community Center”), a not-for-profit corporation formed pursuant to Section 102 of the New York State Not-for Profit Corporation Law, having an office at 2003-005 Walton Avenue, Bronx, New York 10453.

WHEREAS, the Declarant is the fee owner of certain land located in the City and State of New York, Borough of Bronx, being known and designated as Block 2850, Lot 63 on the Tax Map of the City of New York, and more particularly described in Exhibit A annexed hereto and made a part hereof (the “Premises”); and

WHEREAS, the Community Center is fee owner of certain land located in the City and State of New York, Borough of Bronx, being known and designated as Block 2850, Lots 34 and 38 on the Tax Map of the City of New York, and more particularly described in Exhibit B annexed hereto and made a part hereof (the “Community Facility Lot”); and

WHEREAS, the Premises is currently unimproved; and

WHEREAS, the Community Facility Lot is currently improved with a four-story community facility; and

WHEREAS, Declarant has requested by application assigned BSA Cal. Nos. 2017-289-BZ and 252-06-BZ, that the New York City Board of Standards and Appeals (the “Board”) grant (1) a special permit, under Section 73-623 of the New York City Zoning Resolution (“ZR”) (the “Special Permit”) to permit the development of a new, 14-story building with a gymnasium for the Mount Hope Community Center and approximately 103 affordable housing units contrary to ZR § 23-711 (distance of legally required windows) and ZR § 23-622 (base and building heights) and (2) an Amendment application of a previously approved variance which permitted the construction of a four-story Use Group 4 Community Facility contrary to underlying bulk regulations on the Community Facility Lot; and

WHEREAS, the special permit requires that the at least 50 percent of the “dwelling units” (as defined by ZR § 12-10) are “income-restricted housing units” (as defined by ZR § 12-10) or at least 50 percent of its total floor area is a “long-

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term care facility” or philanthropic or non-profit institution with sleeping accommodations; and

WHEREAS, the grant of the Special Permit will facilitate the construction of a 14-story building (the “Proposed Building”) with 103 income-restricted housing units; 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 building permits for the Premises.

NOW THEREFORE, in consideration of the Board’s approval of the Special Permit, Declarant does hereby declare that the Declarant and its successors and/or assigns shall be legally responsible for compliance with the following restrictions:

1. At least 50% of the “dwelling units” (as defined by ZR § 12-10) in the Proposed Building must remain as “income-restricted housing units” (as defined by ZR § 12-10) for the life of the building;
2. Except as otherwise set forth herein, 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. In the event that either (a) the Declarant elects to abandon the Special Permit or (b) the Premises becomes subject to a Regulatory Agreement with the New York City Department of Housing Preservation and Development or any other applicable agency of the City of New York or State of New York, this Declaration may be cancelled by the recordation of a Notice of Cancellation at the City Register’s Office against the Premises, and upon the filing of such Notice of Cancellation, this Declaration shall automatically cease, extinguish, and be void and of no further force or effect.

IN WITNESS WHEREOF, Declarant has made and executed this Declaration as of the date hereinabove written;

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 drawings 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 4, 2018.

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 – Application withdrawn without prejudice.

THE VOTE TO WITHDRAW –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:.....0

Adopted by the Board of Standards and Appeals, December 4, 2018.

2017-224-BZ

CEQR #18-BSA-003M

APPLICANT – Tuttle Yick LLP, for Two Spring Associates LLC, owner.

SUBJECT – Application July 6, 2017– 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.

PREMISES AFFECTED – 2-4 Spring Street, Block 478, Lot 22, 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 Sheta and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Deputy Borough Commissioner, dated June 6, 2017, acting on Department of Buildings (“DOB”) Application No. 121287099, reads in

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pertinent part:

Physical Culture Establishment is not permitted as of right in zoning C6-1 district and is [] contrary to ZR 32-10. Approval from BSA for a special permit pursuant to ZR 73-36 is required; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to legalize, on a site located in a C6-1 zoning district and Special Little Italy District, a physical culture establishment (“PCE”) on portions of cellar and first floor of an existing five- (5) story plus cellar and mezzanine mixed-use residential and commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on August 7, 2018, after due notice by publication in *The City Record*, with a continued hearing on November 20, 2018, and then to decision on December 4, 2018; and

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

WHEREAS, the Board was in receipt of three (3) form letters in support of this application and one (1) form letter in opposition to this application; and

WHEREAS, the Board was also forwarded several complaints directed to Community Board 2, Manhattan, regarding the excessive noise and vibration caused by the operation of this PCE; and

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

WHEREAS, the subject site is located on the southwest corner of Spring Street and Bowery, in a C6-1 zoning district and Special Little Italy District, in Manhattan; and

WHEREAS, the site has approximately 101 feet of frontage on Spring Street, 25 feet of frontage on Bowery, 3,530 square feet of lot area, and is occupied by a five- (5) story plus cellar and mezzanine 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 *use1* 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, the Board notes that, because no portion of the subject PCE is represented as being 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 applicant submitted evidence that the

1 Words in *italics* are defined in Section 12-10 of the Zoning Resolution.

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subject PCE occupies 115.5 square feet of floor area on the first floor with the entrance to the PCE and ADA lift to the cellar, and occupy 2,631 square feet of floor space on the cellar level with an instruction area, reception and men's and women's restrooms; and

WHEREAS, the applicant represents that the PCE began operation in March 2018, as "Hit House," with the following hours of operation: Monday through Friday, 7:00 a.m. to 8:30 p.m.; and, Saturday and Sunday, 9:30 a.m. to 5:00 p.m.; and

WHEREAS, the applicant submitted that, to minimize noise and vibration impacts from the activities of the PCE, a sound limiter will be used in connection with the amplified sound, in-wall sub-woofers have been encased in padding, and submitted flange details for rubber gasket padding installed on the exercise equipment to prevent and minimize impacts from vibrations; 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 the PCE is located on a heavily travelled commercial street and the PCE is predominantly located within the cellar of an existing building in an area characterized by mixed-use buildings with ground floor retail uses; 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 represents that the PCE will contain facilities for the provision physical improvement through martial arts, conditioning, and weight training; and

WHEREAS, accordingly, 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 submits that an approved fire alarm system—including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms, and a connection of the interior fire alarm system to an FDNY-approved central station—will be installed within the PCE space that is already protected with a wet sprinkler system; and

WHEREAS, by letter dated June 30, 2018, the Fire Department has no objection to the subject application and confirmed that applications were filed with the DOB for the change of use (Alt. 1 121287099) and no application filed for a centrally monitored individually coded fire alarm system; the Fire Department requires a fire alarm system for the premises due to the construction of the building (Class 3 – non-fireproof structure) and that the occupancy (70 persons proposed) is located below grade; the Fire Department requests that an application be filed prior to the granting of this application; the Fire Department will assist the applicant in obtaining a review and approval of the fire

alarm application; once the plans have been approved, the fire alarm installer will be responsible for scheduling a test date with the Fire Alarm Inspection Unit in the Bureau of Fire Prevention; and, the premises are protected with a wet sprinkler system a hydrostatic pressure test was performed and tested satisfactory by the Department on May 31, 2018; and

WHEREAS, the applicant represents that the PCE will not impact the privacy, quiet, light and air of the neighborhood on account of its location in the cellar level and ground floor of the premises and the applicant commits to work with the residential tenants to mitigate noise impacts from the PCE; 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, 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, at the hearing, the Board expressed concern regarding ADA access to the PCE for individuals with mobility impairment; and

WHEREAS, in response, the applicant submitted photographs demonstrating the installation of a doorbell system and two (2) signs directing individuals needing staff assistance to ring the doorbell or call a specified number for access to the PCE; 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. 18-BSA-003M, dated July 6, 2017; and

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

WHEREAS, based upon its review of the record, the Board finds that the requested special permit, legalizing the proposed PCE space on the cellar level and first floor, is appropriate, 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, §§ 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 C6-1 zoning district and the Special Little Italy District, a physical culture establishment on a portion of the cellar level and first floor of an existing five- (5) story plus cellar and mezzanine mixed-use residential and commercial building, contrary to ZR § 32-10; *on condition* that all work shall substantially conform to drawings filed with this application marked "Received October 31, 2018"—Five (5) sheets; and *on further condition*:

THAT the term of the PCE grant shall expire on March 1, 2028;

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THAT an ADA-compliant sign at the entrance to the PCE at ADA-compliant height shall be installed and maintained in proper working order at all times to facilitate elevator access to the PCE by those individuals with mobility impairment;

THAT adjustments to equipment shall be made immediately upon the owner's/operator's receipt of a complaint by the neighbor of noise or vibration disturbance;

THAT a limiter shall be employed in connection with the sound system and shall be maintained at 75 percent when the sound system is at 100 percent;

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

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

THAT the sprinkler system shall be maintained as indicated on the Board-approved plans;

THAT an approved fire alarm system—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—shall be installed and maintained within the 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 the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy indicating this approval and calendar number ("BSA Cal. No. 2017-224-BZ") shall be obtained within one (1) year, by December 4, 2019;

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

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

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

Adopted by the Board of Standards and Appeals, December 4, 2018.

2017-306-BZ

CEQR #18-BSA-066K

APPLICANT – Law Office of Lyra J. Altman, for Stella Alfaks and Devi Alfaks, owners.

SUBJECT – Application November 27, 2017 – Special Permit (§73-622) to permit the enlargement of the existing single family home contrary to ZR §23-47 (rear yard) and §23-461(a) (side yard). R5 zoning district.

PREMISES AFFECTED – 1977 East 14th Street, Block 7293, 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 Sheta and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Brooklyn Borough Commissioner, dated July 24, 2018, acting on Department of Buildings ("DOB") Application No. 321635995 reads in pertinent part:

The proposed enlargement of the existing one family residence in an R5 zoning district:

1. Creates non-compliance with respect to the rear yard and is contrary to Section 23-47 of the Zoning Resolution;
2. Creates non-compliance with respect to the side yard and is contrary to Section 23-461(a) of the Zoning Resolution; and

WHEREAS, this is an application under ZR § 73-622 to permit, in an R5 zoning district, the enlargement of a detached one-family dwelling that does not comply with the zoning requirements for rear yards and side yards, contrary to ZR §§ 23-47 and 23-461(a); and

WHEREAS, a public hearing was held on this application on September 27, 2018, after due notice by publication in *The City Record*, with a continued hearing on December 4, 2018, and then to decision on that date; and

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

WHEREAS, the Board was in receipt of one (1) form letter in opposition to this application; and

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

WHEREAS, the subject site is located on the east side of East 14th Street, between Avenue S and Avenue T, in an R5 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 40 feet of frontage, 100 feet of depth, 4,000 square feet of lot area and is occupied by a detached two- (2) story plus cellar and attic one- (1) family dwelling, with one (1) parking space in the rear yard, containing 2,438 square feet of floor area (0.61 floor area ratio ("FAR")), a front yard with a depth of 19'-8.5", two (2) side yards with widths of 6'-11.5" and five (5)

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feet and a combined total side yard width of 11'-11.5", a rear yard with a depth of 29'-10.5", a perimeter wall height of 21'-7" and a total building height of 36'-11"; and

WHEREAS, ZR § 73-622 provides that:

The Board of Standards and Appeals may permit an *enlargement* of an existing *single*¹- 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 this application located within an area in which the special permit is available; and

WHEREAS, the Board notes further that the subject application seeks to enlarge the detached one-family residence, as contemplated by ZR § 73-622; and

WHEREAS, the applicant proposes to enlarge the existing detached dwelling by horizontally extending the dwelling into the front yard and rear yard, vertically enlarging the dwelling, relocating the parking pad in the rear to a side yard, and constructing a 96 square foot shed, resulting in a three- (3) story plus cellar dwelling with 4,743 square feet of floor area (1.19 FAR) with 1,811 square feet on the first floor, 1,600 square feet on the second floor, and 1,236 square feet on the third floor, a front yard with a depth of ten (10) feet, which complies with underlying zoning requirements, and a rear yard with a depth of 20 feet; and

WHEREAS, the applicant proposes to maintain the existing two (2) side yards with widths of 6'-11.5" and five (5) feet, with a combined total side yard width of 11'-11.5"; and

WHEREAS, at the subject site, a rear yard with a depth of 30 feet is required pursuant to ZR § 23-47, and two (2) side yards, each with a minimum width of five (5) feet, and a combined total side yard width of 13 feet, are required pursuant to ZR § 23-461(a); and

WHEREAS, the proposed enlargement includes a vertical and horizontal extension of the two (2) existing non-complying side yards, and the Board notes that, pursuant to a 1920 Sanborn Map including the subject site provided by the applicant, the subject site was developed with a detached dwelling in approximately the same orientation as the site is occupied today and, thus, the non-complying side yards predated the 1961 Zoning Resolution and are legal non-compliances; and

WHEREAS, the applicant provided an analysis of rear

¹ Words in *italics* are defined in Section 12-10 of the Zoning Resolution.

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yard conditions on the subject block, demonstrating that, of the 31 other single- or two- (2) family dwellings located in an R5, 14 lots (45 percent) have rear yards with a depth of less than 30 feet, with rear yards ranging in depth from 28 feet to 13 feet, including the dwelling adjacent to the south of the subject site, which has a rear yard depth of 23'-2"; and

WHEREAS, based upon its review of the record and inspections of the subject site and surrounding neighborhood, the Board finds that the proposed building as enlarged will not alter the essential character of the neighborhood or district in which the subject building is located, 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 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 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. 18-BSA-066K, dated November 27, 2017; 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 R5 zoning district, the enlargement of a detached one-family dwelling that does not comply with the zoning requirements for rear yards and total side yards contrary to ZR §§ 23-47 and 23-461(a); *on condition* that all work shall substantially conform to drawings as they apply to the objection above-noted, filed with this application and marked "Received August 17, 2018"—Nineteen(19) sheets; and *on further condition:*

THAT the following shall be the bulk parameters of the building: a rear yard with a minimum depth of 20 feet and side yards with minimum depths of 6'-11.5" and 5 feet, as illustrated on BSA-approved plans;

THAT the removal of exterior walls and/or joists in excess of those indicated on the BSA-approved plans is prohibited and shall void the special permit;

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

THAT a certificate of occupancy, also indicating this approval and calendar number ("BSA Cal. No. 2017-306-BZ"), shall be obtained within four (4) years, by December 4, 2022;

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, December 4, 2018.

2017-131-BZ

APPLICANT – Sheldon Lobel, P.C., for Congregation Divrei Yoel, owner.

SUBJECT – Application April 18, 2018 – 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 §§24-36 & 23-47 (Required Rear Yards), and ZR 23-33(b) permitted obstructions in rear yard. R7A zoning district.

PREMISES AFFECTED – 77-85 Gerry Street, Block 2266, Lot(s) 46,47,48,49, Borough of Brooklyn.

COMMUNITY BOARD #1BK

ACTION OF THE BOARD – Laid over to February 12, 2019, at 10 A.M. for continued hearing.

2017-247-BZ

APPLICANT – Law Office of Lyra J. Altman, for Eli Leshkowitz and Rachel Leshkowitz, owners.

SUBJECT – Application August 22, 2017 – Special Permit (§73-622) for the enlargement of an existing single family home contrary to floor area ratio and open space ratio (ZR 23-141); and less than the required rear yard (ZR 23-47). R2 zoning district.

PREMISES AFFECTED – 1367 East 24th Street, Block 7660, Lot 17, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Laid over to February 5, 2019, at 10 A.M. for continued hearing.

2018-3-BZ

APPLICANT – Trout Sanders LLP, for Harlem Park Associates, LLC, owner.

SUBJECT – Application January 11, 2018 – Variance (§72-21) to permit the development of an integrated educational and medical facility in conjunction with the Ichan School of Medicine at Mount Sinai contrary to ZR §33-432(a) (height and setback); ZR §33-26 (rear yard) and ZR §33-292 (required depth of yard along district boundaries. C4-4 zoning district.

PREMISES AFFECTED – 154-160 West 124th Street, Block 1908, Lot(s) 60 & 4, Borough of Manhattan.

COMMUNITY BOARD #10M

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ACTION OF THE BOARD – Laid over to March 5, 2019, at 10 A.M., for continued hearing.

**REGULAR MEETING
TUESDAY AFTERNOON, DECEMBER 4, 2018
1:00 P.M.**

Present: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.

ZONING CALENDAR

2016-4236-BZ

CEQR #17-BSA-007M

APPLICANT – Francis R. Angelino, Esq., for One Hudson Park Inc., owner; Radiant Yoga Bet, LLC, lessee.

SUBJECT – Application August 4, 2016 – Special Permit (§73-36) to operate a physical culture establishment (*YogaSpark*) in the ground floor and cellar of an existing mixed use residential and commercial building. C6-2A (TMU) zoning district within the Tribeca West Historic District.

PREMISES AFFECTED – 158 Duane Street/16 Hudson Street, Block 144, 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 Sheta and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

WHEREAS, the decision of the Borough Commissioner dated, July 7, 2016, acting on Department of Buildings (“DOB”) Application No. 122400188, reads in pertinent part:

Proposed physical cultural establishment is not permitted as-of-right in C6-2A zoning district and is contrary to ZR 32-10; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to legalize, on a site located in a C6-2A zoning district and in the Special Tribeca Mixed-Use District and Special Tribeca West Historic District, a physical culture establishment (“PCE”) on portions of the cellar level and first floor of an existing six- (6) story plus cellar mixed-use residential and commercial building, contrary to ZR §§ 32-10; and

WHEREAS, a public hearing was held on this application on December 4, 2018, after due notice by publication in *The City Record*, and then to decision on that same date; and

WHEREAS, the Board was in receipt of one (1) form letter in support of this application; and

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

WHEREAS, the subject site is located on the southeast corner of Hudson Street and Duane Street, in a C6-2A zoning district and in the Special Tribeca Mixed-Use District and Special Tribeca West Historic District, in Manhattan; and

WHEREAS, the site has approximately 199 feet of frontage on Hudson Street, 44 feet of frontage on Reade Street, 178 feet of frontage on West Broadway, and 134 feet of frontage on Duane Street, 16,026 square feet of lot area and is occupied by three (3) buildings;

WHEREAS, the PCE is to be located in a six- (6) story plus cellar mixed-use commercial and residential building located on the northern portion of the lot, with approximately 25 feet of frontage on Duane Street; 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 1* 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, the Board notes that, because no portion of the subject PCE is represented as being located on the

1 Words in *italics* are defined in Section 12-10 of the Zoning Resolution.

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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 applicant submitted evidence that the subject PCE occupies 1,582 square feet of floor area on the first floor with a yoga studio, reception area, and ADA-accessible restroom, and 1,557 square feet of floor space on the cellar level with men's and women's locker rooms with restrooms and showers; and

WHEREAS, the applicant represents that the PCE opened January 1, 2017, as "YogaSpark," with the following hours of operation: Monday through Friday, 6:00 a.m. to 9:00 p.m.; and, Saturday and Sunday, 8:00 a.m. to 5:00 p.m.; and

WHEREAS, the applicant states that sound and vibration attenuating measures have been installed in the PCE space to minimize the impact of any noise or vibration caused by the PCE operation; specifically, the applicant has installed thermal/acoustic insulation for the floor to ceiling length of the full perimeter of the yoga studio, directly attached to a 12-inch masonry wall, and 12-inch thick thermal/acoustic mineral wool insulation batts on the ceiling of the yoga studio providing a total Sound Transmission Class rating of 60-65; 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 the applicant anticipates the PCE will draw a majority of its patrons from the immediate neighborhood, which is well served by public transportation; 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 represents that the PCE will contain facilities for the provision physical improvement utilizing hot yoga classes; and

WHEREAS, accordingly, 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 submits that an approved wet sprinkler system is installed within the PCE space; and

WHEREAS, by letter dated November 29, 2018, the Fire Department has no objection to the application and confirms that the premises has a sprinkler fire suppression system that has been tested satisfactory and has current permits, and the PCE space does not require a fire alarm system; and

WHEREAS, the applicant represents that the PCE will not impact the privacy, quiet, light and air of the neighborhood on account of its location in the cellar level and ground floor of an existing building and the applicant represents that they have been coordinating with the building landlord to minimize any noise and vibration impacts caused by the PCE; and

WHEREAS, by letter dated September 23, 2016, the New York City Landmarks Preservation Commission permitted changes to the exterior signage reflecting the name "YogaSpark;" 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, 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-007M, dated August 4, 2016; and

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

WHEREAS, based upon its review of the record, the Board finds that the requested special permit, legalizing the

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PCE space on the cellar level and first floor, is appropriate, 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, §§ 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 C6-2A zoning district and in the Special Tribeca Mixed-Use District and Tribeca West Historic District, a physical culture establishment on a portion of the cellar level and first floor of an existing six- (6) story plus 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 June 29, 2016”– Three (3) sheets; and *on further condition*:

THAT the term of the PCE grant shall expire on 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 accessibility compliance under Local Law 58/87 shall be as reviewed and approved by DOB;

THAT the sprinkler system 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 certificate of occupancy indicating this approval and calendar number (“BSA Cal. No. 2016-4236-BZ”) shall be obtained within one (1) year, by December 4, 2019;

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

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

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

Adopted by the Board of Standards and Appeals, December 4, 2018.

2018-176-BZ

CEQR #19-BSA-058K

APPLICANT – NYC Mayor’s Office of Housing Recovery Operation.

