
BULLETIN

OF THE NEW YORK CITY BOARD OF STANDARDS AND APPEALS

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January 22, 2021

DIRECTORY

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2020-91-A

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2020-92-A

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2020-93-A

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2021-1-BZ

31-18 37th Street, Block 00649, Lot(s) 0042, Borough of **Queens, Community Board: 1.** Variance (§72-21) to permit the enlargement of a school (Trinity Lutheran Church) contrary to underlying bulk requirements. R6B zoning district. R6B 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

**TELECONFERENCE PUBLIC HEARINGS
FEBRUARY 22-23, 2021, MONDAY-TUESDAY
10:00 A.M. and 2:00 P.M.**

NOTICE IS HEREBY GIVEN of teleconference public hearings, Monday, February 22, 2021, at 10:00 A.M. and 2:00 P.M., and Tuesday February 23, 2021, at 10:00 A.M. and 2:00 P.M., to be streamed live through the Board's website (www.nyc.gov/bsa), with remote public participation, on the following matters:

SPECIAL ORDER CALENDAR

378-45-BZ

APPLICANT – Davidoff Hatcher & Citron, LLP, for Leemilts Petroleum, Inc., owner; Atlantis GRC Realty LLC, lessee.

SUBJECT – Application December 28, 2018 – Amendment (§11-412) of a previously approved variance permitting the operation of an Automotive Service Station (UG 16B) seeking to permit a change in the configuration of existing gasoline pumps, the addition of a canopy and the conversion of an accessory lubricatorium to an accessory convenience store with a drive-through. C2-3/R5D zoning district.

PREMISES AFFECTED – 116-60 Sutphin Boulevard, Block 12008, Lot(s) 0034, Borough of Queens.

COMMUNITY BOARD #12Q

590-76-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Cinfiors Ltd., owner.

SUBJECT – Application August 10, 2020 – Extension of Term of a previously granted Variance (§72-21) for an existing illuminated sign that exceeds the permitted height above curb level. C2-8 zoning district.

PREMISES AFFECTED – 243 East 59th Street, Block 1414, Lot 120, Borough of Manhattan.

COMMUNITY BOARD #8M

6-04-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Glenmore Associates, owner; TSI Third Ave, LLC dba New York Sports Club, lessee.

SUBJECT – Application November 16, 2017 – Extension of Term of a variance granted pursuant to §72-21 allow the operation of a physical culture establishment located in a C1-3/R6B, Special Bay Ridge zoning district.

PREMISES AFFECTED – 7118-7124 Third Avenue, Block 5890, Lot(s) 43, Borough of Brooklyn.

COMMUNITY BOARD #1BK

21-10-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Aquilla Realty Company, Inc., owner; Burger Brother Hutch Restaurant Associates LP dba Burger King, lessee.

SUBJECT – Application September 14, 2020 – Extension of Term of a previously approved Special Permit (§73-243) which permitted the operation of an accessory drive-through to an eating and drinking establishment which expired on September 14, 2020; Extension of Time to Obtain a Certificate of Occupancy which expired on February 13, 2020; Waiver of the Board's Rules of Practice and Procedures. C1-2/R4A zoning district.

PREMISES AFFECTED – 2801 Roebling Avenue, Block 5386, Lot 0001, Borough of Bronx.

COMMUNITY BOARD #10BX

86-10-BZ

APPLICANT – Sheldon Lobel, P.C., for STM Development, LLC, owner.

SUBJECT – Application July 23, 2020 – Extension of Term (§11-411) of a previously granted variance permitting a Use Group (“UG”) 16 custom woodworking shop which expires on September 14, 2020. R5/C1-3 zoning district.

PREMISES AFFECTED – 93-08 95th Avenue, Block 9036, Lot 0003, Borough of Queens.

COMMUNITY BOARD #8Q

2016-4340-BZ

APPLICANT – Law Office of Vincent L. Petraro, PLLC, for Flushing Holding, LLC, owner.

SUBJECT – Application November 25, 2020 – Amendment of a previously approved Special Permit (§73-66) to permit the construction of a new building in excess of the height limits established under ZR §61-21. The amendment seeks to increase the height of the building contrary to the previous approval. C4-2 zoning district.

PREMISES AFFECTED – 131-02 40th Road, Block 5066, Lot 150, Borough of Queens.

COMMUNITY BOARD #7Q

ZONING CALENDAR

2017-262-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Delson Developments, LLC, owner.

SUBJECT – Application September 7, 2017 – Variance (§72-21) to permit the construction of three-story plus cellar residential building contrary to ZR §42-00. M1-1 zoning district.

PREMISES AFFECTED – 18 Stanwix Street, Block 03162, Lot 0007, Borough of Brooklyn.