SUBJECT – Application November 13, 2018 – Special Permit (§64-92) to waive bulk requirements for the reconstruction of homes damaged/destroyed by Hurricane Sandy for a property registered in the NYC Build it Back Program. R3A Special Coastal Risk zoning district. R4 zoning district.

PREMISES AFFECTED – 116 Dare Court, between Bartlett Place and Cyrus Avenue, Block 8914, Lot 414, 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 Sheta and Commissioner Scibetta.....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 legalize, on a site within an R4 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, total side yards, and rear yards contrary to ZR §§ 23-45, 23-461(a), and 23-52; and

WHEREAS, a public hearing was held on this application on December 4, 2018, 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 Dare Court, between Bartlett Place and Cyrus Avenue, in an R4 zoning district, in Brooklyn; and

WHEREAS, the site has approximately 40 feet of frontage, 45 feet of depth, 1,800 square feet of lot area and

MINUTES

is occupied by a two- (2) story single-family detached residence; 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, the applicant now seeks a special permit, pursuant to ZR § 64-92 to legalize the reconstruction of the single-family residence that is compliant flood-resistant construction but, due to a deviation occurring when rebuilding the home to meet flood resistant construction elevation, created non-compliances with the zoning requirements for front yards, side yards and total side yards, and rear yards; and

WHEREAS, specifically, the subject site has a front yard with a depth of 10.4 feet, two (2) side yards with widths of 3.7 feet and 8.7 feet (12.4 feet of total side yards), and a rear yard with a depth of 9.2 feet, but, at the subject site, a minimum front yard depth of 18 feet is required pursuant to ZR § 23-45, two (2) side yards, each with a width of at least 5 feet and with a combined minimum width of 13 feet, are required pursuant to ZR § 23-461(a), and a rear yard with a

minimum depth of 10 feet is required pursuant to ZR § 23-52; and

WHEREAS, in accordance with ZR § 64-92(a), the applicant submits that the composition of the existing residence on the lot creates practical difficulties in complying with flood-resistant construction standards without the modification of requirements for front yards, side yards, total side yards, and rear yards and that waivers of the same are the minimum necessary to allow for a building compliant with flood-resistant construction standards; and

WHEREAS, 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- (2) family, mostly detached, residences; the home design follows the urban context of Dare Court and contributes to the improvement of the essential character of, and has a floor area ratio consistent with other homes in the neighborhood; and

WHEREAS, accordingly, the Board has reviewed the proposal and determined that the subject application 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. 19BSA058K, dated November 13, 2018; and

Therefore, it is Resolved, that the Board of Standards and Appeals *waives* §§ 1-05.1, 1-05.3, 1-05.4, 1-05.6, 1-09.4 and 1-10.7 of 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 legalize, on a site within an R4 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, total side yards, and rear yards contrary to ZR §§ 23-45, 23-461(a), and 23-52; *on condition* that all work shall substantially conform to the drawings filed with this application and marked "Received December 3, 2018"-Four (4) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: a front yard with a minimum depth of 10.4 feet, two (2) side yards with minimum widths of 3.7 feet and 8.7 feet (a minimum of 12.4 feet of total side yards), and a rear yard with a minimum depth of 9.2 feet, as illustrated on the

MINUTES

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 building shall be provided with interconnected smoke and carbon monoxide alarms, designed 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 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 authorized use and/or bulk shall be signed off by DOB and all other relevant agencies within four (4) years;

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 4, 2018.

2016-4128-BZ

APPLICANT – Herrick, Feinstein, LLP, for Ponte Equities, owner; Dogpound Fitness LLC, lessee.

SUBJECT – Application February 29, 2016 – Special Permit (§73-36) to permit a physical culture establishment (*Dogpound Fitness*) to be located at the ground-floor level of an existing commercial building. C6-2A zoning district.

PREMISES AFFECTED – 511 Canal Street, Block 594, Lot 8, Borough of Manhattan.

COMMUNITY BOARD #2M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:0

ACTION OF THE BOARD – Laid over to January 15, 2019, at 10 A.M., for decision, hearing closed.

2016-4238-BZ

APPLICANT – Qiang Su Ra, for 388 Broadway Owners LLC, owner; Eden Day Spa, lessee.

SUBJECT – Application August 10, 2016 – Special Permit (§73-36) to operate a physical culture establishment (*Eden Day Spa*) within an existing building. C6-2A zoning district within the Tribeca East Historic District.

PREMISES AFFECTED – 388 Broadway, Block 195, Lot 3, Borough of Manhattan.

COMMUNITY BOARD #1M

ACTION OF THE BOARD – Laid over to January 15, 2019, at 10 A.M. for continued hearing.

2017-315-BZ

APPLICANT – Eric Palatnik, P.C., for Thomas J. Cannistraci, owner; Strong Pelham Fitness, lessee.

SUBJECT – Application December 12, 2017 – 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.

PREMISES AFFECTED – 2030 Eastchester Road, Block 4218, Lot 9, Borough of Bronx.

COMMUNITY BOARD #11BX

ACTION OF THE BOARD – Laid over to January 15, 2019, at 10 A.M. for continued hearing.

2018-42-BZ

APPLICANT – Bryan Cave LLP, for Congregation Beis Shloime, owner; Bobover Yeshiva Bnei Zion, lessee.

SUBJECT – Application March 16, 2018 – Special Permit (§73-19) to allow for a Use Group 3 school use (*Bobover Yeshiva Bnei Zion*) contrary to ZR §32-31 (Use Regulations); Variance (§72-21) to permit the development of the building contrary to ZR §33-283 (rear yard equivalent) and ZR §33-432 (height and setback regulations). C8-2 zoning district.

PREMISES AFFECTED – 1360 36th Street, Block 5301, Lot 20, Borough of Brooklyn.

COMMUNITY BOARD #12BK

ACTION OF THE BOARD – Laid over to February 5, 2019, at 10 A.M. for continued hearing.

2018-52-BZ

APPLICANT – Akerman, LLP, for SPG Boerum LLC, owner.

SUBJECT – Application April 13, 2018 – Special Permit (§73-433) to permit the waiver of 18 existing parking spaces accessory to an existing Section 8 dwelling to facilitate the development and preservation of affordable housing contrary to ZR §§25-23 and 25-251. R6 zoning district.

PREMISES AFFECTED – 159 Boerum Street, Block 3071, Lot(s) 10, 40, Borough of Brooklyn.

COMMUNITY BOARD #1BK

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ACTION OF THE BOARD – Laid over to February 12, 2019, at 10 A.M. for continued hearing.

2018-55-BZ

APPLICANT – Akerman, LLP, for SPG Johnson LLC, owner.

SUBJECT – Application April 17, 2018 – Special Permit (§73-433) to permit the waiver of 34 existing parking spaces accessory to an existing Section 8 dwelling to facilitate the development and preservation of affordable housing contrary to ZR §§25-23 and 25-251. R6 zoning district.

PREMISES AFFECTED – 222 Johnson Avenue, Block 3072, Lot(s) 1, 40, Borough of Brooklyn.

COMMUNITY BOARD #1BK

ACTION OF THE BOARD – Laid over to February 12, 2019, at 10 A.M. for continued hearing.

2018-99-BZ

APPLICANT – Sheldon Lobel, P.C., for Shawn Hope, owner.

SUBJECT – Application May 25, 2018 – Variance (§72-21) to permit the construction of a five-story and basement, two-family building contrary to ZR §23-32 (Minimum Lot Area or Lot Width for Residences). R7A zoning district.

PREMISES AFFECTED – 275 Pleasant Avenue, Block 1708, Lot 25, Borough of Manhattan.

COMMUNITY BOARD #11M

ACTION OF THE BOARD – Laid over to February 26, 2019, at 10 A.M. for continued hearing.

2018-132-BZ

APPLICANT – Deirdre A. Carson, Greenberg Traurig LLP, for 100 Church Fee LLC, owner; 100 Church Street Tenant, LLC, lessee.

SUBJECT – Application August 7, 2018 – Special Permit (§73-36) to permit the operation of a physical culture establishment (*Club*) within an existing building contrary to ZR §32-10. C5-3 Special Lower Manhattan District.

PREMISES AFFECTED – 100 Church Street, Block 125, Lot 20, Borough of Manhattan.

COMMUNITY BOARD #1M

ACTION OF THE BOARD – Laid over to January 15, 2019, at 10 A.M. for continued hearing.

Carlo Costanza, Executive Director

BULLETIN

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New Case Filed Up to December 11, 2018

2018-193-BZ

1389 East 22nd Street, Located on the East Side of East 22nd Street between Avenue M and Avenue N, Block 7658, Lot(s) 0033, Borough of **Brooklyn, Community Board: 14**. Special Permit (§73-622) for the enlargement of an existing single-family home contrary ZR §23-142 (floor area, open space and lot coverage); ZR §23-461 (side yards) and ZR §23-47 (rear yard). R2 zoning district. R2 district.

2018-194-BZ

2317 Avenue K, Located on the northwest corner of Avenue K and East 24th Street, Block 7605, Lot(s) 0001, Borough of **Brooklyn, Community Board: 14**. Special Permit (§73-622) to permit the enlargement of a single-family home contrary to ZR §23-141 (Floor Area Ratio and Open Space). R2 zoning district. R2 district.

2018-195-A

1824 Shore Parkway, The South West Brooklyn Marine Transfer Station is a property located in the Gravesend neighborhood in Brooklyn NY, Block 6943, Lot(s) 0030, Borough of **Brooklyn, Community Board: 11**. Appeal of a New York City Department of Buildings determination. M3-1 district.

2018-196-A

1740 York Avenue, The East 91 St. Marine Transfer Station is a property located at the cross-section of E. 91st and York Avenue., Block 1587, Lot(s) 0027, Borough of **Manhattan, Community Board: 11**. Appeal of a New York City Department of Buildings determination. M1-4 district.

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

CALENDAR

REGULAR MEETING JANUARY 29, 2019, 10:00 A.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday morning, January 29, 2019, 10:00 A.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

SPECIAL ORDER CALENDAR

410-68-BZ

APPLICANT – Vassalotti Associates Architects, LLP, for GNB Auto Repair, Inc., owner; Alessandro Bartellino, lessee.

SUBJECT – Application May 3, 2018 – 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 26, 2018. C1-3/R3-2 zoning district.

PREMISES AFFECTED – 85-05 Astoria Boulevard, Block 1097, Lot 1, Borough of Queens.

COMMUNITY BOARD #3Q

103-70-BZ

APPLICANT – Herrick Feinstein LLP, for 203 East 74 LLC, owner.

SUBJECT – Application July 24, 2017 – 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. C1-9/R8B zoning district.

PREMISES AFFECTED – 203 East 74th Street, Block 1429, Lot 103, Borough of Manhattan.

COMMUNITY BOARD #8M

40-80-BZ

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for 39 West 23rd Street, LLC, owner.

SUBJECT – Application October 25, 2018 – Amendment of a previously variance (§72-21) to facilitate the transfer of unused development rights from the variance site for incorporation into a new as-of-right development and approval of previously constructed rooftop additions totaling 754 square feet. M1-6 Ladies' Mile Historic District.

PREMISES AFFECTED – 35-41 West 23rd Street, 39-41 West 23rd Street, 20-22 West 24th Street, Block 825, Lot(s) 20, 60, 1001-1005, Borough of Manhattan.

COMMUNITY BOARD #5M

498-83-BZ

APPLICANT – Rampulla Associates Architects, for 2131 Hylan Holding, llc, owner.

SUBJECT – Application June 16, 2017 – Amendment of a previously approved Variance (§72-21) which permitted the enlargement of a then existing banquet hall into the residential portion of the lot and permitted accessory parking within the residential portion of the lot. The amendment seeks to demolish the existing building to permit the development of an As-of-Right commercial building retaining the accessory parking on the residential portion of the lot; Extension of Time to Obtain a Certificate of Occupancy; Waiver of the Rules. C8-1 & R3X (Lower Density Growth Management Area)

PREMISES AFFECTED – 2131 Hylan Boulevard, Block 3589, Lot 63, Borough of Staten Island.

COMMUNITY BOARD #2SI

1059-84-BZ

APPLICANT – Kennedys CMK LLP, for BMS Realty Co., LLC, owner; Hewlett Bay Park, lessee.

SUBJECT – Application July 5, 2018 – Amendment of a previously approved Special Permit (§73-36) which permitted the operation of a Physical Culture Establishment (*24 Hour Fitness*) to permit changes to the interior partitions and layout. C4-2/C9-2 (Special Ocean Parkway District).

PREMISES AFFECTED – 943/61 Kings Highway aka 2032 Coney Island Avenue, Block 6666, Lot 18 Borough of Brooklyn.

COMMUNITY BOARD #15BK

813-87-BZ

APPLICANT – Law Office of Fredrick A. Becker, for 110 BP Property LLC, c/o Hidrock Properties, owners; TSI Cobble Hill LLC dba New York Sports Club, lessee

SUBJECT – Application August 28, 2013 – Extension of Term of a previously approved special permit (§73-36) permitting the operation of a Physical Culture Establishment (New York Sports Club) which expired on April 12, 2018; Amendment to request a change in hours of operation; Waiver of the Rules. C2-3 (R6) zoning district.

PREMISES AFFECTED – 110 Boerum Place, Block 279, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #2BK

CALENDAR

16-12-BZ

APPLICANT – Eric Palatnik, P.C.

SUBJECT – Application – Amendment of a previously approved Special Permit (§73-19) permitting a school (*Congregation Adas Yereim*) contrary to use regulations (§42-00). The amendment seeks changes to the interior, an increase in the height of the building. M1-2 zoning district.

PREMISES AFFECTED – 184 Nostrand Avenue, Block 1753, Lot 42. Borough of Brooklyn

COMMUNITY BOARD #3BK

APPEALS CALENDAR

2018-97-A

APPLICANT – Edward Lauria, P.E., for Salvatore Noto, owner.

SUBJECT – Application May 24, 2018 – Proposed construction of a new building not fronting on a legally mapped street contrary to General City Law Section §36. M1-1 Special South Richmond District.

PREMISES AFFECTED – 50 Storer Avenue, Block 7315, Lot 78, Borough of Staten Island.

COMMUNITY BOARD #3SI

REGULAR MEETING JANUARY 29, 2019, 1:00 P.M.

NOTICE IS HEREBY GIVEN of a public hearing, Tuesday afternoon, January 29, 2019, 1:00 P.M., at 22 Reade Street, Spector Hall, New York, N.Y. 10007, on the following matters:

ZONING CALENDAR

2017-222-BZ

APPLICANT – Gerald J. Caliendo, AIA, P.C., for Avi Tsadok, owner.

SUBJECT – Application July 3, 2017 – 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.

PREMISES AFFECTED – 200-01 116th Avenue, Block 11041, Lot 9, Borough of Queens.

COMMUNITY BOARD #12Q

2018-8-BZ

APPLICANT – Eric Palatnik, P.C., for Victor Allegretti Trust, owner.

SUBJECT – Application January 19, 2018 – Re-instatement (§11-41) of a previously approved variance which permitted garage for trucks, motor vehicle repair shop, body and

fender work and incidental painting and spraying (UG 16B) which expired on January 15, 2003: Amendment (§11-412) to permit the legalization of interior alterations; Waiver of the Board's Rules. C1-2/R5 zoning district.

PREMISES AFFECTED – 1820 Cropsy Avenue, Block 6464, Lot 16, Borough of Brooklyn.

COMMUNITY BOARD #11BK

2018-16-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Constantino Isabella, owner.

SUBJECT – Application February 5, 2018 – Re-instatement (§11-411) of a previously approved variance which permitted the operation of non-storage garage which expired on April 19, 2002; Extension of Time to Obtain a Certificate of Occupancy which expired on April 13, 2000; Waiver of the Board's Rules. R4 zoning district.

PREMISES AFFECTED – 974 Sacket Avenue, Block 4062, Lot 49, Borough of Bronx.

COMMUNITY BOARD #11BX

2018-38-BZ

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

SUBJECT – Application March 15, 2018 – Special Permit (§73-243) to allow for an eating and drinking establishment (UG 6) (Starbucks) with an accessory drive-through facility contrary to ZR §32-15. C1-2/R1-2 zoning district.

PREMISES AFFECTED – 1717 Richmond Road, Block 887, Lot 7, Borough of Staten Island.

COMMUNITY BOARD #2SI

2018-109-BZ

APPLICANT – Goldman Harris LLC, for JMK Realty Family Limited Partnership, owner; DMFYD LIC, LLC, lessee.

SUBJECT – Application July 12, 2018 – Special Permit (§73-19) to permit the operation of a school (UG 3) (Our World Neighborhood Charter Schools (OWN) contrary to ZR §42-00. M1-4 zoning district.

PREMISES AFFECTED – 9-03 44th Road, Block 451, Lot 1, Borough of Queens.

COMMUNITY BOARD #2Q

2018-116-BZ

APPLICANT – Eric Palatnik, P.C., for Remica Property Group Corp, owners.

SUBJECT – Application July 13, 2018 – Special Permit (§73-211) to permit the operation of an Automotive Service Station (UG 16B) with an accessory convenience store contrary to ZR §32-35. C2-2/R3-2 zoning district.

PREMISES AFFECTED – 1982 Utica Avenue, Block 7847, Lot 44, Borough of Brooklyn.

COMMUNITY BOARD #18BK

CALENDAR

2018-118-BZ

APPLICANT – Law Office of Lyra J. Altman, for Abdo Chakkalo and Norma Chakkalo, owners.

SUBJECT – Application July 13, 2018– Special Permit (§73-622) to permit the enlargement of an existing one family home contrary to ZR §23-142 (floor area ratio, lot coverage and open space) and ZR § 23-47 (rear yard). R4 Special Ocean Parkway district.

PREMISES AFFECTED – 710 Avenue W, Block 7184, Lot 3, Borough of Brooklyn.

COMMUNITY BOARD #15BK

2018-144-BZ

APPLICANT – Akerman LLP, for Lexin NY 551 LLC, owner; Nova Fitness, Inc., lessee.

SUBJECT – Application September 4, 2018 – Special Permit (§73-36) to permit the operation of a Physical Cultural Establishment (*NOVA Fitness*) to be located on a portion of the third floor of an existing commercial building contrary to ZR §32-10. C5-3 zoning districts.

PREMISES AFFECTED – 551 Madison Avenue, Block 1291, Lot 21, Borough of Manhattan.

COMMUNITY BOARD #5M

Carlo Costanza, Executive Director

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**REGULAR MEETING
THURSDAY MORNING, DECEMBER 11, 2018
10:00 A.M.**

Present: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.

SPECIAL ORDER CALENDAR

48-10-BZ

APPLICANT – Ronald D. Victorio, R.A., for Guido Passarelli, owner; Campbell Fitness, lessee.

SUBJECT – Application August 28, 2017 – Amendment of a previously approved Special Permit (§73-36) which allowed a physical culture establishment (*Campbell Fitness*) in the cellar of a one-story commercial building contrary to ZR §42-10. The amendment seeks to expand the use to a portion of the first floor contrary to the previous approval. M1-1 zoning district/Special South Richmond District.

PREMISES AFFECTED – 2965 Veterans Road West, Block 7511, Lot 75, 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 Sheta and Commissioner Scibetta.....5
Negative:0

THE RESOLUTION –

WHEREAS, this is an application for reopening and an amendment of a previously granted special permit for a physical culture establishment (“PCE”) to permit an expansion of the PCE space to the first floor; and

WHEREAS, the decision of the Borough Commissioner, dated January 11, 2018, acting on Department of Buildings (“DOB”) Application No. 520232070, reads in pertinent part:

Proposed expansion of an existing physical culture establishment (refer to BSA Calendar No. 48-10-BZ) located in an M1-1 zoning district within the Special South Richmond Development District to include a portion of the first floor currently occupied as retail space is contrary to Section 42-10 of the NYC Zoning Resolution and requires a special permit from the Board of Standards and Appeals pursuant to Section ZR 73-36; and

WHEREAS, a public hearing was held on this application on December 11, 2018, 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 site and surrounding neighborhood; and

WHEREAS, the site is located on the southeast corner of Veterans Road West and West Shore Parkway, in an M1-1 zoning district and in the Special South Richmond Development District, on Staten Island; and

WHEREAS, the site has approximately 123 feet of frontage on Veterans Road West, 196 feet of frontage on West Shore Parkway, 23,522 square feet of lot area, and is occupied by a two- (2) story commercial building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since July 13, 2010, when, under the subject calendar number, the Board granted a special permit to permit the operation of a PCE in the cellar level of a one- (1) story building on condition that all work substantially conform to plans filed with the application; the term of the grant expire on July 13, 2020; there be no change in ownership or operating control of the PCE without prior application to and approval from the Board; all massages be performed by New York State licensed massage therapists; the above conditions appear on the certificate of occupancy; fire safety measures be installed and/or maintained as shown on the Board-approved plans; the approval be limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s); the approved plans be considered approved only for the portions related to the specific relief granted; substantial construction be completed within four (4) years; the Department of Buildings 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; and

WHEREAS, by letter dated January 12, 2017, the Board confirmed that a change in ownership from “Retro Fitness” to “Campbell Fitness,”¹ with no change to the approved drawings, was in substantial compliance with the Board’s July 13, 2010 grant and had no objection to the amendment, on condition that the DOB ensure compliance with all applicable provisions of the Zoning Resolution, Building Code or other relevant law; and

WHEREAS, the applicant now seeks an amendment to permit an expansion of the PCE to the first floor, resulting in an increase of 3,047 square feet of floor area²; and

1 The operator of the PCE is Campbell Fitness, doing business as Retro Fitness.

2 Sheet BSA-001 of the plans approved in association with this application lists the “current BSA” square footage of the

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WHEREAS, the applicant represents that the proposed amendment would allow the PCE to provide a stretching and Pilates area; and

WHEREAS, specifically, the applicant proposes to expand into adjacent space on the first floor, maintaining the 11,805 square feet of floor space in the cellar, and increasing the floor area on the first floor from 331 square feet to 3,378 square feet of floor area; and

WHEREAS, based upon its review of the record, the Board finds that the requested amendment, permitting an extension of the PCE space on the first floor, 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 13, 2010, so that as amended the resolution reads: “to reflect a change in the interior layout of the PCE on first floor such that the PCE will now occupy 11,805 square feet of floor space at the cellar level and 3,378 square feet of floor area at the first floor, *on condition* that any and all work shall substantially conform to drawings as they apply to the objection above noted, filed with this application marked ‘Received December 7, 2018’—five (5) sheets; and *on further condition*:

THAT all conditions from the prior resolution 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 indicating this approval and calendar number (“BSA Cal. No. 48-10-BZ”) shall be obtained within one (1) year, by December 11, 2019;

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) and/or configuration(s) not related to the relief granted.”

Adopted by the Board of Standards and Appeals, December 11, 2018.

PCE as 3,047 square feet and erroneously omits the existing 331 square feet of floor area on the first floor.

933-28-BZ

APPLICANT – Gerard J. Caliendo, R.A., AIA, for RB Auto Repair/Roger Budhu, owner.

SUBJECT – Application October 16, 2015 – Extension of Term, Amendment & Waiver (11-413) for an extension of the term of a variance which permitted the operation of an automotive repair facility and gasoline service station (UG 16) and an Amendment for the legalization of the enlargement with an insulated corrugated metal enclosure. R5 zoning district.

PREMISES AFFECTED – 125-24 Metropolitan Avenue, Block 9271, Lot 4, Borough of Queens.

COMMUNITY BOARD #9Q

ACTION OF THE BOARD – Laid over to April 30, 2019, at 10 A.M., for continued hearing.

509-37-BZ

APPLICANT – Eric Palatnik, P.C., for Power Test Realty Company Limited Partnership, owner.

SUBJECT – Application May 4, 2018 – Amendment (§11-413) to permit the legalization of a change of use of a previously approved variance permitting an Automotive Service Station (UG 16B) to an Automotive Repair Facility (UG 16B). R3-1 zoning district.

PREMISES AFFECTED – 202-01 Rocky Hill Road aka 202-02 47th Avenue, Block 5561, Lot 10, Borough of Queens.

COMMUNITY BOARD #11Q

ACTION OF THE BOARD – Laid over to April 30, 2019, at 10 A.M., for continued hearing.

176-99-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Marathon Parkway Associates, LLC, owner.

SUBJECT – Application April 3, 2018 – Extension of Term of a previously approved Variance (§72-21) permitting the erection of a cellar and two-story professional retail building which expires on May 2, 2020; Waiver of the Board’s Rules. C1-2/R3-1 and R2A zoning district.

PREMISES AFFECTED – 45-17 Marathon Parkway, Block 8226, Lot 10, Borough of Queens.

COMMUNITY BOARD #11Q

THE VOTE TO CLOSE HEARING –

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

ACTION OF THE BOARD – Laid over to February 5, 2019, at 10 A.M. for decision, hearing closed.

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141-06-BZ

APPLICANT – Eric Palatnik, P.C., for Congregation Tefiloh Ledovid, owner.

SUBJECT – Application April 20, 2018 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) permitting the construction of a House of Worship (*Congregation Tefiloh Ledovid*) UG 3) contrary to underlying bulk requirements which expired on March 12, 2017; Waiver of the Board's Rules. R5 zoning district.

PREMISES AFFECTED – 2084 60th Street, Block 5521, Lot 42, Borough of Brooklyn.

COMMUNITY BOARD #12BK

ACTION OF THE BOARD – Laid over to February 5, 2019, at 10 A.M., for continued hearing.

18-09-BZ

APPLICANT – Klein Slowik PLLC, for West 54th Street LLC c/o ZAR Property, owner; Crunch LLC, lessee.

SUBJECT – Application August 28, 2017 – Extension of Term of a special permit (§73-36) for the continued operation of a physical culture establishment (*Crunch Fitness*) which expires on November 21, 2021; Amendment to permit the change in operator; Waiver of the Rules. C6-5 and C6-7 zoning district.

PREMISES AFFECTED – 250 West 54th Street, Block 1025, Lot 54, Borough of Manhattan.

COMMUNITY BOARD #5M

ACTION OF THE BOARD – Laid over to February 26, 2019, at 10 A.M., for continued hearing.

62-13-BZ

APPLICANT – Sheldon Lobel, P.C., for 2703 East Tremont LLC, owner; BXC Gates, LLC, lessee.

SUBJECT – Application March 23, 2018 – Extension of Term of a previously approved Special Permit (§73-243) which permitted the legalization of an eating and drinking establishment (Wendy's) with an accessory drive-through facility which expires on July 9, 2018. C1-2/R6 zoning district.

PREMISES AFFECTED – 2703 East Tremont Avenue, Blok 4076, Lot 12, Borough of Bronx.

COMMUNITY BOARD #10BX

ACTION OF THE BOARD – Laid over to May 7, 2019, at 10 A.M., for continued hearing.

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APPEALS CALENDAR

2017-290-A

APPLICANT – Michael Gruen, Esq., for Carnegie Hill Neighbors, owners

SUBJECT – Application November 3, 2017 – 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 zoning district.

PREMISES AFFECTED – 1558 Third Avenue, Block 01516, Lot(s) 32, 37 & 138, Borough of Manhattan.

COMMUNITY BOARD #8M

ACTION OF THE BOARD – Appeal denied.

THE VOTE TO GRANT –

Affirmative: Commissioner Scibetta1

Negative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta4

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated September 28, 2017, under Zoning Challenge and Appeal Form Control No. 50662 (the “Determination”), reads in pertinent part:

Your Zoning Challenge Appeal, received on July 3, 2017, per 1 Rules of the City of New York (“RCNY”) §101-15, is hereby denied.

This final determination confirms that the New York City Department of Buildings (the “Department”) has received and reviewed your zoning challenge appeal, filed pursuant to 1 RCNY § 101-15, the Department’s rule regarding public challenges of the Department’s zoning approval for New Building [A]pplication No. 121186518.

The new 31-story [sic] mixed-use building (the “subject building”) in a C1-9 zoning district will be occupied by a noncommercial art gallery in community facility Use Group 3 in the building’s first story and a total of 48 dwelling units in zoning Use Group 2, on floors 2 through 31. The challenger submits this zoning challenge appeal challenging two issues pertaining to the subject building, as follows:

(1) In the first issue of this zoning challenge, the challenger claims that the subject building’s zoning lot (composed solely of tax lot No. 37), which was created after three zoning lots (tax lot Nos. 37, 38 and 140) merged and reapportioned to the current two zoning lots (one consisting solely of tax lot No. 37 and another consisting solely of tax lot No. 138), must in fact be treated as a single zoning lot comprised of both tax lots (Nos. 37 and 138). The challenger alleges that

this is based on ZR 12-10(c)’s definition for “zoning lot,” which states that “[a] ‘zoning lot’ is ... (c) a tract of land, either unsubdivided or consisting of two or more lots of record contiguous for a minimum of 10 linear feet, located within a single block, which at the time of filing for a building permit (or, if no building permit is required, at the time of the filing for a certificate of occupancy) is under single fee ownership and with respect to which each party having any interest therein is a party in interest (as defined herein)” The challenger states that at the time of filing for a building permit on August 1, 2014, the two lots of record (tax lot Nos. 37 and 138) were in common ownership under 180 East 88th Street Realty LLC and that such lots of record de facto formed a single zoning lot in accordance with ZR 12-10(c)’s definition for “zoning lot.” The challenger further alleges that as a single zoning lot with street frontage along East 88th Street, the subject building’s northern front wall faces East 88th Street and is therefore subject to the height and setback provisions in ZR 35-10 (General Provisions), as modified in ZR 35-60 (Modification of Height and Setback Regulations). The challenger claims that the “developer/owner took some steps to immunize itself from the application of category (c) [in ZR 12-10’s definition for “floor area”]” by transferring ownership of tax lot 138 to Carnegie Green LLC, to which the challenger observed that “[b]oth grantor and grantee have the same address,” and that on December 27, 2015, 180 East 88th Street Realty LLC and not Carnegie Green LLC filed a zoning lot declaration for tax lot No. 138 as the owner. The challenger also notes the amount of activity in May 2017 in the Office of the City Register’s Automated City Register Information System in the NYC Department of Finance’s (“DOF”) website demonstrating the new building applicant’s efforts to separate tax lot Nos. 37 and 138 into two zoning lots. However, the fact that tracts of land consist of two or more lots of record under single fee ownership does not necessarily mean that such lots of record are automatically considered a single zoning lot under ZR 12-10(c). Unless action has been taken to declare the tracts of land as a single zoning lot, they are not considered one zoning lot. Rather, an affirmative action to develop the lots together, or the recording of a Declaration of Zoning Lot Restrictions, is required for such lots to become a single zoning

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lot. In accordance with DOF's website, recent zoning Exhibits declaring tax lot Nos. 37 and 138 as separate zoning lots have been filed under City Register File Nos. ("CRFN") 2017000198269 and 2017000198271, respectively. The challenger does not submit evidence of zoning Exhibits filed at DOF for a single zoning lot comprised of tax lot Nos. 37 and 138. Unless the new building applicant files zoning Exhibits with the Office of the City Register declaring the tract of land comprised of tax lot Nos. 37 and 138 as a single zoning lot, or an application is filed to develop the lots together as a single zoning lot, each tax lot remains a separate zoning lot. As such, the subject building's northern façade that faces the adjacent zoning lot (tax lot No. 138) and does not face East 88th Street is not subject to the height and setback provisions in ZR 35-10, as modified in ZR 35-60.

Therefore, issue No. 1 in this applicant's challenge is hereby denied; and

WHEREAS, this is an appeal for interpretation under Section 72-11 of the Zoning Resolution of the City of New York ("ZR" or the "Zoning Resolution") and Section 666(6)(a) of the New York City Charter, brought on behalf of Carnegie Hill Neighbors, Inc. and Friends of the Upper East Side Historic District ("Appellants"), alleging errors in the Determination pertaining to whether the subdivision of a tract of land (the "Subdivision") contravenes the "zoning lot" definition of ZR § 12-10 by rendering inapplicable certain bulk regulations to the development of a new 32-story building (the "New Building") authorized by a building permit issued by DOB on October 27, 2016, under New Building Application No. 121186518 (the "Permit"); and

WHEREAS, for the reasons that follow, the Board denies this appeal; and

ZONING PROVISIONS

WHEREAS, Section 12-10 of the Zoning Resolution states in part:

"A *zoning lot* may be subdivided into two or more *zoning lots*, provided that all resulting *zoning lots* and all *buildings* thereon shall comply with all of the applicable provisions of this Resolution. If such *zoning lot*, however, is occupied by a *non-complying building*, such *zoning lot* may be subdivided provided such subdivision does not create a new *non-compliance* or increase the degree of *non-compliance* of such *building*" (emphasis in text of Zoning Resolution indicates defined terms); and

WHEREAS, zoning lots are bounded by lot lines, and buildings must be situated within the lot lines of a zoning

lot, *see* ZR § 12-10 (defining "lot line" and "building"); and

WHEREAS, Section 23-65(a) of the Zoning Resolution provides, in part, that Section 23-651 of the Zoning Resolution applies to a building that is "located on a *zoning lot* that fronts upon a *wide street* and is either within 125 feet from such *wide street* frontage along the short dimension of the *block* or within 100 feet from such *wide street* frontage along the long dimension of the *block*"¹; and

WHEREAS, Section 23-651 of the Zoning Resolution (the "Tower-on-a-Base regulations") states in pertinent part:

On a *wide street*, and on a *narrow street* within 125 feet of its intersection with a *wide street*, the *street wall* of the base shall occupy the entire *street* frontage of a *zoning lot* not occupied by existing *buildings*. At any height, at least 70 percent of the width of such *street wall* shall be located within eight feet of the *street line*, and the remaining 30 percent of such *street wall* may be recessed beyond eight feet of the *street line* to provide *outer courts* or balconies; and

WHEREAS, the Zoning Resolution does not define a street's "frontage," *id.*; and

WHEREAS, Section 12-10 of the Zoning Resolution defines "street wall" as a "wall or portion of a wall of a building facing a street"; and

WHEREAS, the Zoning Resolution does not define the term "facing," *id.*; and

WHEREAS, similarly, Section 23-692 of the Zoning Resolution (the "Sliver Law") contains height limits for narrow buildings, which apply to "portions of *buildings* with *street walls* less than 45 feet in width"; and

WHEREAS, the Sliver Law's height restrictions do not apply to street walls "located beyond 100 feet of a *street line*," ZR § 23-692(e)(2); and

WHEREAS, the Zoning Resolution defines a "street line" as "a *lot line* separating a *street* from other land," ZR § 12-10; and

BACKGROUND AND PROCEDURAL HISTORY

WHEREAS, the subject site is a tract of land located on the west side of Third Avenue, between East 87th Street and East 88th Street, partially in a C1-9 zoning district and partially in a C1-7 zoning district, in Manhattan; and

WHEREAS, the subject site is comprised of Tax Lots 32 and 37 ("Zoning Lot 1") and Tax Lot 138 ("Zoning Lot 2") on Block 1516 as shown on the official tax map of the City of New York; and

WHEREAS, Tax Lot 32 is located on the northwest corner of East 87th Street and Third Avenue, partially in a C1-9 zoning district and partially in a C1-7 zoning district,

1 Sections 23-65 and 23-651 of the Zoning Resolution are applicable to certain mixed-use buildings, such as the New Building, in C1-9 zoning districts, *see* ZR § 35-64.

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with approximately 125 feet of frontage along East 87th Street, 101 feet of frontage along Third Avenue and 12,660 square feet of lot area, and is occupied by a six-story commercial building; and

WHEREAS, Tax Lot 37 is located on the west side of Third Avenue, between East 87th Street and East 88th Street, in a C1-9 zoning district, with approximately 39'-9" of frontage along Third Avenue, 100 feet of depth and 5,080 square feet of lot area, and is occupied by the New Building, which is under construction; and

WHEREAS, Tax Lot 138 is located on the south side of East 88th Street, between Lexington Avenue and Third Avenue, in a C1-9 zoning district, with approximately 22'-0" of frontage along East 88th Street, 10'-0" feet of depth and is vacant; and

WHEREAS, prior to 2014, former Tax Lot 140 was an existing zoning lot with 22 feet of frontage along East 88th Street, 100 feet of depth and was occupied by an existing building that has since been demolished; and

WHEREAS, by July 22, 2014, former Tax Lot 140 and former Tax Lot 38 were combined into a single tax lot (maintaining the designation as former Tax Lot 38) with frontage along East 88th Street and frontage along Third Avenue; and

WHEREAS, by November 25, 2014, former Tax Lot 138—with a depth of four feet, a width of 22 feet and frontage along East 88th Street—had been reapportioned from former Tax Lot 38, which then only had frontage along Third Avenue; and

WHEREAS, a zoning lot description and ownership statement along with a certification of parties in interest were recorded on December 20, 2014, stating that the newly configured Tax Lot 38 and newly configured Tax Lot 138 constituted a single zoning lot where all of the parties in interest were the same; and

WHEREAS, on February 24, 2015, DOB approved the Original Subdivision under Subdivision Improved Application No. 121192459, and DOB records indicate the "last action" on said application is "completed" on the same date²; and

WHEREAS, by February 27, 2015, a new zoning lot description and ownership statement and a certification of parties in interest had been recorded against Tax Lot 38, which excluded Tax Lot 138 (the "Original Subdivision")³;

2 The same DOB records also indicate an audit with the status "notice to revoke" as of May 25, 2016; however, the Board notes that nothing in the record indicates that the revocation of any approval under Subdivision Improved Application No. 121192459 has been effectuated.

3 Because Tax Lot 138's current depth of 10'-0" is the subject of the Determination, the Board considers this appeal with respect to the current configuration of Tax Lot

and

WHEREAS, by February 27, 2015, a declaration of zoning lot restrictions, a zoning lot description and ownership statement and a certification of parties in interest, which included waivers of declaration from all parties in interest, were recorded to merge Tax Lot 37, Tax Lot 38 and Tax Lot 32 into a single zoning lot; and

WHEREAS, by March 23, 2015, new Tax Lot 38 and former Tax Lot 37 had been combined into a single Tax Lot 38; and

WHEREAS, on May 24, 2017, Tax Lot 37 and Tax Lot 138 took on their current configuration by termination of the declaration of zoning lot restrictions and recordation of a new declaration; and

WHEREAS, on October 27, 2016, under New Building Application No. 121186518, DOB approved revised plans for the New Building, authorizing the Subdivision of the subject site into Zoning Lot 1 and Zoning Lot 2, and the Permit was issued on the same date; and

WHEREAS, because of the relocation of the lot line between former 4'-0" Tax Lot 138 and former Tax Lot 38, the Subdivision simultaneously effectuated two events: subdividing former Tax Lot 38 by removing a 6'-0" parcel and merging the former 4'-0" Tax Lot 138 with said 6'-0" parcel to assemble the current 10'-0" Tax Lot 138; and

WHEREAS, as currently configured, Tax Lot 138 has 10'-0" of depth and frontage along East 88th Street, and Tax Lot 37 has approximately 39'-9" of frontage along Third Avenue and is occupied by the New Building, which is under construction; and

WHEREAS, accordingly, Zoning Lot 2 (Tax Lot 138) is an intervening tract of land between the New Building and East 88th Street; and

WHEREAS, it is undisputed that the New Building complies with the Tower-on-a-Base regulations with respect to Third Avenue, upon which Zoning Lot 1 has a "street wall" and which the New Building's Third Avenue "street wall" faces, *see* ZR §§ 23-651 and 12-10 (definitions); and

WHEREAS, on September 28, 2017, DOB issued the Determination, and Appellants commenced this appeal on October 30, 2017, seeking reversal of the Determination; and

WHEREAS, a public hearing was held on this appeal on July 17, 2018, after due notice by publication in *The City Record*, with a continued hearing on October 30, 2018, and then to decision on December 11, 2018; and

WHEREAS, Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Scibetta

138. No appeal with respect to the Original Subdivision, creating a zoning lot with a depth of 4'-0", was filed with the Board, so the lawfulness of the Original Subdivision is not before the Board in this appeal.

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performed inspections of the site and surrounding neighborhood; and

WHEREAS, the Department of City Planning submitted testimony in opposition to this appeal by letter dated October 18, 2018, which reads in pertinent part:

Three zoning issues were cited by the Appellant and the Department agrees with the interpretations set forth by DOB of the relevant zoning regulations in issuing the permit. . . .

The first two issues relate to zoning lots: when does a zoning lot get created and what is the required minimum size of a zoning lot in a commercial district? The definition of zoning lot in New York City Zoning Resolution (ZR) Section 12-10 sets forth in paragraphs (a) through (d) the conditions under which a zoning lot can be formed. However, it is established by interpretation, practice and documentation by previous Department Counsel that the provisions do not apply automatically to a collection of tax lots that meet any of these conditions. An affirmative action by the owners of the properties must be taken in seeking a permit or CO based on zoning calculations of the combined tax lots identified in the applications as the subject zoning lot. Therefore, the zoning lot for this development was created in the application for a building permit for this development. Since the zoning lot identified for development in such application does not incorporate adjoining tax lots, it is not part of the zoning lot for this development, regardless of the lots being owned by a single owner.

The second issue relates to whether there is in the ZR a required minimum zoning lot size. The ZR allows subdivision of zoning lots only if subdivided into two or more zoning lots. As a result, the interpretation of what constitutes a required minimum lot size in the designation of a zoning lot in commercial districts rests on the interpretation of the regulation in ZR 12-10 paragraphs (c) and (d) that establishes a minimum dimension of 10 contiguous feet required to merge adjoining tax lots to create a zoning lot. That is, in order for a tax lot to merge with another tax lot to create a zoning lot, the two tax lots must adjoin for 10 linear feet. By interpreting this regulation in the definition of zoning lot to apply to both the creation of a zoning lot from the subdivision of a tract of land as well as to the merger of formerly separate tax lots, DOB has applied a consistent approach to zoning lot dimensions. Such interpretation protects the intent

of the Zoning Resolution which is to allow for the use of the tax lot in future development and clearly not to alienate any land for the purpose of undermining zoning requirements.

The third issue raised by the Appellant is whether the height regulations of Section 23-692 (known as the “sliver rule”) applicable to “street walls” apply to the portion of the development on 1558 Third Avenue that is set back but visible from East 88[th] Street. The purpose of this rule is to limit the height of buildings on narrow lots fronting on the street. . . .