COMMUNITY BOARD #4BK

CALENDAR

2018-173-BZ

APPLICANT – Law Office of Jay Goldstein, for Beachfront Developers LLC, owner.

SUBJECT – Application November 2, 2018 – 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.

PREMISES AFFECTED – 128 Beach 9th Street, Block 15612, Lot 0026, Borough of Queens.

COMMUNITY BOARD #14Q

2019-38-BZ

APPLICANT – Sheldon Lobel, P.C., for Peabody Real Estate Co., Inc., owner; CoreBalFit, Inc., lessee.

SUBJECT – Application February 28, 2019 – Special Permit (§73-36) to permit the operation of a Physical Culture Establishment (*CoreBalFit*) to be located on the 1st floor of an existing building contrary to ZR §42-10. M1-1 zoning districts.

PREMISES AFFECTED – 222-34 96th Avenue, Block 10812, Lot 0091, Borough of Queens.

COMMUNITY BOARD #13Q

2019-91-BZ

APPLICANT – Michio Sanga, for Umer I. Chaudhry, owner.

SUBJECT – Application May 13, 2019 – Variance (§72-21) to permit the development of a two-family residence contrary to ZR §23-142 (floor area ratio); ZR §23-22 (density); ZR §23-45 (front yard); ZR §23-461 (side yard); and ZR §25-22 (parking). R3X zoning district.

PREMISES AFFECTED – 97-09 24th Avenue, Block 1091, Lot 0041, Borough of Queens.

COMMUNITY BOARD #4Q

2019-92-BZ

APPLICANT – Michio Sanga, for Summer. Chaudhry, owner.

SUBJECT – Application May 13, 2019 – Variance (§72-21) to permit the development of a two-family residence contrary to ZR 22-12 (Use); ZR §23-142 (floor area ratio); ZR §23-22 (density); ZR §23-461 (side yard); ZR 23-47 (rear yard); and ZR §§25-22 & 25-621 (parking). R3X zoning district.

PREMISES AFFECTED – 23-39 98th Street, Block 1092, Lot 0062, Borough of Queens.

COMMUNITY BOARD #4Q

2020-8-BZ

APPLICANT – Francis R. Angelino, Esq., for Lerad Company, owner; Bode NYC, lessee.

SUBJECT – Application January 14, 2020 – Special Permit (§73-36) to permit the operation of a physical cultural establishment (Bode) to be located on a portion of the second floor of an existing building contrary to ZR §32-10. C1-9 zoning district.

PREMISES AFFECTED – 173 East 83rd Street, Block 1512, Lot 0033, Borough of Manhattan.

COMMUNITY BOARD #8M

2020-62-BZ

APPLICANT – Akerman LLP, for PFFNY, LLC, lessee.

SUBJECT – Application July 30, 2020 – Special Permit (§73-36) to permit the legalization of the operation of a physical culture establishment (Planet Fitness) on portions of the first and second floors of an existing building contrary to 32-10. C8-3 zoning district.

PREMISES AFFECTED – 90 West 225th Street, Block 2215, Lot 7502, Borough of Manhattan.

COMMUNITY BOARD #7M

Margery Perlmutter, Chair/Commissioner

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**PUBLIC HEARINGS
MONDAY-TUESDAY MORNING
JANUARY 11-12, 2021, 10:00 A.M.**

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

SPECIAL ORDER CALENDAR

187-97-BZ

APPLICANT – Nasir J. Khanzada, for Charanjit Singh, owner.

SUBJECT – Application March 18, 2019 – Amendment of a previously approved Special Permit (§ 73-211) which permitted the operation of an Automotive Service Station (UG 16B) with an accessory convenience store. The amendment seeks to remove lot 39 from the application as well as enlarge the existing building by 133.68 square feet. C2-3/R5D zoning district.

PREMISES AFFECTED – 148-02 Rockaway Boulevard, Block 12103, Lot 25, Borough of Queens.

COMMUNITY BOARD #12Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta5

Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated February 22, 2019, acting on DOB Job No. 421696588, reads in pertinent part, “The proposed enlargement of existing Use Group 16 building in zoning districts C2-3 in R5D, R3A, which is contrary to the resolutions and plans adopted by the Board of Standards and Appeals under Cal. # 187-97-BZ must be referred back to the BSA for approval.”

This is an application for an amendment of a special permit, previously granted by the Board, under Z.R. § 73-211, which permitted the use of the site as an automotive service station.

A public hearing was held on this application on December 17, 2019, after due notice by publication in *The City Record*, with continued hearings on March 24, 2020, and September 14, 2020, and then to decision on January 11, 2021. Vice-Chair Chanda and Commissioner Sheta performed inspections of the Premises and surrounding neighborhood.