In order to make sense of this regulation, the building wall must be on a zoning lot that adjoins the street. Otherwise most walls of every building on a block could be determined to be “facing” a street and therefore could be subject to these height restrictions. This is not what was intended by this regulation and would be an absurd and extremely problematic outcome. The regulation also uses the term “fronts on a street” or “street frontage” (see zoning text*). In order to pinpoint the location of a street wall that “fronts on a street”, although not defined in the ZR, “fronting on a street” means that the building is on a zoning lot that adjoins the street, and the street wall is the wall of the building that is closest to and faces/fronts the street on such zoning lot. The applicability of this rule for buildings based on distance from the street even on zoning lots that adjoin the street is dealt with directly in ZR Section 23-692 paragraph (e) and with through lots where a building wall beyond 100 feet of a street on a zoning lot that adjoins a street is not required to comply with the sliver rule. Therefore, the Department agrees with DOB’s determination that the sliver rule applies to a building’s street wall facing a street only when it is on a zoning lot that fronts on or adjoins a street.

A related issue the Appellant raised concerns tower on a base regulations and their applicability to the portion of the zoning lot visible from East 88th Street. The development is in a C1-9 District where tower on a base is required for buildings on wide streets where more than 25 percent of the floor area is residential (pursuant to ZR Section 35-64 and the criteria in ZR Section 23-65(a)). The development complies with these regulations and places a tower on a base building on the portion of the zoning lot that fronts on Third Avenue. For the same reason as the sliver rules, these regulations do not apply on East 88th Street where the zoning lot does not front on or adjoin

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the street.

The Department notes that given the complexity and enormous variety of land and existing buildings in the city, the ZR does not, and realistically cannot, anticipate and adjust the design outcome of every development, especially given the parallel complexity and intricacy of regulations in the ZR. The Department believes that DOB correctly interpreted the applicable ZR regulations and the development at 1558 3rd Avenue complies with the regulations as set forth [in] the ZR; and

WHEREAS, Community Board 8 submitted testimony in support of this appeal, stating that the developer created a small lot solely for the purpose of evading zoning regulations, that the Zoning Resolution is designed to maintain neighborhoods, provide predictability, foster community and allow the City to remain a livable, vital place for all residents and that allowing the Subdivision to form Zoning Lot 1 and Zoning Lot 2 would enable a taller building than otherwise permitted; and

WHEREAS, Manhattan Borough President Gale A. Brewer, New York State Senator Liz Krueger, New York State Assembly Member Richard N. Gottfried, City Council Member Benjamin J. Kallos, City Council Member Margaret Chin, City Council Member Barry Grodenchik, City Council Member I. Daneek Miller, City Council Member Bill Perkins, City Council Member Keith Powers, City Council Member Antonio Reynoso, City Council Member Donovan Richards and City Council Member Carlina Rivera submitted testimony in support of this appeal, stating that the Board should prohibit the creation of unbuildable lots designed to evade zoning regulations; and

WHEREAS, Manhattan Borough President Gale A. Brewer submitted testimony in support of this appeal, stating that subdividing out a small, unbuildable lot allows the Owner to circumvent the Sliver Law and the Tower-on-a-Base regulations and that permitting a practice of subdividing lots for no discernible reason other than bending rules could lead to greater administrative confusion and more unpredictable building forms; and

WHEREAS, City Council Member Benjamin J. Kallos submitted testimony in support of this appeal, stating that the Subdivision solely serves to evade applicable zoning regulations, that the New Building in reality still faces East 88th Street and that Zoning Lot 2 is actually an integral part of the New Building; and

WHEREAS, Appellants, DOB and the Owner have been represented by counsel throughout this appeal; and

ISSUES PRESENTED

WHEREAS, there are two issues in this appeal: (1) whether the Subdivision of the subject site into Zoning Lot 1 and Zoning Lot 2 contravenes the “zoning lot” definition of

ZR § 12-10 and (2) whether, if the Subdivision is valid, the New Building nevertheless has a “street wall” “facing” East 88th Street—notwithstanding the presence of an intervening tract of land (Zoning Lot 2) between the New Building and East 88th Street—that renders the Tower-on-a-Base regulations and the Sliver Law applicable to the New Building4; and

APPELLANTS’ POSITION

WHEREAS, Appellants represent that the Subdivision is not permitted and that, even assuming the Subdivision is permitted, the Tower-on-a-Base regulations and the Sliver Law still apply to the New Building with respect to East 88th Street; and

I. SUBDIVISION NOT PERMITTED

WHEREAS, Appellants submit that the Subdivision is not permitted because the owner’s sole purpose is to intentionally evade zoning regulations5 and that, in this appeal, no other justification for the Subdivision has been asserted; and

WHEREAS, Appellants state that the Zoning Resolution prohibits the creation of a new zoning lot that results in a non-compliance; and

WHEREAS, Appellants state that the clear intent of the ZR § 12-10 “zoning lot” definition is that a zoning lot subdivision should not be employed to evade other zoning provisions and that the plain language of the Zoning Resolution and its legislative history converge in expressing that the “zoning lot” definition was never intended to result in allowing creation of a small zoning lot for the clear purpose of avoiding compliance with zoning regulations; and

WHEREAS, Appellants submit that there is an implicit owner-intent test in the Zoning Resolution that, in order to effectuate the Zoning Resolution’s legislative intent, prohibits zoning lot subdivisions that solely seek to evade zoning regulations; and

WHEREAS, Appellants submit that, because Tax Lot 37 and Tax Lot 138 are owned by different entities with the same principals and the same addresses, the tract of land consisting of Tax Lot 37 and Tax Lot 138 should be treated

4 Though the Determination does not discuss the Sliver Law directly, the applicability of the Tower-on-a-Base regulations and the Sliver Law both involve the interpretation and application of the term “street wall,” and DOB has thoroughly briefed the applicability of the Sliver Law to the New Building in this appeal. Accordingly, this issue is appropriately before the Board.

5 It should be noted that this owner-intent test, which focuses on the intent of the property owner in pursuing a zoning lot subdivision, is a distinct argument from Appellants’ ancillary argument about the Zoning Resolution’s statement of legislative intent.

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as a single zoning lot, *see* ZR § 12-10 (“zoning lot” definition), and the Subdivision is a sham; and

WHEREAS, Appellants submit that private easements covering part of Tax Lot 138 and the Offering Plan for the 180 East 88th Street Condominium, a private disclosure document to purchasers of condominiums, further evince that the Subdivision is a sham because the separate ownership of Tax Lot 37 and Tax Lot 138 is contrary to fact; and

WHEREAS, Appellants state that a sham zoning lot subdivision that is blatantly contrary to the statutory language and intent, that creates a zoning non-compliance and that leads to absurd results is unlawful; and

WHEREAS, Appellants state that there is no New York law precisely on point but that a sham zoning lot subdivision that violates substantive provisions of zoning is a nullity; and

WHEREAS, Appellants state that, analogous to the Subdivision in this appeal, courts have upheld the City’s enforcement against sham compliance with respect to advertising signs and adult establishments and that similarly the Subdivision should be voided in this appeal for circumventing the Zoning Resolution; and

WHEREAS, moreover, Appellants submit that it is implausible that Tax Lot 138 will ever be developed with a building because the New Building has been designed so that the New Building’s main entrance is located within the landlocked portion of Tax Lot 37 immediately next to Tax Lot 138 and that access to the entrance to the New Building will perforce be over Tax Lot 138; and

WHEREAS, furthermore, Appellants state that, although the Zoning Resolution does not by its terms prohibit unbuildable lots, Tax Lot 138 has no independent utility and that DOB does not approve the subdivision of unbuildable lots under DOB’s Operations Policy and Procedure Notice, entitled “Subdivision of Unimproved Properties,” dated October 24, 1991 (“OPPN # 30/92”) (“In the absence of [subdivision] review, a tax lot could be theoretically created that fails to meet the minimum requirements of law resulting in a tax lot which cannot be built in a complying or conforming manner.”); and

WHEREAS, Appellants further state that the Subdivision solely seeks to circumvent the Tower-on-a-Base regulations, which allow for a consistent street wall with abutting buildings, and the Sliver Law, which generally limits the height of a building less than 45 feet wide to the width of the street on which it faces; and

WHEREAS, additionally, Appellant states that DOB’s interpretation of the Zoning Resolution allowing such subdivisions would undermine much of the Zoning Resolution by allowing evasion of the street-wall continuity requirement as well as regulations regarding transparency regulations, designs standards for arcades and plazas,

parking wrap requirements and yard requirements; and

WHEREAS, Appellants state that the Subdivision should be treated as a sham that should be regarded as void because its purportedly separate ownership lacks substance, because Zoning Lot 2 is unbuildable and has no value and because its creation serves no other purpose than to evade the substantive requirements of the Zoning Resolution; and

WHEREAS, accordingly, Appellants submit that the Subdivision is not permitted because the sole purpose is to intentionally evade zoning regulations; and

WHEREAS, Appellants also submit that the Subdivision contravenes the explicit legislative intent of the Zoning Resolution; and

WHEREAS, Appellants state that C1 zoning districts are “designed to provide for local shopping and include a wide range of retail stores and personal service establishments which cater to frequently recurring needs. . . . The district regulations are designed to promote convenient shopping and the stability of retail development by encouraging continuous retail frontage and by prohibiting local service and manufacturing establishments which tend to break such continuity,” *see* ZR § 31-11; and

WHEREAS, Appellants state that commercial districts are established “to encourage the natural tendency of local retail development to concentrate in continuous retail frontage, to the mutual advantage of both consumers and merchants,” ZR § 31-00; and

WHEREAS, Appellants state that the legislative history confirms the intent of the clear language of these provisions in that the City Planning Commission developed the Tower-on-a-Base regulations specifically to reinforce the street wall scale: “[M]any blocks in neighborhoods with an established streetwall character have had this context eroded by towers that are set back from the streetline in plazas and rise without setback. . . . Recent high density residential development, particularly on the east side of Manhattan, has all too frequently been out of scale with its context. The streetwall scale and neighborhood context have been eroded as towers have become increasingly taller and thinner. This text change would create a new building form that would reinforce the established neighborhood character. . . . The plaza erodes the streetwall character of neighborhoods,” City Planning Commission Report No. N 940013 ZRM; and

WHEREAS, Appellants state that the New Building and approval of the Subdivision would disrupt the continuity of frontage and prevent the development of a potential retail site in direct violation of these provisions of the Zoning Resolution; and

WHEREAS, accordingly, Appellants submit that the Subdivision contravenes the legislative intent of the Zoning Resolution by eliminating continuous retail frontage; and

II. APPLICABILITY OF TOWER-ON-A-BASE REGULATIONS AND THE SILVER LAW

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WHEREAS, notwithstanding the foregoing, Appellants submit that, even if the Board were to find the Subdivision lawful, the Tower-on-a-Base regulations and the Sliver Law would still apply to the New Building with respect to East 88th Street; and

A. Tower-on-a-Base Regulations

WHEREAS, Appellants submit that the Tower-on-a-Base regulations still apply to the New Building with respect to East 88th Street; and

WHEREAS, Appellants state that, under ZR § 23-651(b)(1)(i), “the *street wall* of the [*building*] base shall occupy the entire *street* frontage of a *zoning lot* not occupied by existing *buildings*” and that this provision applies along East 88th Street because the New Building “is located on a *zoning lot* that fronts upon a *wide street* and is either within 125 feet from such *wide street* frontage along the short dimension of the *block* or within 100 feet from such *wide street* frontage along the long dimension of the *block*,” ZR § 23-65; and

WHEREAS, Appellants state that these provisions apply to the New Building because the street wall of its base facing East 88th Street is within 125 feet of the intersection of Third Avenue and East 88th Street but that said street wall of the New Building’s base is not “located within eight feet of the *street line*,” ZR § 23-651(b)(1)(i); and

WHEREAS, Appellants state that the Zoning Resolution does not define the words “facing the street,” “on a narrow street” and “street frontage,” so the fact that Zoning Lot 1 purportedly does not itself abut East 88th Street is irrelevant because the Tower-on-a-Base regulations are still applicable to the New Building; and

WHEREAS, Appellants state that Tower-on-a-Base regulations were enacted because the City Planning Commission determined that “[t]he plaza erodes the streetwall character of neighborhoods”; that “many blocks in neighborhoods with an established streetwall character have had this context eroded by towers that are set back from the streetline in plazas and rise without setback. . . . Recent high density residential development, particularly on the east side of Manhattan, has all too frequently been out of scale with its context. The streetwall scale and neighborhood context have been eroded as towers have become increasingly taller and thinner. This [Tower-on-a-Base] text change would create a new building form that would reinforce the established neighborhood character,” City Planning Commission Report No. N 940013 ZRM at 2, 11, 12; and that “[t]he proposed combination of streetwall controls, floor area distribution, tower coverage and articulation credits work together to ensure a flexible building design which will enhance streetscapes, reinforce neighborhood character, and still allow for reasonable tower development,” City Planning Commission Report No. N 940013 ZRM at 7; and

WHEREAS, Appellants state that DOB’s

interpretation of these provisions could be used to negate the Tower-on-a-Base regulations entirely; and

WHEREAS, accordingly, Appellants submit that, even with the Subdivision, the Tower-on-a-Base regulations still apply to the New Building with respect to East 88th Street; and

B. Sliver Law

WHEREAS, Appellants state that the Sliver Law still applies to the New Building with respect to East 88th Street; and

WHEREAS, Appellants state that the Sliver Law sets stringent height limits “on portions of buildings with street walls less than 45 feet in width,” which limits extend back 100 feet from the street line, ZR § 23-692; and

WHEREAS, Appellants state that the plain language of the Sliver Law make them applicable to the New Building because they apply to “portions of buildings with street walls less than 45 feet in width,” ZR § 23-692, and the portion of the New Building that faces East 88th Street is 22 feet in width; and

WHEREAS, Appellants state that a “street wall” is a “wall or portion of a wall of a building facing a street,” ZR § 12-10; that a “street line” is a “lot line separating a street from other land,” ZR § 12-10; that a street wall is not necessarily along the street line, but only facing that line; and that a street wall can be more than 100 feet from a street line, *see* ZR § 23-692(e)(2); and

WHEREAS, Appellants state that the New Building is situated on a corner lot, so the maximum height of the portion of the New Building with street walls less than 45 feet in width is “the width of the widest street on which it fronts, or 100 feet, whichever is less,” ZR § 23-692; that the widest street on which the New Building fronts is Third Avenue, which is more than 100 feet in width; that the height of the portion of the New Building governed by the Sliver Law (the portion facing, and within 100 feet of, East 88th Street) cannot exceed 100 feet; and that as designed that portion of the New Building rises 32 stories and 623 feet in height—exceeding the 100-foot limit; and

WHEREAS, Appellants state that, under ZR § 23-692, the 100-foot height limit applies 100 feet southward from the street line along East 88th Street, which affects the portion of the New Building facing East 88th Street and within 100 feet of East 88th Street (approximately 1,200 square feet per floor); and

WHEREAS, accordingly, Appellants submit that, even with the Subdivision, the Sliver Law is applicable to the New Building with respect to East 88th Street; and

DOB’S POSITION

WHEREAS, DOB submits that the Subdivision is permitted and that, with the Subdivision, neither the Tower-on-a-Base regulations nor the Sliver Law applies to the New Building with respect to East 88th Street; and

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I. SUBDIVISION PERMITTED

WHEREAS, DOB submits that the Subdivision is permitted because it complies with the Zoning Resolution's applicable subdivision regulations; and

WHEREAS, DOB states that the Subdivision does not create a non-compliance, as required by the ZR § 12-10 "zoning lot" definition; and

WHEREAS, DOB states that the configurations of Zoning Lot 1 and Zoning Lot 2 are proper because a zoning lot with a depth of 10 feet is permitted by the Zoning Resolution; and

WHEREAS, DOB states that the Zoning Resolution does not explicitly state the minimum dimensions for a zoning lot but that it would be absurd to interpret the Zoning Resolution such that any tract of land, regardless of its ability to be developed, could constitute a zoning lot; accordingly, DOB submits that a deeper analysis into the Zoning Resolution supports its position that a tract of land containing at least a 10-foot dimension adjacent to another zoning lot could be subdivided from a tract of land to form a valid zoning lot; and

WHEREAS, DOB states that it would also be absurd to not have a minimum zoning lot dimension because applicants could create 1-inch by 1-inch zoning lots, thereby creating many zoning lots in the City that could never be developed; and

WHEREAS, DOB states that zoning lot subdivisions require the resulting tracts of land to be developable zoning lots because a "zoning lot may be subdivided into two or more zoning lots, provided that all resulting zoning lots and all buildings thereon shall comply with all of the applicable provisions of this Resolution," ZR § 12-10; that each subdivided tract of land must be capable of being developed as its own zoning lot because zoning lots can only be formed "at the time of filing for a building permit," ZR § 12-10 ("zoning lot" definition); and that a zoning lot subdivision that results in a tract of land that cannot complete the requirements of forming a zoning lot (filing for a building permit to develop or enlarge) is not a permitted subdivision; and

WHEREAS, DOB states that, because a lot with a depth of four feet and a width of 22 feet would not be developable, it would therefore not be permitted⁶; and

WHEREAS, DOB states that, because zoning lots can consist of multiple lots of record contiguous for a minimum of 10 linear feet under paragraphs (c) and (d) of the ZR

§ 12-10 "zoning lot" definition, a 10-foot-deep dimension is permitted because that is the minimum dimension required for merging zoning lots; and

WHEREAS, DOB states that neither Zoning Lot 1 nor Zoning Lot 2 is undevelopable, so the Subdivision would meet an implicit developability test; and

WHEREAS, accordingly, based on the foregoing, DOB submits that the Subdivision complies with applicable zoning regulations and is therefore permitted; and

II APPLICABILITY OF TOWER-ON-A-BASE REGULATIONS AND THE SILVER LAW

WHEREAS, DOB submits that, with the Subdivision, neither the Tower-on-a-Base regulations nor the Silver Law apply to the New Building with respect to East 88th Street; and

A. Tower-on-a-Base Regulations

WHEREAS, DOB submits that, with the Subdivision, the Tower-on-a-Base regulations do not apply to the New Building with respect to East 88th Street because Zoning Lot 1, within which the New Building is constructed, has no frontage along East 88th Street, and the New Building has no street wall with respect to East 88th Street; and

WHEREAS, DOB states that the northern wall of the New Building is not subject to the Tower-on-a-Base regulations because they only apply to buildings on zoning lots that are adjacent to streets without any intervening land in between, *see* ZR §§ 23-65 and 23-651; and

WHEREAS, DOB states that, in particular, ZR § 23-65(a) states that it only applies to a building that "is located on a zoning lot that fronts upon a wide street and is either within 125 feet from such wide street frontage along the short dimension of the block or within 100 feet from such wide street frontage along the long dimension of the block"—in other words, the Tower-on-a-Base regulations only apply to buildings located on zoning lots that front upon a wide street; and

WHEREAS, DOB states that, because Zoning Lot 1 has no frontage along East 88th Street, the Tower-on-a-Base regulations do not apply to the New Building; and

WHEREAS, DOB states that the Tower-on-a-Base regulations were introduced to replace the previous tower-in-a-plaza regime; that studies had shown that tower-in-a-plaza designs often failed to produce the public benefit originally intended since plaza designs frequently discouraged public use; that City Planning Commission Report No. N 940013 ZRM indicates that the Tower-on-a-Base regulations were meant to "set a middle ground between contextual buildings and tower development"; and that "the height of residential towers and the effect of zoning lot mergers on building scale would become more predictable, resulting in buildings likely to range in height from 28 to 33 stories"; and

WHEREAS, DOB states that the Tower-on-a-Base

6 The Board notes that the issue of whether the Zoning Resolution contains an implicit developability test is not before the Board in this appeal, so the Board does not consider or reach any conclusion as to whether a zoning lot must be developable or whether there is an implicit minimum dimension for a zoning lot.