The Premises are located on the southeast corner of Rockaway Boulevard and 148th Street, partially within a C2-3 (R5D) zoning district and partially within an R3A zoning district, in Queens. With approximately 160 feet of frontage along Rockaway Boulevard, 106 feet of frontage along 148th Street, and 15,274 square feet of lot area (372

square feet of which is located within the R3A zoning district), the Premises are occupied by an existing automotive service station which includes tax lot 39 for additional parking.

The Board has exercised jurisdiction over the Premises since March 15, 1949, when, under BSA Cal. No. 1086-48-BZ, the Board granted a variance, for a term of 15 years, to permit the extension of the portion of the plot formerly used as a gasoline service station and to include the balance of the plot as proposed on plans filed with the application, on condition that all uses be removed from the Premises and the plot leveled to the grade of Rockaway Boulevard and be arranged substantially as indicated and proposed; there be erected on the interior lot lines to the east and south a masonry wall not less than 5'-6" in height; a similar wall be erected on the new building line of 148th Street for a distance of 60 feet from the rear line; planting areas be maintained as proposed with suitable planting and protected by a concrete curbing; the accessory building be arranged and located as proposed and comply in all respects with the requirements of the Building Code; pumps not be nearer than 12'-6" to the street building line of Rockaway Boulevard as shown; the number of gasoline storage tanks not exceed six 550-gallon tanks; curb cuts be restricted to one on 148th Street constructed within a distance of not over 35 feet from the Rockaway Boulevard building line and two from Rockaway Boulevard, not exceeding 35 feet in width each with no part of any curb cut nearer than five feet to the street building lines as mapped and as prolonged; at the intersection of Rockaway Boulevard and the new line of 148th Street there be erected a block of concrete not less than 12 inches in height, which may be segmental in shape; where not occupied by pumps and planting the plot be paved with concrete or other suitable reasonably impervious surfacing; the sidewalks and curbs be restored or reconstructed to the satisfaction of the borough president; the portion of the plot proposed for street widening be maintained outside the wall with grass sodding; signs be restricted to a permanent sign attached to the façade of the accessory building and to the globes of the gasoline pumps, excluding all temporary signs and all roof signs, but permitting the erection near the intersection of a post standard for supporting a sign, advertising only the brand of gasoline on sale, but permitting such sign to be illuminated and to extend beyond the building line for a distance of not more than four feet; such portable fire-fighting appliances be installed as the Fire Commissioner directs; and, all permits be obtained and all work completed within one year.

On that same date, under BSA Cal. No. 1087-48-A, the Board granted an application, under GCL § 35, to permit the portion of the Premises within the proposed widening of 148th Street to be traversed for entrance to the Premises, as proposed, on condition that the requirements of the resolution adopted under BSA Cal. No. 1086-48-BZ be complied with; and, the curb cut on 148th Street as permitted under BSA Cal. No. 1086-48-BZ may be on the present curb line of 148th Street but be relocated on the new

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curb line upon the widening of 148th Street.

On July 15, 1952, under BSA Cal. No. 1086-48-BZ, the Board amended the resolution to permit a maximum of eight 550-gallon tanks.

On May 21, 1957, under BSA Cal. No. 1086-48-BZ, the Board amended the resolution to permit a maximum of 12 approved tanks.

On June 2, 1964, under BSA Cal. No. 1086-48-BZ, the Board extended the term for ten years, to expire on June 2, 1974, and amended the resolution to permit minor repairs on the Premises, on condition that other than as amended the resolution be complied with in all respects and a certificate of occupancy be obtained.

On July 20, 1971, under BSA Cal. No. 280-71-BZ, the Board granted a special permit, under Z.R. §§ 73-211 and 73-212, to permit the enlargement in lot area and the reconstruction of an automotive service station with accessory uses, on condition that the curb cut on Rockaway Boulevard be located a distance of 40 feet from the intersection of 149th Street and Rockaway Boulevard in lieu of the 15 feet as shown on the plan; all applicable laws, rules, and regulations be complied with; and, substantial construction be completed within one year, by July 20, 1972.

On October 3, 1972, under BSA Cal. No. 280-71-BZ, the Board amended the special permit to accept new plans.

On March 19, 1974, under BSA Cal. No. 280-71-BZ, the Board amended the special permit to accept new plans on condition that the fences along 148th Street and 149th Street be repaired and made 50% opaque; a median type guard rail be provided along the concrete curb to protect the fence along 149th Street; and, other than as amended the resolution be complied with in all respects.

On January 23, 2001, under the subject calendar number, the Board granted a special permit, under Z.R. § 73-211, to permit the existing operation of a gasoline service station with a convenience store, and the installation of a canopy over new gas pump islands with MPDs and underground tanks, on condition that all work substantially conform to drawings as they apply to the objections, filed with the application; signage be provided in accordance with BSA-approved plans; fencing and screening be provided in accordance with BSA-approved plans; lighting be provided in accordance with BSA-approved plans and be positioned down and away from the adjacent residential uses; the Premises be maintained free of debris and graffiti; 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.

The applicant seeks an amendment to remove tax lot 39, enlarge the existing building by approximately 134 square feet, and permit a rearrangement of the accessory convenience store in accordance with DOB Technical Policy and Procedure Notice ("TPPN") # 10/99. TPPN # 10/99 states, in pertinent part, that a proposed retail

convenience store will be deemed accessory to an automotive service station located on the same zoning lot if the following guidelines are met: a) the accessory retail use shall be located on the same zoning lot as the service station and it shall be contained within a completely enclosed building; and, b) the accessory retail use shall have a maximum retail selling floor area of either 2500 square feet or twenty-five percent (25%) of the zoning lot area, whichever is less. The applicant submits that the proposed accessory convenience store is 2,457 square feet and is less than the lesser of 2,500 square feet or 25 percent of the zoning lot (3,818 square feet).

Over the course of hearings, the Board raised concerns regarding the maintenance of the site with respect to high light levels on nearby residential properties and sufficient landscaping and screening of the Premises from nearby properties.

In response, the applicant revised the plans to demonstrate five-foot deep planting beds protected with wheel stops, and committed to reduce light levels to zero (0.0) at the property line, stucco and paint the dumpster facing residential properties, and demonstrate compliance before the Board within three years.

By letter dated December 16, 2019, the Fire Department states that a review of their records indicates that the Premises are current with their permits for the storage of combustible liquids, leak detection equipment, underground storage tank, and the fire suppression (dry-chemical) system. The Fire Department has no objection to the application, as the Bureau of Fire Prevention will continue to inspect the Premises and enforce all applicable rules and regulations.

By letter dated September 22, 2020, the Fire Department added that, during the September 14, 2020, public hearing, comments were made that the Premises have several drums of unknown liquids stored on site. A complaint was filed with the Fire Department's Bureau of Fire Prevention by our office to investigate the same. On September 15, 2020, inspectors from the Bureau of Fire Prevention District Office inspected and found no drums stored at the Premises and a re-inspection of existing accounts found that the two attendants on duty at the time of the inspection did not possess Certificates of Fitness for dispensing operations at an automotive facility. The owner's representative was issued a violation order to obtain such Certificate of Fitness within thirty days. The Fire Department will conduct a follow-up inspection of the Premises to verify compliance with the violation order. Based upon the foregoing the Fire Department has no objection to the application, as the Bureau of Fire Prevention will continue to inspect these premises and enforce all applicable rules and regulations.

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 *amends* the resolution, dated July 20, 1971, as amended through January 23, 2001, so that as

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amended this portion of the resolution shall read: “to *permit* removal of tax lot 39 and the enlargement of the existing building *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked ‘Received October 15, 2020—twelve (12) sheets’; and *on further condition*:

THAT light levels shall be zero (0.0) at the property line(s) shared with residences;

THAT the side block wall surrounding the dumpster facing residential properties shall be maintained stuccoed and painted;

THAT all fencing, planting, asphalt, exterior finishes, and masonry shall be maintained in first-rate condition and shall be replaced, as necessary;

THAT the Board shall hold a compliance hearing on BSA Calendar Number 187-97-BZ in approximately 36 months, in June 2024, at which the applicant must demonstrate adherence to the Board’s conditions and safeguards, and failure to demonstrate compliance may result in revocation of the special permit or other enforcement action deemed appropriate by the City of New York;

THAT in three months, in March 2021, the applicant shall submit to the Board, under BSA Calendar Number 187-97-BZ, a lighting level study pursuant to the Board’s July 2, 2020, Administrative Notice, demonstrating zero (0.0) light levels at the property line shared with residences;

THAT signage shall be provided in accordance with BSA-approved plans;

THAT fencing and screening shall be provided in accordance with BSA-approved plans;

THAT lighting shall be provided in accordance with BSA-approved plans and shall be positioned down and away from the adjacent residential uses;

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

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

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. 187-97-BZ”), shall be obtained within one year and an additional six months, in light of the current state of emergency declared to exist within the City of New York resulting from an outbreak of novel coronavirus disease, by July 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;

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 11, 2021.

853-53-BZ

APPLICANT – Eric Palatnik, P.C., Knapp, LLC, owner, Bolla EM Realty, LLC, lessee.

SUBJECT – Application November 15, 2019 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of an automotive service station (UG 16B) which expires on October 23, 2019. C2-2/R3-2 zoning district.