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regulations emphasize the term “frontage,” which is tied to a zoning lot’s juxtaposition with a street and that City Planning Commission Report No. N 940013 ZRM frequently refers to the term “street line,” which is defined as “a *lot line* separating the *street* from other land,” ZR § 12-10; and

WHEREAS, DOB states that the New Building will contain 32 stories, which is directly in line with the above range envisioned by the City Planning Commission when enacting the Tower-on-a-Base regulations; and

B. Sliver Law

WHEREAS, DOB states that, with the Subdivision, the Sliver Law does not apply to the New Building with respect to East 88th Street; and

WHEREAS, DOB states that the northern wall of the proposed building is not subject to the Sliver Law, *see* ZR § 23-692; and

WHEREAS, DOB states that the northern wall of the proposed building is not a “street wall,” ZR § 12-10; and

WHEREAS, DOB states that City Planning Commission Report No. N 830112 ZRY, explaining the Sliver Law, supports DOB’s interpretation that “street walls” must front on streets; and

WHEREAS, DOB states that Appellant’s interpretation of ZR § 23-692 would lead to absurd results; and

WHEREAS, DOB states that the Sliver Law was introduced to prohibit excessive heights for narrow buildings on small lots which, by virtue of their small lot size, contained limited street frontage and that City Planning Commission Report No. N 830112 ZRY indicates that there had been an increase in high-rise buildings built on small lots with “lack of opportunity to assemble large construction sites”; and

WHEREAS, DOB states that the Sliver Law accomplishes this goal by limiting excessive heights for certain small frontage lots and that, although the term “frontage” is not defined in the Zoning Resolution, frontage is commonly understood to be tied to a lot’s juxtaposition to a street; and

WHEREAS, DOB states that Zoning Lot 1 is not the type of small zoning lot addressed by the Sliver Law and, more importantly, does not contain any narrow street frontage along East 88th Street because the zoning lot line ends ten feet south of East 88th Street; and

WHEREAS, accordingly, DOB submits that, with the Subdivision, neither the Tower-on-a-Base regulations nor the Sliver Law apply to the New Building with respect to East 88th Street; and

OWNER’S POSITION

WHEREAS, the Owner submits that the Subdivision is permitted and that, with the Subdivision, neither the Tower-on-a-Base regulations nor the Sliver Law apply to the New

Building with respect to East 88th Street; and

I. SUBDIVISION PERMITTED

WHEREAS, the Owner states that the Subdivision is permitted because it complies with the Zoning Resolution’s requirements for zoning lot subdivisions, because there is no applicable minimum lot size, because there is no owner-intent test and because common ownership does not create a de facto zoning lot; and

WHEREAS, with respect to requirements for zoning lot subdivisions, the Owner states that, in particular, the Zoning Resolution states that a “*zoning lot* may be subdivided into two or more *zoning lots*, provided that all resulting *zoning lots* and all *buildings* thereon shall comply with all of the applicable provisions of this Resolution,” ZR § 12-10; and

WHEREAS, the Owner states that the City Planning Commission Report, No. N 760226 ZRY, discussing the 1977 amendments to the Zoning Resolution’s “zoning lot” definition, notes that, under paragraph (d) of the revised definition, a zoning lot, once established, would remain in effect “until such time as the zoning lot is subdivided in accordance with existing zoning lot subdivision rules” and that “[t]hese rules preclude any subdivisions creating noncompliance with any applicable provisions of the zoning”; and

WHEREAS, the Owner states that neither the text of the “zoning lot” definition in ZR § 12-10 nor its legislative history provides any authority for disallowing a zoning lot subdivision based on speculation about a future development; and

WHEREAS, the Owner states that the Zoning Resolution’s standard for zoning lot subdivisions was met when the zoning exhibits required by the Zoning Resolution were recorded against the subject site and were accepted by DOB; and

WHEREAS, the Owner states that Tax Lot 37 and Tax Lot 138 were established as separate zoning lots under a declaration of zoning lot subdivision and restrictions, dated May 24, 2017, and recorded May 26, 2017; and

WHEREAS, the Owner states that, with regard to Tax Lot 37, a zoning lot declaration dated May 25, 2017, was recorded on May 26, 2017, at CRFN 2017000198267, declaring Tax Lot 37 and Tax Lot 32 to be a single zoning lot; and

WHEREAS, the Owner states that ZR § 71-00 obliges DOB to “administer and enforce” the Zoning Resolution, and New York City Charter § 645(d) states that the Commissioner of DOB “shall review and certify any proposed subdivision of a zoning lot with any building thereon, in order to ensure that the subdivision will not result in the violation of the applicable zoning laws”; and

WHEREAS, the Owner states that DOB expressly approved the Subdivision on June 13, 2017, pursuant to

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Subdivision Improved Application No. 121203642, thereby confirming there were no zoning non-compliances created by the Subdivision; and

WHEREAS, accordingly, the Owner submits that the Subdivision complies with the Zoning Resolution's requirements for zoning lot subdivisions; and

WHEREAS, with respect to the applicability of a minimum lot size, the Owner states that, at the subject site, there is no minimum lot size for zoning lots that do not contain a residential building; that, in contrast, in residential zoning districts, no residential building is permitted on a zoning lot with a total lot area or lot width below explicitly stated minimums, *see* ZR §§ 23-32; and that, for instance, in R3 through R10 zoning districts, there are a minimum lot area of 1,700 square feet and a minimum width of 18 feet required for zoning lots containing residential buildings; and

WHEREAS, the Owner states that Appellants would have the Board impose an analogous—but nonexistent—minimum lot size requirement for an unimproved zoning lot; however, no such zoning provision exists; and

WHEREAS, the Owner states that there is no requirement in the Zoning Resolution that a zoning lot must be able to accommodate the development of a new building; and

WHEREAS, the Owner states that DOB's Operations Policy and Procedure Notice, entitled "Department of Buildings Documentation Required by Department of Finance for Final Tax Lots," dated December 9, 1992 ("OPPN # 30/92"), does not support the proposition that zoning lots must be buildable and instead states: "The Department of Finance does not require an applicant to submit evidence of the certification or approval of the subdivision (for example, a PW-1 or Certificate of Occupancy) from the Department of Buildings in order to obtain final tax lots for unimproved land"; and

WHEREAS, the Owner states that there is no logic to requiring that a tax lot be "buildable" where there is no obligation under the Zoning Resolution or any other provision of law that the tax lot actually be developed with buildings (rather than used to support an open use); and

WHEREAS, the Owner states that DOB's Operations Policy and Procedure Notice, entitled "Subdivision of Unimproved Properties," dated October 24, 1991 ("OPPN # 30/92"), has been superseded by OPPN # 30/92 and, in any event, requires no more than that tax lots resulting from a subdivision meet "the minimum requirements of law," which Tax Lot 138 does do since there is no requirement with respect to a minimum lot area; and

WHEREAS, the Owner states that, notwithstanding the absence of any buildability requirement, a new building that complies with the Zoning Resolution could be developed on Lot 138—specifically, a one-story commercial building for use as a coffee vendor, cellphone retailer, newsstand or

other similarly small retail establishment; and

WHEREAS, accordingly, the Owner submits that there is no minimum lot size or other implicit developability requirement that would prohibit the Subdivision; and

WHEREAS, with respect to Appellants' asserted owner-intent test, the Owner states that there is no basis in the Zoning Resolution for an implicit owner-intent test; and

WHEREAS, the Owner states that, contrary to Appellants' assertions about an owner-intent test, the Zoning Resolution permits a property owner to subdivide a zoning lot freely—provided that the subdivision does not result in any zoning non-compliance at the time it is made and provided that the proper legal instruments are recorded; and

WHEREAS, the Owner states that the Zoning Resolution employs an objective test for zoning lot subdivisions and that there is no basis in the "zoning lot" definition or elsewhere in the text of the Zoning Resolution for Appellants' asserted owner-intent test; and

WHEREAS, the Owner states that zoning lots are merged and subdivided in the City of New York repeatedly over time, as building patterns change and as old buildings make way for new buildings; that zoning lots, once established, are not set in stone and may be subdivided freely to accommodate new development, subject only to the Zoning Resolution's requirement that a zoning lot subdivision not create a noncompliance; and

WHEREAS, the Owner submits that Section 71-00 of the Zoning Resolution provides that DOB "shall administer and enforce" its provisions; and

WHEREAS, the Owner notes that Appellants cite no authority for the proposition that the Zoning Resolution instructs DOB to speculate about the future subjective intent of an applicant for subdivision approval or a building permit; and

WHEREAS, the Owner notes that, in administering and enforcing the Zoning Resolution with respect to subdivision or construction applications, DOB receives plans of existing zoning-lot configurations and plans of proposed zoning-lot configurations; and

WHEREAS, the Owner notes that Appellants cite no zoning provision instructing DOB to receive, investigate or analyze private, contractual arrangements—including offering plans—or indicating that such documents would be a proper basis for withholding approval of an application to subdivide a zoning lot or for refusing to issue a building permit; and

WHEREAS, the Owner submits that there is no requirement that a zoning lot ever be developed with a new building, considering that the Zoning Resolution permits open uses; and

WHEREAS, the Owner submits that any owner-intent test envisaged by Appellants would be impracticable—if not impossible—for DOB to implement as part of its review of

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subdivision or construction applications; and

WHEREAS, the Owner states that the subject site has been subdivided in order to ensure the New Building's compliance with zoning regulations, as required by DOB; and

WHEREAS, the Owner states that Appellants cite no authority for the proposition that a zoning lot subdivision have a "legitimate land use purpose"; and

WHEREAS, accordingly, the Owner submits that there is no basis for an implicit owner-intent test; and

WHEREAS, with respect to whether common ownership creates a de facto zoning lot and Appellants' assertions about "sham" subdivisions, the Owner states that the Zoning Resolution does not automatically treat two adjacent parcels as a single zoning lot merely because they are in the same ownership and that therefore there is no basis for the Subdivision to be considered a sham; and

WHEREAS, the Owner states that considering the Subdivision a sham would violate the bedrock zoning principal that zoning be based on the characteristics of a particular property—not on the identity of the property owner; and

WHEREAS, accordingly, based upon the foregoing, the Owner submits that the Subdivision is permitted; and

II APPLICABILITY OF TOWER-ON-A-BASE REGULATIONS AND THE SILVER LAW

WHEREAS, the Owner submits that, with the Subdivision, neither the Tower-on-a-Base regulations nor the Sliver Law apply to the New Building with respect to East 88th Street; and

A. Tower-on-a-Base Regulations

WHEREAS, the Owner submits that the Tower-on-a-Base regulations do not apply to the New Building with respect to East 88th Street; and

WHEREAS, more specifically, the Owner states that the Tower-on-a-Base regulations, which are applicable along East 88th Street, do not apply to the New Building because the New Building does not have a street wall or a base built along East 88th Street; and

WHEREAS, the Owner states that the Tower-on-a-Base regulations only apply to a building that is "located on a *zoning lot* that fronts upon a *wide street* and is either within 125 feet from such *wide street* frontage along the short dimension of the *block* or within 100 feet from such *wide street* frontage along the long dimension of the *block*," ZR § 23-65(a), and require affected buildings to be built with street walls that are located within eight feet of the applicable street line, for 70 percent of their width; and

WHEREAS, the Owner states that, under ZR § 23-651, "On a *wide street*, and on a *narrow street* within 125 feet of its intersection with a *wide street*, the *street wall* of the base shall occupy the entire *street* frontage of a *zoning lot* not occupied by existing *buildings*. At any height, at least 70

percent of the width of such *street wall* shall be located within eight feet of the *street line*, and the remaining 30 percent of such *street wall* may be recessed beyond eight feet of the *street line* to provide *outer courts* or balconies"—which is, by its terms, only applicable to a zoning lot's "street frontage" and a "street wall" facing a "street line"; and

WHEREAS, the Owner states that the New Building complies with the Tower-on-a-Base regulations with respect to Third Avenue, upon which the Zoning Lot has a "street wall" and which the New Building's Third Avenue "street wall" faces, *see* ZR §§ 23-651 and 12-10 (definitions); and

WHEREAS, the Owner states that Appellants' urge an impossible result: because Zoning Lot 1 has no frontage on East 88th Street and because the depth of Zoning Lot 1 is 10 feet, the New Building's northern wall cannot be located within 8 feet of the street line along East 88th Street because to do so would situate the New Building on more than one zoning lot; and

WHEREAS, accordingly, the Owner submits that the Tower-on-a-Base regulations do not apply to the New Building with respect to East 88th Street; and

B. Sliver Law

WHEREAS, the Owner submits that the Sliver Law does not apply to the New Building with respect to East 88th Street; and

WHEREAS, more specifically, the Owner states that the Sliver Law does not apply to the New Building because Zoning Lot 1 has no street frontage on East 88th Street, and, more particularly, the New Building cannot have a "street wall" with regard to East 88th Street because its zoning lot does not have a "street line" on East 88th Street, as those terms are defined in ZR § 12-10; and

WHEREAS, the Owner states that the provisions of ZR § 23-692 apply to "portions of buildings with street walls less than 45 feet in width"; that ZR § 12-10 defines a "street wall" as a "wall or portion of a wall of a building facing a street"; and that the term "facing" is not defined in the Zoning Resolution; and

WHEREAS, the Owner states that zoning compliance for floor area, height and setback, yards and other regulations is measured based on the parameters of a zoning lot and that many regulations measure compliance with reference to a zoning lot's "street line," which is defined as "a lot line separating a street from other land" under ZR § 12-10; and

WHEREAS, the Owner states that it would be absurd to assert that the New Building faces East 88th Street when the zoning lot has no frontage on East 88th Street because it would subject a zoning lot to the height and setback regulations of each of the streets bounding the block on which it is located—regardless of the presence of any intervening lots, buildings or other structures located

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between the zoning lot and the applicable street line; and

WHEREAS, the Owner states that the term “street wall” is only definable regarding a particular “street line,” and the Sliver Law’s restrictions do not apply to street walls “located beyond 100 feet of a street line,” ZR § 23-692(e)(2), a provision that is not comprehensible without regard to a specific street line; and

WHEREAS, the Owner states that, without reference to a particular street line, there is no reference point for measuring the width of the applicable street wall, but, even under Appellant’s asserted interpretation of the Sliver Law, the New Building’s street wall “facing” East 88th Street would be the entire northern wall of the New Building, which is 100 feet in width, and therefore not subject to the Sliver Law limitations on the height of a building less than 45 feet in width; and

WHEREAS, accordingly, the Owner submits that the Sliver Law does not apply to the New Building with respect to East 88th Street; and

DISCUSSION

WHEREAS, because this is an appeal for interpretation, under ZR § 72-11, the Board “may make such . . . determination as in its opinion should have been made in the premises in strictly applying and interpreting the provisions of” the Zoning Resolution; and

WHEREAS, the Board first considers whether the Subdivision, which splits the subject site into Zoning Lot 1 (with the New Building and frontage along Third Avenue) and into Zoning Lot 2 (with frontage along East 88th Street), is permitted by the Zoning Resolution’s applicable zoning lot subdivision regulations; and

WHEREAS, next, assuming the Subdivision is permitted, the Board considers whether the Tower-on-a-Base regulations and the Sliver Law still apply to the New Building with respect to East 88th Street; and

WHEREAS, based on the record in this appeal and as discussed herein, the Board finds that Appellants have failed to demonstrate that the Subdivision is invalid and that Appellants have failed to demonstrate that the Tower-on-a-Base regulations or the Sliver Law still apply to the New Building; and

WHEREAS, lastly, a minority of the Board finds that the Subdivision is not permitted by the Zoning Resolution and that this appeal should therefore be granted; and

I. SUBDIVISION PERMITTED

WHEREAS, the Board finds that Appellants have failed to demonstrate that the Subdivision does not comply with any provision of the Zoning Resolution taking into consideration legislative intent, the definition of a “zoning lot,” the lack of an owner-intent test and the absence of any developability issue in this appeal; and

A. Role of Legislative Intent

WHEREAS, the Zoning Resolution sets forth its

statement of legislative intent for regulations applicable in commercial zoning districts in Chapter 1 of Article III; and

WHEREAS, with respect to the general purposes of commercial zoning districts, Section 31-00 of the Zoning Resolution provides in pertinent part:

The Commercial Districts established in this Resolution are designed to promote and protect public health, safety and general welfare. These general goals include, among others, . . . (b) to provide appropriate space and, in particular, sufficient depth from a street, to satisfy the needs of modern local retail development, including the need for off-street parking spaces in areas to which a large proportion of shoppers come by automobile, and to encourage the natural tendency of local retail development to concentrate in continuous retail frontage, to the mutual advantage of both consumers and merchants; . . .

(i) to provide freedom of architectural design, in order to encourage the development of more attractive and economic building forms, within proper standards . . . and (k) to promote the most desirable use of land and direction of building development in accord with a well-considered plan, to promote stability of commercial development, to strengthen the economic base of the City, to protect the character of the district and its peculiar suitability for particular uses, to conserve the value of land and buildings, and to protect the City’s tax revenues; and

WHEREAS, Appellants’ arguments that “continuous retail frontage” would be negatively affected by the Subdivision and by the New Building are unpersuasive and unavailing, ZR §§ 31-00 and 31-11—especially considering that the New Building does not propose any retail use anywhere near East 88th Street and that the New Building has street-wall continuity along Third Avenue; and

WHEREAS, furthermore, nothing in the record indicates that “continuous retail frontage” would be impeded by this appeal in light of the developability of Tax Lot 138 as a one-story commercial building, suitable for use as a newsstand or other retail establishment that “cater[s] to frequently recurring needs,” ZR § 31-11; and

WHEREAS, the Board does favorably acknowledge Appellants’ citations to the Zoning Resolution’s stated purposes, which are part of the text of the Zoning Resolution; and

WHEREAS, however, Appellants assert that allowing the Subdivision and the New Building would undermine the Zoning Resolution’s stated purposes to such an extent as to constitute a rationale sufficient and specific enough to demand denial or revocation of the Permit; and

WHEREAS, in so insisting, Appellants essentially

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treat the Zoning Resolution’s stated purposes—even those which are not relevant or applicable to the New Building—as conditions precedent to the approval of a subdivision application or issuance of a building permit; and

WHEREAS, the Board would not, as urged by Appellants, import into the Zoning Resolution’s statement of legislative intent any conditions precedent to the issuance of a building permit, and Appellants have cited no authority standing for the contrary; and

WHEREAS, reading the Zoning Resolution’s statement of legislative intent as a condition precedent to the issuance of a building permit would essentially eviscerate as-of-right development in the City, allowing the denial—or revocation—of a building permit wherever DOB determines that a particular building would not, for instance, be in the “general welfare,” ZR § 31-00, notwithstanding its compliance with explicitly applicable provisions of the Zoning Resolution; and

WHEREAS, besides being administratively untenable at a DOB plan-examination level, such a result and its attendant uncertainty would be in direct contravention of the Zoning Resolution’s own stated purposes, which seek “to promote stability” and “freedom of architectural design,” ZR § 31-00; and

WHEREAS, accordingly, the Board finds that the Zoning Resolution’s statements regarding legislative intent are not conditions precedent to the issuance of a building permit but rather to be read in harmony with the Zoning Resolution’s substantive requirements, found elsewhere in the zoning text and meant to effectuate the Zoning Resolution’s general purposes; and

B. “Zoning Lot” Definition

WHEREAS, the Zoning Resolution specifically provides, in the “zoning lot” definition, ZR § 12-10, the following in pertinent part:

A zoning lot may be subdivided into two or more zoning lots, provided that all resulting zoning lots and all buildings thereon shall comply with all of the applicable provisions of this Resolution. If such zoning lot, however, is occupied by a non-complying building, such zoning lot may be subdivided provided such subdivision does not create a new non-compliance or increase the degree of non-compliance of such building; and

WHEREAS, the Board notes that the “may” in the phrase “may be subdivided” is “permissive,” ZR § 12-01(c) (rules applying to zoning text); and

WHEREAS, the Zoning Resolution permissively allows subdividing a zoning lot “provided that all resulting zoning lots and all buildings thereon shall comply with all of the applicable provisions of this Resolution,” ZR § 12-10; and

WHEREAS, accordingly, Zoning Lot 1 and Zoning

Lot 2 must each—individually, rather than as an aggregate tract of land—comply with the Zoning Resolution after their subdivision into separate zoning lots, and any buildings located on Zoning Lot 1 and any buildings located on Zoning Lot 2 must also comply with the Zoning Resolution; and

WHEREAS, nothing in the record indicates the Zoning Resolution imposes a minimum lot area for commercial uses in the subject zoning districts; and

WHEREAS, the Board finds that the subject site has been subdivided into two zoning lots in accordance with the applicable subdivision provision in the ZR § 12-10 “zoning lot” definition—namely, that Zoning Lot 1 and Zoning Lot 2 “and all buildings thereon . . . comply with all of the applicable provisions” of the Zoning Resolution⁷; and

C. No Owner-Intent Test

WHEREAS, the Board finds no basis in the “zoning lot” definition or elsewhere in the text of the Zoning Resolution for Appellants’ asserted owner-intent test; and

WHEREAS, Section 71-00 of the Zoning Resolution provides that DOB “shall administer and enforce” its provisions; and

WHEREAS, Appellants cite no authority for the proposition that the Zoning Resolution instructs DOB to speculate about the future subjective intent of an applicant for subdivision approval or a building permit; and

WHEREAS, in administering and enforcing the Zoning Resolution with respect to subdivision or construction applications, DOB receives plans of existing zoning-lot configurations and plans of proposed zoning-lot configurations; and

WHEREAS, Appellants cite no zoning provision instructing DOB to receive, investigate or analyze private, contractual arrangements—including offering plans—or indicating that such documents would be a proper basis for withholding approval of an application to subdivide a zoning lot or for refusing to issue a building permit; and

WHEREAS, the Board notes that, in practice, zoning lot subdivisions often occur prior to the filing of New Building applications and apply to vacant lots or to zoning lots with one or more existing buildings to be demolished, and it may be months or years before construction drawings for a new building are filed—while subsequent zoning lot mergers with adjacent parcels not subject to the subdivision have taken place in the interim; and

WHEREAS, there is no requirement that a zoning lot subdivision be contemporaneous with—or even close in time to—the development of a new building; and

⁷ No party asserts in this appeal that the presence of a six-story commercial building on Tax Lot 32 creates a new non-compliance or increases the degree of any existing non-compliance with respect to the Subdivision.