PREMISES AFFECTED – 2402/16 Knapp Street, Block 7429, Lot 0010, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to April 26, 2021, at 10 A.M., for adjourned hearing.

803-61-BZ

APPLICANT – Eric Palatnik, P.C., for Martin Blessinger, owner; BP Products North America Inc., lessee.

SUBJECT – Application November 15, 2019 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of an automotive service station (UG 16B) which expires on July 27, 2020. C2-1/R3-2 zoning district.

PREMISES AFFECTED – 1416 Hylan Boulevard, Block 3350, Lot 30, Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Laid over to April 26, 2021, at 10 A.M., for continued hearing.

528-71-BZ

APPLICANT – Eric Palatnik, P.C. for PMG NE LLC, owner.

SUBJECT – Application May 29, 2018 – Amendment of a previously approved Variance (§72-21) which permitted the operation of an Automotive Service Station (UG 16B) which expired on October 3, 1982. The Amendment is filed pursuant to §1-07.3 (b)(4)(ii) of the Board’s Rules of Practice and Procedures to requests a modification of the term specified as a condition of the Board’s resolution. The application seeks to legalize modifications to signage, landscaping, site layout and the accessory

PREMISES AFFECTED – 133-40 150th Street, Block 12116, Lot 0001, Borough of Queens.

COMMUNITY BOARD # 12Q

ACTION OF THE BOARD – Laid over to April 26, 2021, at 10 A.M., for continued hearing.

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389-85-BZ

APPLICANT – Walter T. Gorman, P.E., P.C., for GTY-CPG (QNS/BX) Leasing, Inc, owner; Global Partners LP, lessee.

SUBJECT – Application February 21, 2019 – Extension of Term of a previously approved Special Permit (§73-211) which permitted the operation of a Automotive Service Station (UG 16B)(Mobil) which expired on November 26th 2015; Waiver of the Board’s Rules.

PREMISES AFFECTED – 2090 Bronxdale Avenue, Block 4283, Lot 1, Borough of Bronx.

COMMUNITY BOARD #11BX

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Shelta, and Commissioner Scibetta5
Negative:.....0

ACTION OF THE BOARD – Laid over to February 8, 2021, at 10 A.M., for decision, hearing closed.

825-86-BZ

APPLICANT – Akerman, LLP, for Ban Realty LLC, owner.

SUBJECT – Application July 27, 2018 – Extension of Term of a previously approved Variance (§72-21) which permitted the operation of a commercial banquet hall (UG 9) and eating and drinking establishment (UG 6) contrary to zoning use regulations which expired on June 30, 2017: Amendment to permit the extension of the banquet hall by approximately 1,104 square feet and the addition of two new mezzanines for a total of 2,461 square feet, permit an increase in the maximum permitted occupancy from 850 people to a maximum occupancy of 1,008 people and propose to reduce the parking from 75 to 65 attendant parking spaces; Waiver of the Rules. R5 Zoning District.

PREMISES AFFECTED – 1703 Bronxdale Avenue, Block 4045, Lot 29, Borough of Bronx.

COMMUNITY BOARD # 11BX

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Shelta, and Commissioner Scibetta5
Negative:.....0

ACTION OF THE BOARD – Laid over to February 22, 2021, at 10 A.M., for decision, hearing closed.

21-91-BZ

APPLICANT – Sheldon Lobel, P.C., for Hardath Latchminarain, owner.

SUBJECT – Application July 19, 2017 – Extension of Term of a previously approved Variance (§72-21) which permitted the operation of an automotive glass and mirror repair establishment (UG 7D) and used car sales (UG 16B) which expired on March 16, 2015; Amendment to permit the legalize the conversion of the existing building to Use Car Sales (UG 16B) and relinquishing the automotive glass and mirror repair establishment (UG 7D); Waiver of the

Board’s Rules. R5 zoning district.

PREMISES AFFECTED – 2407-2417 Linden Boulevard, Block 4478, Lot 24, Borough of Brooklyn.

COMMUNITY BOARD #5BK

ACTION OF THE BOARD – Laid over to March 8, 2021, at 10 A.M., for continued hearing.

42-97-BZ

APPLICANT – Law Offices of Marvin Mitzner LLC, for NDC Elmhurst, LLC, owner.

SUBJECT – Application October 18, 2019 – Extension of Term of a previously approved Variance (§72-21) which permitted the construction and use of a one-story and cellar retail drug store (UG 6) which expired on March 3, 2018; Amendment to permit the elimination of a term since the use is now permitted with the exception of a portion located in a R6B zoning district; Waiver of the Board’s Rules. C1-3 and R6B zoning districts.