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WHEREAS, nor is there a requirement that a zoning lot ever be developed with a new building, considering that the Zoning Resolution permits open uses; and

WHEREAS, because there is no basis in the text of the Zoning Resolution for any owner-intent test as to zoning lot subdivisions, the Board expresses no opinion as to the analogy suggested by Appellants with respect to sham compliance with advertising-sign or adult-establishment regulations; and

WHEREAS, accordingly, the Board finds that, beyond having no basis in the text of the Zoning Resolution, any owner-intent test envisaged by Appellants would be impracticable—if not impossible—for DOB to implement as part of its review of subdivision or construction applications; and

D. No Developability Issue

WHEREAS, the Board notes that, because Zoning Lot 2 (Tax Lot 138) can support the development of a one-story commercial building, even if said development is unlikely to occur, whether the Zoning Resolution permits or prohibits zoning lot subdivisions that would create undevelopable tracts of land is purely hypothetical in this appeal; and

WHEREAS, because a theoretical subdivision that attempts to create an undevelopable zoning lot is not before the Board in this appeal, the Board need not—and does not, as Appellants asserts the Board must—consider whether the Zoning Resolution imposes an implicit developability requirement on the subdivision of zoning lots in this appeal; and

WHEREAS, additionally, though not before the Board, in light of the above discussion about the absence of any owner-intent test, it is unclear from the record that it would be possible or practicable to formulate or implement a developability requirement; and

E. Conclusion

WHEREAS, based upon the foregoing, the Board finds that the Subdivision is permitted by the Zoning Resolution in accordance with applicable subdivision regulations, *see* ZR § 12-10 (“zoning lot” definition); and

II APPLICABILITY OF TOWER-ON-A-BASE REGULATIONS AND THE SILVER LAW

WHEREAS, because the Board finds Appellants’ arguments that the Subdivision is not permitted by the Zoning Resolution unpersuasive, the Board next considers Appellants’ assertions that, even were the Subdivision valid, the Tower-on-a-Base regulations and the Sliver Law apply to the New Building with because the New Building purportedly has a street wall facing East 88th Street; and

WHEREAS, as discussed herein, the Board does not find the Tower-on-a-Base regulations or the Sliver Law applicable to the New Building with respect to East 88th Street; and

A. Tower-on-a-Base Regulations

WHEREAS, the Board finds that Appellants have failed to demonstrate that the Tower-on-a-Base regulations apply to the New Building with respect to East 88th Street, *see* ZR § 23-65; and

WHEREAS, Section 23-65 of the Zoning Resolution provides in pertinent part:

The Tower-on-a-Base regulations of Section 23-651 shall apply to any such *building* that:

- (1) contains more than 25 percent of its total *floor area* in *residential use*; and
- (2) is located on a *zoning lot* that fronts upon a *wide street* and is either within 125 feet from such *wide street* frontage along the short dimension of the *block* or within 100 feet from such *wide street* frontage along the long dimension of the *block*.

If a portion of such *building* is *developed* or *enlarged* with a tower the entire *zoning lot* shall be subject to the provisions of Section 23-651 (Tower-on-a-Base); and

WHEREAS, in other words, the Tower-on-a-Base regulations only apply to a zoning lot that “fronts” on a wide street, ZR § 23-65; and

WHEREAS, the Zoning Resolution does not define the term “front” but evinces through its provisions the relationship of a zoning lot to the surrounding street system as well as the adjacency intrinsic to the meaning of a zoning lot’s frontage; and

WHEREAS, a zoning lot is defined, in part, as “tract of land . . . located within a single *block*,” and a block is defined, in part, as “a tract of land bounded by . . . *streets*,” ZR § 12-10; and

WHEREAS, a zoning lot is accordingly defined with relation to the City’s street system, and, by virtue of its location within a block, a zoning lot may be “bounded by” one or more streets, ZR § 12-10; and

WHEREAS, here, Zoning Lot 1 has a lot line coincident with the westerly boundary of Third Avenue, which is more than 75 feet wide, and accordingly “fronts” on Third Avenue, a wide street, *see* ZR § 23-65; and

WHEREAS, because the New Building “contains more than 25 percent of its total *floor area* in *residential use*” and because Zoning Lot 1 “fronts upon” Third Avenue, all of Zoning Lot 1 is subject to the Tower-on-a-Base regulations, *see* ZR § 23-65; and

WHEREAS, however, the Tower-on-a-Base regulations do not apply to the New Building in the manner Appellants purport; and

WHEREAS, Section 23-651 of the Zoning Resolution states, in part:

[T]he *street wall* of the base shall occupy the entire *street* frontage of a *zoning lot* not occupied by existing *buildings*. . . . [T]he width of such

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street wall shall be located within eight feet of the *street line*; and

WHEREAS, a “street line” is defined, in part, as “a *lot line* separating a *street* from other land,” ZR § 12-10—indicating that a zoning lot’s boundary may be coincident with the boundary of a street; and

WHEREAS, a “street wall” is defined as “a wall or portion of a wall of a *building* facing a street,” ZR § 12-10; and

WHEREAS, a “building” is defined, in part, as “any structure which . . . is located within the *lot lines* of a *zoning lot*,” ZR § 12-10; and

WHEREAS, just as zoning lots do not traverse streets, a building is confined to a zoning lot’s “lot lines”—defined as the “boundar[ies] of a *zoning lot*,” ZR § 12-10; and

WHEREAS, the Board finds that, because of the intervening tract of land between Zoning Lot 1 and East 88th Street, the New Building is not designed with “a wall or portion of a wall . . . facing” East 88th Street, ZR § 12-10; and

WHEREAS, the Board finds no merit in the assertion that any of the New Building’s walls or portions of walls face East 88th Street; and

WHEREAS, the Board notes that interpreting “facing” to disregard intervening buildings or other intervening tracts of land and to apply to every wall of a building would mean the building is “facing” in all directions, rendering every wall of a building a street wall, and nothing in the record indicates that the “street wall” definition is meant to—or should—apply in such a manner; and

WHEREAS, the Board finds that the New Building is not designed with “a wall or portion of a wall . . . facing” East 88th Street, ZR § 12-10, so the New Building is not designed with any “street wall” with respect to East 88th Street; and

WHEREAS, accordingly, the Board finds that Appellants have failed to demonstrate that the Tower-on-a-Base regulations apply to the New Building with respect to East 88th Street; and

B. Sliver Law

WHEREAS, the Board further finds that Appellants have failed to demonstrate that the Sliver Law applies to the New Building with respect to East 88th Street; and

WHEREAS, Section 23-692 of the Zoning Resolution (height limitations for narrow buildings or enlargements) states, in pertinent part:

[P]ortions of *buildings* with *street walls* less than 45 feet in width shall not be permitted above the following height[]: . . . 100 feet; and

WHEREAS, as discussed above, the Board finds that no portion of the New Building has a “street wall” with respect to East 88th Street since the New Building is not designed with any wall “facing” East 88th Street, ZR

§ 12-10, and Appellants’ urging otherwise is without merit; and

WHEREAS, furthermore, assuming for the sake of argument that Appellants’ asserted interpretation of the “street wall” definition applies, the Board finds that the New Building’s street wall “facing” East 88th Street would more appropriately be measured as the entire northern wall of the New Building, which is approximately 100 feet in width, so the New Building would not be subject to the Sliver Law’s limitations; and

WHEREAS, the Board finds that no height limit set forth in ZR § 23-692 applies to the New Building; and

WHEREAS, accordingly, the Board finds that Appellants have failed to demonstrate that the Sliver Law applies to the New Building with respect to East 88th Street; and

III. MINORITY POSITION

WHEREAS, a minority of the Board finds that the Subdivision is not permitted by the Zoning Resolution; and

WHEREAS, a minority of the Board finds that subdividing a zoning lot should not be permitted where the sole purpose is to intentionally evade zoning regulations and that, in this appeal, no other justification for the Subdivision has been asserted; and

WHEREAS, a minority of the Board finds it implausible that Tax Lot 138 will ever be developed with a building because the New Building has been designed so that the New Building’s main entrance is located within the landlocked portion of Tax Lot 37 immediately next to Tax Lot 138; and

WHEREAS, in particular, to enter the New Building, it appears that one must traverse Tax Lot 138, through a garden, past the concierge and mail room to the elevator bay; and

WHEREAS, on the other hand, the New Building has no concierge along Third Avenue and instead appears to have its service entrance with bicycle storage or package deliveries along Third Avenue; and

WHEREAS, because it does not appear that Tax Lot 138 will ever be developed separately from Tax Lot 37 and no justification for the Subdivision has been proffered other than the intentional evasion of zoning regulations, a minority of the Board finds that the Subdivision is not permitted; and

WHEREAS, therefore, a minority of the Board finds that this appeal should therefore be granted; and

CONCLUSION

WHEREAS, the Board has considered all of the arguments on appeal, but a majority of the Board finds them ultimately unpersuasive; and

WHEREAS, in response to concerns from Appellants and the community regarding the applicability of this site-specific appeal to the development of other buildings within the City, the Board notes that, while it has the power, among

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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* City Charter § 666; and

WHEREAS, accordingly, insofar as Appellants 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, for the foregoing reasons, a majority of the Board finds that Appellant has failed to demonstrate that the Subdivision of the subject site into Zoning Lot 1 and Zoning Lot 2 contravenes applicable provisions for zoning lot subdivisions or that the Tower-on-a-Base regulations or the Sliver Law applies to the New Building with respect to East 88th Street.

Therefore, it is Resolved, that the decision of the Department of Buildings, dated September 28, 2017, under Zoning Challenge and Appeal Form Control No. 50662, shall be and hereby is *upheld* and that this appeal shall be and hereby is *denied*.

Adopted by the Board of Standards and Appeals, December 11, 2018.

2016-4142-A thru 2016-4146-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Cunard/SI Associates LLC, owners.

SUBJECT – Application March 17, 2016 – To permit the proposed development consisting of five one family homes contrary Article 3 Section 36 of the General City Law. R3A (HS) zoning district.

PREMISES AFFECTED – 70/72/74/76/78 Cunard Avenue, Block 623, Lot(s) 10, 9, 8, 95, 93, Borough of Staten Island.

COMMUNITY BOARD #1SI

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:0

ACTION OF THE BOARD – Laid over to April 30, 2019, at 10 A.M. for decision, hearing closed.

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 unbuild 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 26, 2019, at 10 A.M., for adjourned hearing.

2017-263-A

APPLICANT – Tarter Krinsky & Drogin LLP, for Westbroad Company, LLC, owner; Outfront Media, LLC, lessee.

SUBJECT – Application September 7, 2017 – 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.

PREMISES AFFECTED – 62-66 West Broadway, Block 132, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #1M

ACTION OF THE BOARD – Laid over to February 26, 2019, at 10 A.M., for postponed hearing.

2017-316-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for AMC Realty Holdings LLC, owner.

SUBJECT – Application December 12, 2017 – 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).

PREMISES AFFECTED – 95 Androvetta Street, Block 7407, Lot 72, Borough of Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Laid over to March 5, 2019, at 10 A.M., for continued hearing.

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ZONING CALENDAR

2017-192-BZ

CEQR #17-BSA-134K

APPLICANT – Greenberg Traurig, LLP, for Fort Hamilton, LLC, owner.

SUBJECT – Application May 26, 2017 – 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.

PREMISES AFFECTED – 5402-5414 Fort Hamilton Parkway/1002-1006 54th Street, Block 5673, Lot(s) 42 & 50, 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, Commissioner Sheta and Commissioner Scibetta.....5

Negative:0

The RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated May 8, 2017, acting on New Building Application No. 321310808, reads in pertinent part:

“[A]ccessory parking spaces proposed does not comply with the . . . spaces required per ZR 36-21”; and

WHEREAS, this is an application under ZR §§ 73-44 and 73-03 to permit, in an R6 (C1-3) zoning district, a reduction in the number of accessory off-street parking spaces required for an ambulatory diagnostic or treatment facility (Use Group 4), contrary to ZR § 36-21; and

WHEREAS, a public hearing was held on this application on March 6, 2018, after due notice by publication in *The City Record*, with continued a hearing on September 27, 2018, and then to decision on December 11, 2018; and

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

WHEREAS, Community Board 12, Brooklyn, recommends disapproval of this application, stating that the surrounding area is congested and suffers from a lack of parking and that the presence of a school across the street exacerbates the lack of parking; and

WHEREAS, the subject site is located on the southwest corner of Fort Hamilton Parkway and 54th Street, in an R6 (C1-3) zoning district, in Brooklyn; and

WHEREAS, the subject site has approximately 122 feet of frontage along Fort Hamilton Parkway, 100 feet of frontage along 54th Street, 11,168 square feet of lot area and

is vacant; and

WHEREAS, ZR § 73-44 provides, in pertinent part, that:

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 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, 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 applicant proposes to develop a six-

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story, with cellar and two sub-cellars, community-facility building with 50,678 square feet of floor area (4.54 FAR), 7,045 square feet of cellar space for related medical office functions for a total of 57,723 square feet of community-facility floor space and 88 accessory off-street parking spaces; and

WHEREAS, the applicant originally proposed providing 65 off-street parking spaces accessory to the proposed ambulatory diagnostic or treatment facility use at the subject site; and

WHEREAS, in response to community concerns and questions from the Board at hearing, the applicant increased the number of proposed parking spaces from 65 to 88; and

WHEREAS, the applicant states that, at the subject site, 144 parking spaces are required for the proposed building under ZR § 36-21, calculated at a rate of one space per 400 square feet of floor area as well as cellar space not used for storage; and

WHEREAS, pursuant to ZR § 73-44, the Board may reduce the required parking for an ambulatory diagnostic or treatment facility (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 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 an ambulatory diagnostic or treatment facility (Use Group 4); and

WHEREAS, the applicant also submitted City Planning Commission Report No. C 140288 ZMK, in which it is noted that the rezoning of the subject site would facilitate the construction of the proposed building for use by the applicant as an ambulatory diagnostic or treatment facility (Use Group 4); 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 an ambulatory diagnostic or treatment facility (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; 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, in response to community concerns and at the Board's instruction, the applicant increased the number of parking spaces proposed from 65 parking spaces to 88 parking spaces accessory to the proposed ambulatory diagnostic or treatment facility use at the subject site; and

WHEREAS, in response to community concerns, the Board also directed the applicant to provide a parking demand and utilization study (the "Parking Study") to

analyze whether the proposed parking reduction would have any adverse impact on the surrounding area; and

WHEREAS, the Parking Study concludes that the parking capacity of the proposed building will be sufficient to accommodate the parking demand created by the proposed use at all times and that traffic will not be increased as a result of patrons circulating the neighborhood in search of parking—thereby ensuring that the proposed parking reduction would not have a negative impact on the adjacent businesses, residents or neighborhood; and

WHEREAS, specifically, the Parking Study finds that the proposed 88 accessory parking spaces would be sufficient to accommodate the parking demand generated by the proposed community-facility building,

WHEREAS, the Parking Study further finds that, when the garage is in operation, there will be between 14 and 59 available spaces most of the time and that, in the period after business hours, the garage will be empty; and

WHEREAS, the Parking Study finds that, using transportation planning factors based on data provided by the Department of Transportation ("DOT") to the Department of City Planning ("DCP"), parking demand would peak at 88 spaces from 9:00 a.m. to 11:00 a.m. on weekdays and 59 spaces at 11:00 a.m. on Saturdays and that the proposed 88 parking spaces would be sufficient to meet peak demand; and

WHEREAS, the Parking Study notes that, even during periods of peak usage, high turnover of parking spaces is anticipated because garage spaces customarily turn over rapidly; and

WHEREAS, the Parking Study also surveys the surrounding area for available on-street parking capacity, determining that there would be at least 99 on-street parking spaces available within one-quarter mile of the subject site at all times in the event that parking demand exceeds on-site capacity; and

WHEREAS, the applicant states that the configuration and operations of the garage will ensure that cars can enter and exit safely and efficiently with a two-lane entry and exit onto 54th Street, 10 queueing spaces for drop-offs and pick-ups, adequate lighting and sufficient directional signage indicating a designated stopping point and general safety measures—such as signage or mirrors—to prevent conflict between the garage, pedestrians and the local street network; and

WHEREAS, the applicant states that the parking garage will employ a robotically operated parking facility system (the "Automated Parking System") to systematically store and retrieve vehicles in a high-density racking structure without the use of vehicle storage pallets; and

WHEREAS, the applicant states that the Automated Parking System's parking and retrieval process, once a vehicle is placed in the entry-exit station, will be entirely

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controlled by computer with two parking attendants available on any given shift to assist patrons who wish to have their vehicle stored as well as a cashier; and

WHEREAS, the applicant states that the Automated Parking System will be able to park and retrieve a vehicle in under three minutes and that no vibration or noise will be generated from the Automated Parking System because of its location below grade; and

WHEREAS, by letter dated September 19, 2018, the Fire Department states that it has no objection to this application so long as the applicant files plans for the Automated Parking System with the Fire Department and with the Office of Technical Certification and Research of the Department of Buildings for review and approval prior to the commencement of construction; 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 parking 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 parking regulations will not interfere with any pending public improvement project; 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. 17BSA134K, dated November 20, 2018; 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 August 29, 2018, DCP states that it has no objection to this application; 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 finds that the evidence in the record supports the findings required to be made under ZR §§ 73-44 and 73-03 and that the applicant has substantiated

a basis to warrant exercise of discretion.

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 BZ; *on condition* that all work and site conditions shall conform to drawings filed with this application marked "Received November 21, 2018"-Seventeen (17) sheets; and *on further condition*:

THAT plans for the automated parking system shall be filed with and approved by the Fire Department and the Office of Technical Certification and Research of the Department of Buildings prior to the commencement of construction;

THAT the certificate of occupancy issued for the building within which the ambulatory diagnostic or treatment facility (Use Group 4) is located shall state that no certificate shall thereafter be issued if the 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;

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 11, 2022;

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 11, 2018.

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2018-18-BZ

CEQR #18-BSA-095K

APPLICANT – Law Office of Fredrick A. Becker, for Garichi LLC, owner.

SUBJECT – Application February 7, 2018 – Re-instatement (§11-411) of a previously approved variance permitted retail uses which expired on June 18, 2001; Amendment (§11-411) to permit the enlargement of one of the existing buildings; Waiver of the Board’s Rules. R5 zoning district. PREMISES AFFECTED – 2250 Linden Boulevard, Block 4359, Lot(s) 1, 6, 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, Commissioner Sheta and Commissioner Scibetta.....5

Negative:0

The RESOLUTION –

WHEREAS, this is an application for a waiver of the Board’s Rules of Practice & Procedure, the reinstatement of a variance previously granted by the Board, which expired on June 18, 2001, and an amendment to the same; and

WHEREAS, a public hearing was held on this application on June 26, 2018, after due notice by publication in *The City Record*, with continued hearings on September 27, 2018, and December 11, 2018, and then to decision on that date; and

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

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

WHEREAS, the subject site is located on the south side of Linden Boulevard, bound by Ashford Street and Cleveland Street, in an R5 zoning district, in Brooklyn; and

WHEREAS, the site is comprised of two (2) adjoining tax lots with approximately 200 feet of frontage on Linden Boulevard, 85 feet of frontage on Ashford Street, 105 feet of frontage on Cleveland Street, 19,000 square feet of lot area, and is occupied by two (2) one- (1) story retail stores (Use Group (“UG”) 6)—one (1) building located at the south east corner of Linden Boulevard and Ashford Street (the “Ashford Building”) identified on BSA-approved plans as “BLDG. B” and “BLDG. B1”, and one (1) building located at the southwest corner of Linden Boulevard and Cleveland Street (the “Cleveland Building”) identified on BSA-approved plans as “BLDG A” and “BLDG. A1”—with 19 accessory off-street parking spaces on-site; and

WHEREAS, the Board has exercised jurisdiction over the subject site since January 16, 1951, when, under BSA Cal. No. 215-50-BZ, the Board granted a variance to permit the

construction of a building in a residence district to be used as a bowling alley, stores, and offices, for a term of ten (10) years, expiring January 16, 1961, on condition that the building in all other respects comply with all laws, rules and regulations applicable thereto and with all other provisions of the zoning resolution; no part of the building be erected within the proposed widening line of Ashford street; before plans are filed with the Department of Housing and Buildings complete working drawings be submitted to the Board for further consideration; such plans be filed within six (6) months from the date of the resolution and after approval, all permits be obtained and all work completed within one (1) year thereafter; and;

WHEREAS, on October 14, 1959, under BSA Cal. No. 215-50-BZ, the Board amended the resolution to permit the erection and maintenance of three (3) retail stores with accessory customer and employee parking, with the building occupying more than the permitted area and without the required setback, for a term of 21 years, expiring October 14, 1980, on condition that the work be done in accordance with drawings filed with the application; all laws, rules and regulations applicable be complied with; all permits, including a certificate of occupancy be obtained and all work completed within one (1) year, by October 14, 1960; and

WHEREAS, on June 28, 1960, under BSA Cal. No. 215-50-BZ, the Board amended the resolution to permit the façade of Building A1 to be redesigned and provided with a show window on Ashford Street, except that the Ashford Street side of the building be faced with face bricks instead of concrete blocks; a certificate of occupancy be issued upon the completion of Building A, and a separate certificate of occupancy be issued upon the completion of Building B, on condition that other than as amended, the resolution be complied with in all respects; and

WHEREAS, on November 29, 1960, under BSA Cal. No. 215-50-BZ, the Board amended the resolution to permit Building B2 to be reduced in size to a depth of 80 feet and constructed substantially as shown on revised drawings dated November 7, 1930, 3 sheets, on condition that other than as amended the resolution be complied with in all respects; and

WHEREAS, on April 25, 1961, under BSA Cal. No. 215-50-BZ, the Board amended the resolution to permit illuminated non-flashing signs on Building A, substantially as shown on revised drawings dated March 20, 1961, one (1) sheet, except that no sign be permitted on the Ashford Street side of the building on condition that other than as amended the resolution be complied with in all respects; and