PREMISES AFFECTED – 93-20 Astoria Boulevard, Block 1367, Lot 48, Borough of Queens.

COMMUNITY BOARD #3Q

ACTION OF THE BOARD – Laid over to March 22, 2021, at 10 A.M., for continued hearing.

5-98-BZ

APPLICANT – Heywood Blaubeux, for Priority Landscaping Inc., owner.

SUBJECT – Application December 12, 2020 – Extension of Term of a previously approved variance (§72-21) which permitted a garden supply sales and nursery establishment (UG 17) with accessory parking and storage which expired on February 23, 2019; Waiver of the Board’s Rules. R5 zoning district.

PREMISES AFFECTED – 1861 McDonald Avenue, Block 6633, Lot 55, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to March 8, 2021, at 10 A.M., for continued hearing.

294-99-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 821 Fifth Avenue Investors IV LLC, owner; Equinox Rockefeller Center Inc., lessee.

SUBJECT – Application December 31, 2019 – Extension of Term of a previously approved Special Permit (§73-36) which permitted the operation of a physical cultural establishment (Equinox) which expires on May 9, 2020. C5-2.5 and C5-3 Midtown Special Purpose District – Rockefeller Center National Historic Landmark.

PREMISES AFFECTED – 521 5th Avenue, Block 1278, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #5M

THE VOTE TO CLOSE HEARING –

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

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Commissioner Scibetta5
Negative:.....0
ACTION OF THE BOARD – Laid over to February 8, 2021, at 10 A.M., for decision, hearing closed.

128-00-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Roza 14W LLC, owner; Equinox Wall Street, Inc., lessee.
SUBJECT – Application March 11, 2020 – Extension of Term of a Special Permit (ZR §73-36) for the continued operation of a physical culture establishment (*Equinox*) which expires on September 12, 2020. C5-5(LM) zoning district. Individual Landmark Building.
PREMISES AFFECTED – 14 Wall Street, Block 46, Lot 9, Borough of Manhattan.

COMMUNITY BOARD #1M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Shelta, and Commissioner Scibetta5
Negative:.....0

ACTION OF THE BOARD – Laid over to January 28, 2021, at 10 A.M., for decision, hearing closed.

195-02-BZ

APPLICANT – Pryor Cashman LLP, for McDonald’s Corporation, owner.
SUBJECT – Application September 4, 2019 – Extension of Term of a previously approved Variance (§72-21) permitting an eating and drinking establishment with an accessory drive through facility which expires on November 23, 2023; Amendment to permit an enlargement; Waiver of the Rules. R4 zoning district.
PREMISES AFFECTED – 2797 Linden Boulevard, Block 4471, Lot 21, Borough of Brooklyn.

COMMUNITY BOARD #5BK

ACTION OF THE BOARD – Laid over to April 12, 2021, at 10 A.M., for adjourned hearing.

245-03-BZ

APPLICANT – Seyfarth Shaw LLP, for Allied Enterprises NY LLC c/o Muss Development 118-35 Queens Boulevard, owner; McDonald’s Real Estate Company, lessee.
SUBJECT – Application January 8, 2019 – Extension of Term of a previously granted special permit (§72-243) for an accessory drive-thru to an existing eating and drinking establishment (McDonald’s), which expired on December 9, 2018. C1-2/R3-2 zoning district.
PREMISES AFFECTED – 160-11 Willets Point Boulevard, Block 4758, Lot 100, Borough of Queens.

COMMUNITY BOARD #7Q

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Shelta, and Commissioner Scibetta5

Negative:.....0
ACTION OF THE BOARD – Laid over to February 22, 2021, at 10 A.M., for decision, hearing closed.

72-04-BZ

APPLICANT – Eric Palatnik, P.C, for BWAY-129th Street, Gasoline Corp., owner.
SUBJECT – Application October 18, 2019 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of an Automotive Service Station (UG 16B)(Getty) which expires on June 3, 2020. C1-2/R6 & R6 zoning district.
PREMISES AFFECTED – 141-54 Northern Boulevard, Block 5012, Lot 45, Borough of Queens.

COMMUNITY BOARD #7Q

ACTION OF THE BOARD – Laid over to March 8, 2021, at 10 A.M., for continued hearing.

23-08-BZ

APPLICANT – Sheldon Lobel, P.C., for Boris Aronov, owner.
SUBJECT – Application February 15, 2019 – Amendment of a previously approved Variance (§72-21) which permitted the construction of a two-story and cellar house of worship (UG 4) contrary to floor area and parking requirements. R1-2 zoning district.
PREMISES AFFECTED – 80-14 Chevy Chase Street, Block 7248, Lot 44, Borough of Queens.