WHEREAS, on July 18, 1961, under BSA Cal. No. 215-

1 Prior Board history references to “Building A” herein refer to the Ashford Building.

2 Prior Board history references to “Building B” herein refer to the Cleveland Building.

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50-BZ, the Board amended the resolution to permit an illuminated non-flashing sign on the Linden Boulevard front of Building B substantially as shown on revised drawings dated June 14, 1961, one (1) sheet, on condition that other than as amended the resolution be complied with in all respects; and

WHEREAS, on May 27, 1980, under BSA Cal. No. 215-50-BZ, the Board reopened and amended the resolution to grant an extension of term for ten (10) years, expiring October 14, 1990, and required that other than as amended the resolution be complied with in all respects, and a new certificate of occupancy be obtained within one (1) year, by May 27, 1981; and

WHEREAS, on June 18, 1991, under BSA Cal. No. 288-90-BZ, the Board granted an extension of the term of the variance for the use of retail stores (UG 6) and the enlargement of the Cleveland Building which increases the degree of non-conformance on condition that all work substantially conform to drawings filed with the application; the special permit be limited to a term of ten (10) years, expiring June 18, 2001; all landscaping be in accordance with BSA approved plans and be maintained and replaced as necessary; all lighting be directed down and away from adjoining residences; all signs comply with C1 district regulations; the parking area be locked after business hours; the conditions appear on the certificate of occupancy; the development, as approved, be subject to verification by the Department of Buildings for compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under the jurisdiction of the Department; and substantial construction be completed within four (4) years; and

WHEREAS, the previous term having expired more than ten (10) years ago, the applicant seeks a reinstatement of the variance in accordance with ZR § 11-411 and Board Rule of Practice and Procedure § 1-05 *et seq.*; and

WHEREAS, in addition, the applicant seeks a waiver, pursuant to Board Rule of Practice and Procedure § 1-14.2, of Board Rule of Practice and Procedure § 1-07.3(b)(4)(i) to permit the filing of this application more than ten (10) years after the expiration of the most recent term; and

WHEREAS, pursuant to Board Rule of Practice and Procedure § 1-07.3(b)(4)(i), the applicant has demonstrated, with utility bills, leases, and directory listings for the subject site, that the use of both buildings has been continuous at the site since the expiration of the term on June 18, 2001, without a period of discontinuance for more than two (2) years; and

WHEREAS, over the course of the hearings, the Board raised concerns regarding the payment of Department of Buildings violations fines, the removal of a corrugated metal wall and restoration of the building material thereunder, and the relocation of improperly located vents which protrude over the sidewalk;

WHEREAS, in response, the applicant submitted proof of payment for the violations, and agreed to remove the corrugated metal located on Ashford Street, to paint the masonry material thereunder to match the color of the adjoining brick wall, and, if it is not masonry, to enclose the wall with exterior finish material that meets all code specifications for exterior fire-rated material/finish that is not of exterior insulation and finish system type, and to relocate the vents within the property line; and

WHEREAS, the applicant also seeks an amendment to the variance, first issued under BSA Cal. No. 215-50-BZ, as amended through BSA Cal. No. 288-90-BZ, to permit the enlargement of one (1) of the existing buildings, located on 2228 Linden Boulevard, Tax Lot 1, the Ashford Building; and

WHEREAS, pursuant to ZR § 11-412, the Board may permit the enlargement of a pre-existing non-conforming use, provided that it does not exceed 50 percent of the floor area of such building occupied by the use prior to December 15, 1961; and

WHEREAS, the applicant submitted evidence that, pursuant to the pre-1961 grants, the Cleveland Building contained 4,000 square feet of floor area, and the Ashford Building contained 4,697 square feet of floor area, thus, the Board has the authority, pursuant to ZR § 11-412, to permit the requested legalization of an additional 668 square feet of floor area in the Ashford Building (a 14 percent enlargement) because it constitutes less than 50 percent of the floor area of the building occupied by the subject use prior to December 15, 1961; 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. 18-BSA-095K, dated February 8, 2018; and

WHEREAS, the Board finds that the reinstatement of the variance and amendment to permit enlargement of the building is appropriate with certain conditions set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals *waives* Rule § 1-07.3(b)(4)(i) of its Rules of Practice and Procedure, *reinstates* and *amends* the resolution, issued January 16, 1951, under BSA. Cal. No. 215-50-BZ, as amended through June 18, 1991, under BSA Cal. No. 288-90-BZ, so that as amended, this portion of the resolution reads: “to permit the 668 square foot enlargement of the Ashford Building, *on condition* that the use and operation of the site shall conform to drawings filed with this application marked ‘Received December 10, 2018’– Three (3) sheets; and *on further condition*:

THAT the Ashford Building shall have a maximum floor area of 5,365 square feet;

THAT prior to the issuance of the resolution, the corrugated metal on the extension on Ashford Street shall be removed and the masonry material underneath shall be

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painted to match the color of the adjoining brick wall, and, if it is not masonry, the wall shall be enclosed with an exterior fire-rated finish/material that meets Building Code and is not exterior insulation and finish system, and vents protruding over the public sidewalk shall be relocated within the property prior to this resolution taking effect;

THAT all fencing shall include privacy stats;

THAT the gate along Cleveland Avenue shall be replaced with a permanent fence so as to prevent access to the property from Cleveland Avenue;

THAT the area behind the building shall be used as parking with access from Linden Boulevard only;

THAT one (1) street tree shall be installed on Cleveland Avenue, opposite from the entrance to the parking lot, to prevent access to the lot from Cleveland Avenue;

THAT the curb cut on Ashford Street shall be removed;

THAT all landscaping shall be in accordance with BSA approved plans and shall be maintained and replaced as necessary;

THAT all lighting shall be directed down and away from adjoining residences;

THAT all signs shall comply with the C1 district regulations;

THAT the parking area shall be locked after business hours;

THAT the above conditions appear on the certificate of occupancy;

THAT a certificate of occupancy indicating this approval and calendar number (“BSA Cal. No. 2018-18-BZ”) shall be obtained within one (1) year, by December 11, 2019;

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

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

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

Adopted by the Board of Standards and Appeals, December 11, 2018.

2018-54-BZ

CEQR #18-BSA-124X

APPLICANT – Sheldon Lobel, P.C., for Dagny Enterprises LLC, owner; Civic Builders, Inc., lessee.

SUBJECT – Application April 16, 2018 – Special Permit (§73-19) to permit the construction of a charter school (UG 3) (Classical Charter School) contrary to ZR §32-10. C8-3 zoning district.

PREMISES AFFECTED – 761 Sheridan Avenue/757 Concourse Village West, Block 2458, Lot 124, Borough of Bronx.

COMMUNITY BOARD #4BX

ACTION OF THE BOARD – Application granted on condition.

THE VOTE TO GRANT –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.....5

Negative:0

The **RESOLUTION** –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated July 18, 2018, acting on New Building Application No. 220631608, reads in pertinent part:

“The proposed Use Group 3 School is not permitted within a C8-3 Zoning district, contrary to ZR 32-10 and therefore requires a special permit from the Board of Standards and Appeals pursuant to ZR 73-19”; 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 § 32-10; and

WHEREAS, this application has been filed on behalf of South Bronx Classical Charter School IV (the “School”), a public school; and

WHEREAS, a public hearing was held on this application on October 23, 2018, after due notice by publication in *The City Record*, with a continued hearing on December 11, 2018, and then to decision on the same date; and

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

WHEREAS, Community Board 4, Bronx, recommends approval of this application; and

WHEREAS, the subject site is located on the west side of Concourse Village West, in a C8-3 zoning district, in the Bronx; and

WHEREAS, the subject site has approximately 179 feet of frontage along Concourse Village West, 127 feet of depth, 22,026 square feet of lot area and is occupied by a parking lot; and

WHEREAS, ZR § 73-19 provides:

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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 *street* 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 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, as to the threshold issue of whether the School qualifies as a school for purposes of ZR § 73-19, the applicant states that the School meets the ZR § 12-10 definition of “school” 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, further, the applicant submitted a copy of the School’s application to the New York State Board of Regents, which approved the School’s application by letter dated August 15, 2017; and

WHEREAS, with respect to ZR § 73-19(a), an applicant must demonstrate its 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 provided an assessment of the School’s programmatic needs, indicating that the School needs approximately 52,000 square feet of floor area; and

WHEREAS, accordingly, the applicant has demonstrated that its stated requirements related to size and configuration are justified by its programmatic needs; and

WHEREAS, the applicant submitted a report of its search for appropriate sites where the School would be permitted as of right (the “Site Search Report”); and

WHEREAS, the Site Search Report demonstrates that the applicant searched for an appropriate site for approximately one (1) year, taking into consideration the following criteria: affordability; providing an existing, standalone building of suitable size that could be renovated straightforwardly to provide adequate school facilities; and location close to transportation; and

WHEREAS, the Site Search Report indicates that the School considered the following locations: 352 East 149th Street (existing building would not be affordable); 2948 Third Avenue (existing building surrounded by retail uses not available to rent for school use); 2883 Third Avenue (space would not be available for the School’s exclusive use); 2887 Third Avenue (oddly configured and not suitable for a school building); 1980 Jerome Avenue (not affordable); 1311 Webster Avenue (located too near one of the School’s other locations), 1417 Webster Avenue (located too near one of the School’s other locations) and 1070 Southern Boulevard (incapable of being developed in a timely manner); and

WHEREAS, accordingly, 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, accordingly, the Board finds that the

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requirements of ZR § 73-19(a) are met; and

WHEREAS, § 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 states that the subject site is located approximately 30 feet from an R8 zoning district to the east and 50 feet from an R8 zoning district to the west; and

WHEREAS, the applicant submitted a radius diagram that reflects that the subject site is within 400 feet of a residential zoning district; and

WHEREAS, accordingly, 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 states that the noise analysis conducted for this application indicates that the predominant noise source in the surrounding area is vehicular traffic; and

WHEREAS, the applicant states that the proposed building would incorporate a composite window-wall attenuation level of 28 dBA for all building facades through the use of insulated exterior walls and double-paned windows; and

WHEREAS, the Board finds that the conditions surrounding the site and the proposed building's use will adequately separate the proposed school use from noise, traffic and other adverse effects of any of the uses within the surrounding C8-3 zoning district; accordingly, 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 states that the School would serve approximately 491 students and 46 staff members; and

WHEREAS, the applicant states that the transportation analysis conducted for this application indicates that approximately 55 percent of students in kindergarten through fourth grade and 25 percent of students in fifth through seventh grade would arrive by school bus, that approximately 30 percent of students in kindergarten through fourth grade, approximately 60 percent of students in fifth through seventh grade and 85 percent of students in eighth grade would arrive by public transportation or walking and that approximately 15 percent of students would arrive by private automobile—resulting in 9 projected staff vehicular trips and 69 projected vehicular trips (54 private-automobile and 15 school bus) for students; and

WHEREAS, the applicant states that a “no standing” zone with a width of 100 feet is proposed in front of the

subject site along of Concourse Village West for private automobiles to drop off and pick up students; and

WHEREAS, the applicant states that approximately 193 students would arrive and depart via six school buses; and

WHEREAS, the applicant states that a “no standing” zone with a width of 100 feet is proposed on the east side of Concourse Village West for school buses to drop off and pick up students; and

WHEREAS, the applicant states that the School would employ the following protocol with respect to arrivals and dismissals: the dean of students would greet students, buses and caregivers in mornings and afternoons; students would arrive beginning at 7:15 a.m. and would depart between 4:15 p.m. and 4:45 p.m. with staggered departures by grade level; at dismissal, teachers would escort students to designated areas in the gymnasium or cafeteria; bus attendants would escort students directly to and from school buses; and other staff escorts would take children to the “no standing” zone designated for private-automobile drop-offs and pick-ups, where attendants would be stationed to ensure authorization to release students to caregivers equipped with authorization badges; and

WHEREAS, the applicant states that the School would employ the following protocol with respect to vehicular staging, loading and unloading: a “no standing” zone is proposed on the west side of Concourse Village West in front of the School for private-automobile drop-offs and pick-ups with extended “no standing” hours proposed to be 7:00 a.m. to 5:00 p.m.; and

WHEREAS, the applicant states that the School would employ the following protocol with respect to school buses: the six buses transporting students would be staggered by approximately five minutes with each bus equipped with a wireless communication device to communicate to with on-site operations personnel; operations personnel would monitor logistics relating to school buses; the School would employ bus attendants on each bus to assist with dropping off and picking up students; and a “no standing” zone for school buses is proposed for the east side of Concourse Village West to ensure adequate separation of school buses and private automobiles during arrival and departure times; and

WHEREAS, the applicant states that the School would employ the following protocol with respect to private cars: the School would place an escort along the frontage adjacent to the “no standing” zones during arrival and departures; the escort would direct students dropped off by private car to the main entrance of the School, where the dean of students would be stationed; starting at 4:15 p.m., students would be led from the cafeteria or gymnasium to caregivers provided with authorization badges and electronic communications devices would be used by attendants to communicate with

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faculty to request that a student be escorted from the cafeteria or gymnasium to the respective private automobile; and

WHEREAS, with respect to pedestrian safety, the applicant states that none of the nearby intersections qualify as high-crash locations and that safety measures to control the movement of traffic through the street on which the School is located would be implemented to the extent deemed appropriate by the Department of Transportation (“DOT”); and

WHEREAS, the applicant states that the School is well-served by public transportation and near numerous bus lines; and

WHEREAS, the Board referred the application to DOT’s School Safety Engineering Office; and

WHEREAS, by letter dated May 18, 2018, DOT states that the applicant should provide a table showing their multi-modal trip generate estimate, that the applicant should investigate the feasibility of installing a half-curb extension on the southeast corner of Concourse Village West and East 156th Street, on the Concourse Village West frontage, to improve student visibility at that corner and that, upon approval of this application and construction of the School, the School shall notify DOT’s School Safety Office to determine if traffic safety improvements or parking regulation changes are necessary; and

WHEREAS, by memorandum dated December 6, 2018, DOT, as an interested agency in the Board’s CEQR review of this application, makes the following recommendations which the Board hereby incorporates as conditions to this approval: in order to determine traffic and pedestrian conditions and recommend improvement measures before the School opens, the applicant shall perform traffic and pedestrian level of service (“LOS”) analyses up to four intersection as well as at pedestrian elements (i.e., sidewalks, crosswalks and corners) in the vicinity of the subject site to determine whether traffic generated by the project, compared to the No Action condition, results in potential traffic and pedestrian impacts based on CEQR criteria—and to provide improvement measures if warranted, which may include conversion from stop control to signalization up to four intersections or other improvement measures; the applicant shall submit for DOT review and approval a scope of work for the traffic study including travel demand assumptions based on the survey of the existing school and projected full occupancy of the new school, locations to be studied for traffic and pedestrian LOS and data collection (including 24-Hour Automatic Traffic Recorder counts, manual turning movement, vehicular classification and pedestrian counts including sidewalks and, at uncontrolled and mid-block crossings, intersection geometry including the verification of field signal timing and field observations including queue

lengths); the applicant shall submit a completed traffic study to DOT at least three (3) months prior to the opening of the School; and, when DOT approves the required studies and subsequent improvement measures, DOT will inform the Board that the conditions outlined in DOT’s memorandum, dated December 6, 2018, are complete; and

WHEREAS, the Board finds that the abovementioned measures will control traffic so as to protect children going to and from the proposed school; and

WHEREAS, accordingly, the Board finds that the requirements of ZR § 73-19(d) are met; and

WHEREAS, in response to questions from the Board regarding exterior building materials, the applicant submits that the proposed building would employ fiber cement cladding, an aluminum curtain wall, a precast trellis, precast columns, aluminum storefront windows and window trim to enhance the neighborhood’s built environment; and

WHEREAS, in response to the Board’s questions at hearing, the applicant provided further detail regarding the School’s search for an appropriate site in an as-of-right zoning district and the protocols the School would implement with respect to arrivals and departures; and

WHEREAS, in response to questions from the Board regarding whether caretakers would leave cars unattended in the “no standing” zone, the applicant clarified the above protocol to indicate that, upon arrival of a caretaker and display of said caretaker’s authorization badge, an attendant would communicate by electronic communications device to the cafeteria or gymnasium for the appropriate student to be escorted to the caretaker’s private automobile without needing the caretaker to exit the vehicle; and

WHEREAS, the applicant further states that the attendant would use a monitoring sheet to track students being picked up; and

WHEREAS, the applicant represents that the proposed building complies with all bulk regulations applicable in a C8-3 zoning district; however, the Board notes that it has not reviewed compliance with applicable bulk regulations, so the DOB must ensure that the proposed building complies in all respects with the bulk regulations of the Zoning Resolution; 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 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

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documented relevant information about the project in the Final Environmental Assessment Statement CEQR No. 18BSA124X, dated December 10, 2018; 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 January 29, 2018, the Landmarks Preservation Commission (“LPC”) states that the subject site is directly adjacent to the State or National Register of Historic Places listed and LPC designated Grand Concourse Historic District and that a construction protection plan for the adjacent building (Block 2458, Lot 80) is required and shall be submitted to LPC for review and comment prior to the start of construction; and

WHEREAS, by letter dated August 24, 2018, the Department of Environmental Protection (“DEP”) states that it finds the July 2018 Remedial Action Plan and Construction Health and Safety Plan is acceptable with the following conditions: the applicant shall include an accident and injury report form in the CHASP; the applicant shall include the names and phone numbers of the site safety personnel (i.e., Project Manager, Site Supervisor, Site Health and Safety Officer and Alternate Site Health and Safety Officer) in the CHASP; and, at the completion of the project, a professional engineer-certified Remedial Closure Report shall be submitted to DEP for review and approval for the proposed project, which shall indicate that all remedial requirements have been properly implemented (i.e., installation of vapor barrier and sub-slab depressurization system (“SSDS”), transportation and disposal manifests for removal and disposal of soil in accordance with New York State Department of Environmental Conservation regulations and two feet of DEP-approved certified clean fill and top soil capping requirement in any landscaped or grass-covered areas not capped with concrete or asphalt, etc.); and

WHEREAS, revised Remedial Action Plan and Construction Health and Safety Plan were received on December 7, 2018 addressing DEP’s conditions; and

WHEREAS, by memorandum dated December 6, 2018, DOT, as an interested agency in the Board’s CEQR review of this application, makes the following recommendations which the Board hereby incorporates as conditions to this approval: in order to determine traffic and pedestrian conditions and recommend improvement measures before the School opens, the applicant shall perform traffic and pedestrian level of service (“LOS”)

analyses up to four intersection as well as at pedestrian elements (i.e., sidewalks, crosswalks and corners) in the vicinity of the subject site to determine whether traffic generated by the project, compared to the No Action condition, results in potential traffic and pedestrian impacts based on CEQR criteria—and to provide improvement measures if warranted, which may include conversion from stop control to signalization up to four intersections or other improvement measures; the applicant shall submit for DOT review and approval a scope of work for the traffic study including travel demand assumptions based on the survey of the existing travel school and projected full occupancy of the new school, locations to be studied for traffic and pedestrian LOS and data collection (including 24-Hour Automatic Traffic Recorder counts, manual turning movement, vehicular classification and pedestrian counts including sidewalks and, at uncontrolled and mid-block crossings, intersection geometry including the verification of field signal timing and field observations including queue lengths); the applicant shall submit a completed traffic study to DOT at least three (3) months prior to the opening of the School; and, when DOT approves the required studies and subsequent improvement measures, DOT will inform the Board that the conditions outlined in DOT’s memorandum, dated December 6, 2018, are complete; and

WHEREAS, by letter dated December 11, 2018, DEP states that, with the proposed restriction on the location of HVAC stacks to the area bounded by 35 feet from the rear lot line, 42 feet from the southern lot line, 32 feet from the northern lot line and the lot line fronting on Concourse Village West, the proposed project would not result in significant air quality impacts; and

WHEREAS, by letter dated December 11, 2018, DEP further states that, with the proposed installation of closed windows with minimum noise attenuation of 28 dBA (requiring an alternate means of ventilation), the proposed project would not result in significant 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

WHEREAS, the Board finds that the evidence in the record supports the findings required to be made under ZR §§ 73-19 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion.

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,

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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 § 32-10; *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked “Received “December 11, 2018”-Ten (10) sheets; and *on further condition*:

THAT the building shall incorporate a composite window-wall attenuation level of 28 dBA for all building facades;

THAT the location of HVAC stacks shall be restricted to the area bounded by 35 feet from the rear lot line, 42 feet from the southern lot line, 32 feet from the northern lot line and the lot line fronting on Concourse Village West;

THAT a restrictive declaration covering the Department of Transportation’s conditions of approval shall be recorded against the subject site prior to the issuance of the Board’s resolution;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal No 2018-54-BZ”), shall be obtained within four (4) years, by December 11, 2022;

THAT because the subject site is directly adjacent to the State or National Register of Historic Places listed and Landmarks Preservation Commission (“LPC”) designated Grand Concourse Historic District, a construction protection plan for the adjacent building (Block 2458, Lot 80) is required and shall be submitted to LPC for review and comment prior to the start of construction;

THAT in order to determine traffic and pedestrian conditions and recommend improvement measures before the School opens, the applicant shall perform traffic and pedestrian level of service (“LOS”) analyses up to four intersection as well as at pedestrian elements (i.e., sidewalks, crosswalks and corners) in the vicinity of the subject site to determine whether traffic generated by the project, compared to the No Action condition, results in potential traffic and pedestrian impacts based on CEQR criteria—and to provide improvement measures if warranted, which may include conversion from stop control to signalization up to four intersections or other improvement measures; the applicant shall submit for Department of Transportation (“DOT”) review and approval a scope of work for the traffic study including travel demand assumptions based on the survey of the existing school and projected full occupancy of the new school, locations to be studied for traffic and pedestrian LOS and data collection (including 24-Hour Automatic Traffic Recorder counts, manual turning movement, vehicular classification and pedestrian counts including sidewalks and, at uncontrolled and mid-block crossings, intersection geometry including the verification of

field signal timing and field observations including queue lengths); the applicant shall submit a completed traffic study to DOT at least three (3) months prior to the opening of the School; and, when DOT approves the required studies and subsequent improvement measures, DOT will inform the Board that the conditions outlined in DOT’s memorandum, dated December 6, 2018, are complete;

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 11, 2018.

77-15-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Arasu Jambukeswaran, owner.

SUBJECT – Application April 9, 2015 – Variance (§72-21) to allow the alteration of an existing two-family dwelling on the second floor and an enlargement, located within an R2A zoning district.

PREMISES AFFECTED – 244-36 85th Avenue, Block 8609, Lot 22, Borough of Queens.

COMMUNITY BOARD #13Q

ACTION OF THE BOARD – Laid over to December 11, 2018, at 10 A.M., for adjourned hearing.

ACTION OF THE BOARD – Laid over to April 9, 2019, at 10 A.M., for adjourned hearing.

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 5, 2019, at 10 A.M., for continued hearing.

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2016-4239-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Atlantis Marina and Yacht Club, owner.

SUBJECT – Application August 11, 2016 – Special Permit (§73-242) to allow an existing building to be operated as an eating and drinking establishments (Use Group 6), contrary to use regulations (§32-15). C3A (SRD) zoning district.

PREMISES AFFECTED – 180 Mansion Avenue, Block 5207, Lot 28, Borough of Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Laid over to March 5, 2019, at 10 A.M., for continued hearing.

2016-4274-BZ

APPLICANT – Pryor Cashman LLP, for Ahron & Sons Realty LLC, owner; Bnos Zion of Bobov, lessee.

SUBJECT – Application October 27, 20167 – 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 39th Avenue, Block 5347, Lot(s) 13 & 71, Borough of Brooklyn.

COMMUNITY BOARD #2BK

ACTION OF THE BOARD – Laid over to February 26, 2019, at 10 A.M., for continued hearing.

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 14th Avenue, Block 5649, Lot(s) 44, 46, Borough of Brooklyn.

COMMUNITY BOARD #12BK

ACTION OF THE BOARD – Laid over to February 26, 2019, at 10 A.M., for continued hearing.

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 February 12, 2019, at 10 A.M., for continued hearing.

2018-10-BZ

APPLICANT – Sheldon Lobel, P.C., for Gershon Klein, owner.

SUBJECT – Application January 26, 2018 – Special Permit (§73-622) to permit the enlargement of a detached single-family home contrary to ZR §23-141 (FAR and open space ratio); ZR §23-631 (front yard sky exposure plane) and ZR §23-632 (rear yard and side yards). R2 zoning district.

PREMISES AFFECTED – 1238 East 26th Street, Block 7643, Lot 60, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Laid over to January 15, 2019, at 10 A.M., for continued hearing.

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**REGULAR MEETING
TUESDAY AFTERNOON, DECEMBER 11, 2018
1:00 P.M.**

Present: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta and Commissioner Scibetta.

ZONING CALENDAR

2017-293-BZ

CEQR #18-BSA-053M

APPLICANT – Law Office of Fredrick A. Becker, for Broadway 32nd Street Realty, owner; Juvenex Spa/Myung Chul Yi, lessee.

SUBJECT – Application November 2, 2018 – 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.

PREMISES AFFECTED – 25 West 32nd Street, Block 834, Lot 26, 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 Sheta and Commissioner Scibetta.....5

Negative:0

THE RESOLUTION –

WHEREAS, the decision on behalf of the Borough Commissioner, dated October 3, 2017, acting on Department of Buildings (“DOB”) Application No. 102935512, reads in pertinent part:

ZR 32-00 & ZR 73-36 – Proposed physical establishment is not permitted ‘as of right’ as per ZR 73-36. Provide BSA approval; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to legalize, on a site located in a C6-4 zoning district, a physical culture establishment (“PCE”) on portions of the fourth, fifth, and sixth floors of an existing six- (6) story plus cellar commercial building, contrary to ZR § 32-10; and

WHEREAS, a public hearing was held on this application on December 11, 2018, after due notice by publication in *The City Record*, and then to decision on that same date; and

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

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

WHEREAS, the subject site is located on the north side of West 32nd Street, between Broadway and Fifth Avenue, in a C6-4 zoning district, in Manhattan; and

WHEREAS, the site has approximately 48 feet of frontage, 99 feet of depth, 4,691 square feet of lot area, and is occupied by a six- (6) story plus cellar commercial building; and

WHEREAS, the Board has exercised jurisdiction over the subject site since December 4, 2001, when, under BSA Cal. No. 148-01-BZ, the Board issued a special permit to permit the operation of a PCE (Use Group 9) located on the fourth and fifth floors of a six- (6) story building, on condition that all work substantially conform to plans filed with the application; there be no change in ownership or operating control of the PCE without prior application to and approval from the Board; fire protection measures, including a fire alarm system and a smoke detection system with both systems connected to a Fire Department-approved central station, be provided and maintained in accordance with the BSA-approved plans; the special permit be limited to a term of ten (10) years from the date of the grant; the above conditions appear on the certificate of occupancy; the development, as approved, be subject to verification by the DOB for compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code and any other relevant laws under the jurisdiction of the Department; and substantial construction be completed in four (4) years; and

WHEREAS, by letter dated July 21, 2006, in response to a request by the applicant to amend the grant, the Board confirmed that the elimination of the fourth floor from the PCE does not affect the BSA-approved plans and had no objection to the removal of the fourth floor from the proposed plans for the PCE on condition that the DOB ensure compliance with all other applicable provisions of the Zoning Resolution, Building Code, or any other relevant law; 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 1* 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,

1 Words in *italics* are defined in Section 12-10 of the Zoning Resolution.

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- 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, the Board notes that, because no portion of the subject PCE is represented as being 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 applicant represents that the subject PCE occupies 10,154 square feet of floor area with 4,216 square feet of floor space on the fourth floor with a reception and waiting area, treatment rooms, saunas, steam rooms, scrubbing rooms, locker room, bathrooms, mechanical room, and utility room; 4,216 square feet of floor area on the fifth floor with a reception area, lounge and rest area, café, treatment rooms, scrub room, steam rooms, hot and cold tubs, saunas, lockers, mechanical room and utility room; and, 1,723 square feet of floor area on the sixth floor with massage rooms, scrub rooms, a shower room, and bathrooms; and

WHEREAS, the applicant submits that the PCE operates as “Juvenex Spa,” operating 24 hours per day, seven (7) days per week; 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 by keeping with the commercial character of the neighborhood, draws a majority of its clientele from the immediate vicinity, and is well served by public transportation;

WHEREAS, the Board notes that the subject PCE continued to operate after the expiration of the prior special permit on December 4, 2011, and that no complaints regarding its operation during that time have been submitted into the record on this application; 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 represents that the PCE will contain facilities for the practice of massage; and

WHEREAS, accordingly, 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 submits that an approved fire alarm system—including area smoke detectors, manual pull stations at each required exit, local audible and visual alarms, and a connection of the interior fire alarm system to an FDNY-approved central station—will be installed within the PCE space which is already protected by a wet sprinkler system; and

WHEREAS, by letter dated December 8, 2018, the Fire Department confirms that the premises is protected with a fire alarm and fire suppression systems, consisting of

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standpipe and sprinkler protection, and those systems have current permits; and, the Fire Department has no objection to the application; and

WHEREAS, the applicant represents that the PCE will not impact the privacy, quiet, light and air of the neighborhood on account of its location in an existing commercial building with no residential uses within; 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, 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, at the hearing, the Board expressed concern regarding whether the PCE massage therapists had current licenses to practice massage therapy; and

WHEREAS, in response, the applicant submitted current certificates evidencing licenses to practice massage therapy, esthetics, cosmetology; 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. 18-BSA-053M, dated November 2, 2017; and

WHEREAS, based upon its review of the record, the Board finds that the requested special permit, legalizing the PCE space on the fourth, fifth, and sixth floors, is appropriate, 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, §§ 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 C6-4 zoning district, a physical culture establishment on a portion of the fourth, fifth and sixth floors of an existing six- (6) 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 “October 20, 2017”–Seven (7) sheets; and *on further condition*:

THAT the term of the PCE grant shall expire on December 11, 2028;

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 services provided by the PCE to which New York State licensure is required shall be performed by individuals licensed to perform such service;

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

THAT the sprinkler system shall be maintained as

indicated on the Board-approved plans;

THAT an approved fire alarm system—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—shall be maintained within the 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 the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy indicating this approval and calendar number (“BSA Cal. No. 2017-293-BZ”) shall be obtained within four (4) years, by December 11, 2022;

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, December 11, 2018.

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2018-148-BZ

CEQR #19-BSA-034M

APPLICANT – Pryor Cashman LLP, for Altair 18 Condominium, owner; CorePower Yoga, lessee.

SUBJECT – Application September 12, 2018 – Special Permit (§73-36) to permit the operation of a Physical Culture Establishment (*CorePower Yoga*) to be located on portion of first floor of an existing mixed-use building contrary to ZR §32-10. C8-4A Ladies Mile Historic District.

PREMISES AFFECTED – 32 West 18th Street, Block 819, Lot 7503 (fka 82), 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 Sheta and Commissioner Scibetta.....5
Negative:0

THE RESOLUTION –

WHEREAS, the decision of the Borough Commissioner dated, August 20, 2018, acting on Department of Buildings (“DOB”) Application No. 123376872, reads in pertinent part:

Proposed yoga studio with showers is considered a Physical Culture Establishment which is not [. . .] permitted as-of-right per ZR 32-31. Secure BSA’s approval per ZR 73-36; and

WHEREAS, this is an application under ZR §§ 73-36 and 73-03 to permit, on a site located in a C6-4A zoning district and in Ladies’ Mile Historic District, a physical culture establishment (“PCE”) on a portion of the first floor of an existing 12-story plus cellar mixed-use residential and commercial building, contrary to ZR §§ 32-10; and

WHEREAS, a public hearing was held on this application on December 11, 2018, after due notice by publication in *The City Record*, and then to decision on that same date; and

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

WHEREAS, the subject site is located on the south side of West 18th Street, between Avenue of the Americas and Fifth Avenue, in a C6-4A zoning district and Ladies’ Mile Historic District, in Manhattan; and

WHEREAS, the site has approximately 75 feet of frontage, 92 feet of depth, 6,900 square feet of lot area, and is occupied by a 12-story plus cellar mixed-use residential and commercial building;

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 1* 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, the Board notes that, because no portion of the subject PCE is represented as being 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

1 Words in *italics* are defined in Section 12-10 of the Zoning Resolution.

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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 applicant submitted evidence that the proposed PCE will occupy 2,800 square feet of floor area on the first floor with a two (2) yoga studios, men's and women's changing rooms with showers and bathrooms, a lobby and a utility room; and

WHEREAS, the applicant represents that the proposed PCE will operate as "CorePower Yoga" with the following hours of operation: Monday through Friday, 5:30 a.m. to 9:00 p.m.; and, Saturday and Sunday, 8:00 a.m. to 6:30 p.m.; and

WHEREAS, the applicant states that, while it is not anticipated to create adverse noise impacts within the building or surrounding area, only light hand-weights, and no heavy weights or other equipment, will be utilized, and the PCE will employ a sound limiter on its sound system; 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 the PCE use is compatible with the essential commercial character of the neighborhood, which is well served by public transportation, and expects to draw its patronage from the local residents and workforce; 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 represents that the PCE will contain facilities for the provision physical improvement utilizing yoga classes; and

WHEREAS, accordingly, 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, by letter dated December 8, 2018, the Fire Department has no objection to the application and confirms that the premises is protected by a fire suppression system, consisting of a combination standpipe and sprinkler, and the permit for such system is current; and

WHEREAS, the applicant represents that the PCE will not impact the privacy, quiet, light and air of the neighborhood on account of its location on ground floor of an existing building and does not anticipate the PCE to create any adverse impacts on vehicular or pedestrian traffic; and

WHEREAS, on July 3, 2018, the New York City Landmarks Preservation Commission permitted alterations to the subject site, under Certificate of No Effect permit CNE-19-27886, and determined that the work, consisting of interior alterations at the cellar level and first floor, including the demolition and construction of nonbearing partitions and finishes, as well as mechanical, plumbing and electrical work, will have no effect on the 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, 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. 19-BSA-034M, dated September 18, 2018; and

WHEREAS, based upon its review of the record, the Board finds that the requested special permit, permitting the PCE space on the first floor, is appropriate, 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, §§ 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 C6-4A zoning district and Ladies' Mile Historic District, a physical culture establishment on a portion of the first floor of an existing 12-story plus 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 "September 12, 2018"– Six (6) sheets; and *on further condition*:

THAT the term of the PCE grant shall expire on

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December 11, 2028;

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

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

THAT the sprinkler system 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 certificate of occupancy indicating this approval and calendar number (“BSA Cal. No. 2018-148-BZ”) shall be obtained within four (4) years, by December 1, 2022;

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, December 11, 2018.

43-11-BZ

APPLICANT – Law Office of Lyra J. Altman, for Lorraine Waknin and David Waknin, owners.

SUBJECT – Application April 12, 2011– Special Permit (§73-622) for the enlargement of an existing two family home to be converted to a 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). R3-2 zoning district.

PREMISES AFFECTED – 1926 East 21st Street, Block 6826, Lot 19, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to February 12, 2019, at 10 A.M., for postponed hearing.

2016-1208-BZ

APPLICANT – Akerman, LLP, for 300 East 64th Street Partners LLC c/o RFR Holding, LLC, owner; Barry Bootcamp NYC, LLC, lessee.

SUBJECT – Application January 13, 2016 – Special Permit (§73-36) to permit a physical culture establishment (*Barry's Bootcamp*) within a portion of an existing building's ground and second floors. C2-5/R8B & C2-8 zoning districts.

PREMISES AFFECTED – 300 East 64th Street, Block 1438, Lot 7502, Borough of Manhattan.

COMMUNITY BOARD #8M

ACTION OF THE BOARD – Laid over to February 12, 2019, at 10 A.M., for continued hearing.

2016-4240-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Thor 1231 Third Avenue LLC, owner; TSI 1231 Third Avenue dab NYSC, lessee.

SUBJECT – Application August 11, 2016 – Special Permit (§73-36) to legalize the operation of a physical culture establishment (*New York Sports Club*) on a portion of the first floor and cellar of the subject premises. C1-9 zoning district.

PREMISES AFFECTED – 1231 Third Avenue, Block 1426, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #8M

ACTION OF THE BOARD – Laid over to February 12, 2019, at 10 A.M., for continued hearing.

2017-101-BZ

APPLICANT – Carl A. Sulfaro, Esq., for M & R Rockaway, LLC, owner; Burn Fitness 247, LLC, lessee.

SUBJECT – Application April 5, 2017 – Special Permit (§73-36) to permit a physical culture establishment (*Burn Fitness*) within an existing commercial building. C2-3/R5D zoning district.

PREMISES AFFECTED – 104-06 Rockaway Beach Boulevard, Block 16176, Lot 001, Borough of Queens.

COMMUNITY BOARD #14Q

THE VOTE TO CLOSE HEARING –

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

ACTION OF THE BOARD – Laid over to January 8, 2019, at 10 A.M. for decision, hearing closed.

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2017-309-BZ

APPLICANT – Eric Palatnik, P.C., for Samnon Associates Inc., owner.

SUBJECT – Application December 1, 2017 – 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.

PREMISES AFFECTED – 406 Remsen Avenue, Block 4663, Lot 4, Borough of Brooklyn.

COMMUNITY BOARD #17BK

ACTION OF THE BOARD – Laid over to January 15, 2019 and February 12, 2019, at 10 A.M., for continued hearing.

2018-48-BZ

APPLICANT – Philip L. Rampulla, for Joseph Marino, owner.

SUBJECT – Application March 30, 2018 – Re-instatement of a previously approved variance which permitted the operation of an Automotive Service Station (UG 16B) with accessory repair facilities which expired on September 13, 2004; Amendment to permit the legalization of an attendant booth and relocation of an existing free standing illuminated sign; Waiver of the Rules. R3X Special South Richmond District (Lower Density Growth Management Area).

PREMISES AFFECTED – 5205 Hylan Boulevard, Block 6499, Lot 1, Borough of Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Laid over to April 30, 2019, at 10 A.M., for continued hearing.

Carlo Costanza, Executive Director

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***CORRECTION**

This resolution adopted on August 14, 2018, under Calendar No. 2018-41-BZ and printed in Volume 103, Bulletin No. 34, is hereby corrected to read as follows:

**2018-41-BZ
CEQR #18-BSA-112K**

APPLICANT – Jay Goldstein, Esq., for David Janklowicz, owner.

SUBJECT – Application March 16, 2018 – Special Permit (§73-622) to permit the enlargement of a one family home contrary to ZR §23-141 (FAR and Open Space); ZR §23-461 (a) (side yard) and ZR §23-47 (rear yard). R2 zoning district.

PREMISES AFFECTED – 1238 East 29th Street, Block 7646, 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, Commissioner Ottley-Brown and Commissioner Scibetta.....4

Negative:0

Absent: Commissioner Sheta.....1

THE RESOLUTION –

WHEREAS, the decision of the Department of Buildings (“DOB”), dated February 15, 2018, acting on Alteration Application No. 320910948, reads in pertinent part:

1. Proposed plans are contrary to ZR 23-141 in that the proposed floor area ratio (FAR) exceeds the permitted
2. Proposed plans are contrary to ZR 23-141 in that the proposed open space ratio (OSR) is less than the required
3. Proposed plans are contrary to ZR 23-461(A) in that the proposed side yards are less than the required
4. Proposed plans are contrary to ZR 23-47 in that the proposed rear yard is less than [required]; 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 zoning regulations for floor area, 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 June 26, 2018, after due notice by publication in *The City Record*, with continued hearing on August 14,

2018, 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; and

WHEREAS, the subject site is located on the west side of East 29th Street, between Avenue L and Avenue M, in an R2 zoning district, in Brooklyn; and

WHEREAS, the subject site has approximately 30 feet of frontage along East 29th Street, 100 feet of depth, 3,000 square feet of lot area and is occupied by an existing 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

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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 from 2,117 square feet of floor area (0.71 FAR) to 2,776 square feet of floor area (0.93 FAR), decrease the open space ratio from 0.90 to 0.59, maintain side yards with a depth of 3'-8" to the north and with a depth of 6'-4" to the south and decrease the depth of the rear yard from 30 feet to 20 feet at the first and second floor; and

WHEREAS, the applicant states that, at the subject site, floor area may not exceed 1,500 square feet under ZR § 23-141, the open space ratio must be at least 1.50, side yards must have minimum depths of 8 feet and 5 feet under ZR § 23-461 and the rear yard must have a minimum depth of 30 feet under ZR § 23-47; and

WHEREAS, the applicant represents that the proposed building as enlarged is consistent with the built character of

the neighborhood; and

WHEREAS, in support of this contention, the applicant surveyed single- and two-family residences in the surrounding area, finding that there are 17 residences with 0.90 FAR or greater and that 14 residences have rear yards with depths of 25 feet or less; and

WHEREAS, the applicant also submits that, on the subject block, an adjacent residence also has a rear yard with a depth of 20 feet at the first and second floor; and

WHEREAS, the applicant also submitted a rear yard study, lot coverage diagram, photographic streetscape montage and a photographic neighborhood study demonstrating that the proposed building will fit in with the building conditions of the surrounding area; and

WHEREAS, based upon its review of the record and inspections of the subject site and surrounding neighborhood, the Board finds that the proposed building as enlarged will not alter the essential character of the neighborhood or district in which the subject building is located, nor impair the future use or development of the surrounding area; and

WHEREAS, in response to questions from the Board at hearing about the effect of the enlarged building on residences nearby, the applicant removed the proposed enlargement of the attic and revised the slope of the proposed building's roof; 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 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. 18BSA112K, dated March 19, 2018; and

WHEREAS, the Board finds that the evidence in the record supports the findings required to be made under ZR §§ 73-622 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion.

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 §§ 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 zoning regulations for floor area, open space ratio, side

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yards and rear yards, contrary to ZR §§ 23-141, 23-461 and 23-47; *on condition* that all work and site conditions shall conform to drawings filed with this application marked “Received July 24, 2018”-thirteen (13) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: floor area shall be limited to 2,776 square feet (0.93 FAR), the open space ratio shall be at least 0.59, side yards shall have a minimum depth of 3’-8” to the north and a minimum depth of 6’-4” to the south and the rear yard shall have a minimum depth of 20 feet at the first and second floor, as illustrated on the Board-approved drawings;

THAT removal of existing joists or perimeter walls in excess of that shown on the Board-approved drawings shall void the special permit;

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 14, 2022;

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 14, 2018.

***The resolution has been Amended. Corrected in Bulletin No. 51, Vol. 103, dated December 21, 2018.**