COMMUNITY BOARD #8Q

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Shelta, and Commissioner Scibetta5
Negative:.....0

ACTION OF THE BOARD – Laid over to April 26, 2021, at 10 A.M., for decision, hearing closed.

25-09-BZ

APPLICANT – Pryor Cashman LLP, for AJJ Canal, LLC, owner; UFC Gym, lessee.
SUBJECT – Application April 15, 2019 – Extension of Term of a previously approved Special Permit (§73-36) which permit the operation of a physical culture establishment on the third floor of a three-story commercial building which expired on November 23, 2018; Amendment to permit a change in operator from Champion Fitness to UFC Gym; Waiver of the Board’s Rules. M1-5B SoHo Iron Historic District.
PREMISES AFFECTED – 277 Canal Street, Block 209, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #2M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Shelta, and Commissioner Scibetta5

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Negative:.....0
ACTION OF THE BOARD – Laid over to February 22, 2021, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

2018-102-A

APPLICANT – Sheldon Lobel, P.C., for K. Kurylo Corporation, owner.

SUBJECT – Application June 28, 2019 – 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.

PREMISES AFFECTED – 241 Grand Street, Block 2382, Lot 27, Borough of Brooklyn.

COMMUNITY BOARD #1BK

ACTION OF THE BOARD – Application dismissed.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

This is an application, based on the common-law doctrine of vested rights, to establish the right to continue construction and to renew building permits lawfully issued by the Department of Buildings (“DOB”), acting on New Building Application No. 302156798, before the effective date of an amendment to the Zoning Resolution, which have lapsed as a result of such amendment.

A public hearing was held on this application on October 3, 2019, after due notice by publication in *The City Record*, with a continued hearing on December 1, 2020, and then to decision on January 11, 2021. Vice-Chair Chanda, Commissioner Ottley-Brown, and Commissioner Scibetta performed an inspection of the site and surrounding neighborhood. Community Board 1, Brooklyn, recommends approval of this application.

The Premises are located on the north side of Grand Street, between Roebling Street and Driggs Avenue, in a C2-4 (R6B) zoning district, in Brooklyn. With approximately 20 feet of frontage along Grand Street, 94 feet of depth, and 1,860 square feet of lot area, the Premises are under construction of a four-story building (the “Building”).

On October 29, 2007, DOB determined that the Building would comply with all applicable zoning regulations and issued an Alteration Type I permit authorizing work associated with the application to construct a four-story mixed-use residential and commercial building on March 11, 2008.

Effective March 26, 2008 (the “Effective Date”), the City amended the Zoning Resolution, changing the underlying zoning district from an R6 zoning district to an

R6B zoning district, such that the Building does not comply with bulk regulations pertaining to base height, building height, and open space.

Because not “all work on” the Building’s “foundations had been completed prior to” the Effective Date, the building permits authorizing work associated with the New Building Application “automatically lapse[d]” on the Effective Date and “the right to continue construction . . . terminate[d]” under ZR § 11-331. Accordingly, the applicant seeks to establish the right to continue construction of the Building, based on the common-law doctrine of vested rights, and to renew building permits authorizing work associated with the New Building Application.

“Under New York law, a property owner has no right to an existing land-use benefit unless that right has ‘vested.’ In New York, a vested right can be acquired when, pursuant to a legally issued permit, the landowner demonstrates a commitment to the purpose for which the permit was granted by effecting substantial changes and incurring substantial expenses to further the development. *Town of Orangetown v. Magee*, 88 N.Y.2d 41, 47, 643 N.Y.S.2d 21, 665 N.E.2d 1061 (1996). In order to gain the vested right, the landowner’s actions relying on a valid permit must be so substantial that the municipal action results in serious loss rendering the improvements essentially valueless,” *Cine SK8, Inc. v. Town of Henrietta*, 507 F.3d 778, 784 (2d Cir. 2007) (internal quotation marks omitted); *see also Zahra v. Town of Southold*, 48 F.3d 674, 681 (2d Cir. 1995) (recognizing a “protectible ‘property interest’ in a benefit that affects land use—i.e. a building permit, certificate of occupancy, zoning variance, excavation permit or business license”). Notwithstanding this general framework, “there is no fixed formula which measures the content of all the circumstances whereby a party is said to possess a vested right,” *Estate of Kadin v. Bennett*, 163 A.D.2d 308, 309 (N.Y. App. Div. 1990) (internal quotation marks omitted).

The applicant requested adjournments of the public hearings scheduled for January 28, 2020, May 18, 2020, September 14, 2020, and December 1, 2020. At the public hearing on December 1, 2020, the Board stated that no further adjournments on this application would be permitted. A dismissal warning letter was sent to the applicant on December 2, 2020, instructing them that failure to make a complete submission by December 23, 2020, and appear at the public hearing on January 11, 2021, may result in the denial of this application or dismissal for failure to prosecute. The Board notes that the applicant may return at a future date when they are ready to prosecute this application. No further submission, nor appearance, was made in this application.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *dismiss* this application for failure to prosecute.

Adopted by the Board of Standards and Appeals, January 11, 2021.

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2018-198-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Debbie Ann Culotta, owner.

SUBJECT – Application December 12, 2018 – Proposed construction of a two-story, two-family residential building not fronting on a mapped street contrary to General City Law §36. R3X Special South Richmond District.

PREMISES AFFECTED – 85 Trenton Court, Block 6708, Lot 13 (tent.), Borough of Staten Island.

COMMUNITY BOARD #3SI

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Shelta, and Commissioner Scibetta.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to January 28, 2021, at 10 A.M., for decision, hearing closed.

2019-69-A & 2019-70-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 335 Mallory LLC, lessee.

SUBJECT – Application April 3, 2019 – Proposed construction of a new two-family not fronting on a legally mapped street contrary to General City Law Section §36. R3X zoning district.

PREMISES AFFECTED – 341 & 343 Mallory Avenue, Block 3417, Lot(s) 174, 173, Borough of Staten Island.

COMMUNITY BOARD # 2SI

ACTION OF THE BOARD – Laid over to March 22, 2021, at 10 A.M., for adjourned hearing.

2019-276-A

APPLICANT – Pryor Cashman LLP, for Bill Lecomplex, owner.

SUBJECT – Application October 16, 2019 – Proposed enlargement of an existing two-story with cellar single-family home located on the bed of a mapped street contrary to General City Law §35. R1-2 zoning district.

PREMISES AFFECTED – 15 Stuart Lane, Block 8103, Lot 62, Borough of Queens.

COMMUNITY BOARD #11Q

ACTION OF THE BOARD – Laid over to February 22, 2021, at 10 A.M., for adjourned hearing.

2020-47-A

APPLICANT – Law Office of Jay Goldstein, for Miles Davis, owner.

SUBJECT – Application June 8, 2020 – Application filed pursuant to General City Law (“GCL”) 36, to allow the proposed construction of a single-family home on a property not fronting on a mapped street. R3-1 zoning district.

PREMISES AFFECTED – 4810 Beach 48th Street, Block 7035, Lot 10, Borough of Brooklyn.

COMMUNITY BOARD #13BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Shelta, and Commissioner Scibetta.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to January 28, 2021, at 10 A.M., for decision, hearing closed.

ZONING CALENDAR

2018-142-BZ

CEQR #19-BSA-029Q

APPLICANT – Dennis P. George, owner.

SUBJECT – Application August 29, 2018 – 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.

PREMISES AFFECTED – 204-23 46th Road, Block 7304, Lot 53, Borough of Queens.

COMMUNITY BOARD #19Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

I.

The decision of the Department of Buildings (“DOB”), dated August 1, 2018, and May 7, 2020 acting on New Building Application No. 421543315, reads in pertinent part:

ZR 22-00 – Zero lot line buildings are not as-of-right in a R3-1 district.

ZR 23-142 – Floor area ratio requirements is greater than required in a R3-1 district (requirement – FAR 0.5 max) (proposed – FAR 0.6)

ZR 23-32 – Lot area is less than required for R3-1 district (existing lot 2,083 sf < required 3,800 sf); lot width is less than required for R3-1 district – existing irregular lot (existing lot widths [14'-8" – 26'-11"] < required 40'-0")

ZR 23-45 – Front yard requirements for corner lot is less than required in a R3-1 district. (Requirement – two yards 10 feet & 15 feet)

ZR 23-461a – Side yard requirements for corner lot is less than required in a R3-1 district. (requirement – two yards 5 feet & 20 feet)

This is an application for a variance, pursuant to Z.R. § 72-21, to allow, within an R3-1 zoning district, the construction of a three-story, plus cellar, single-family detached residence that does not comply with the zoning requirements for zero lot line buildings (Z.R. § 22-00), FAR (Z.R. § 23-142), minimum lot area and lot width (Z.R. § 23-

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32), front yards (Z.R. § 23-45), and side yards (Z.R. § 23-461).

A public hearing was held on this application on April 7, 2020, after due notice by publication in *The City Record*, with continued hearings on June 15, 2020, and December 1, 2020, and then to decision on January 11, 2021. Vice-Chair Chanda and Commissioner Ottley-Brown performed inspections of the Premises and surrounding neighborhood. Community Board 11, Queens, recommends denial of this application citing concerns over the proposal for a zero lot line building, the proposed size of the building, and that the connection of the cellar to the detached one-car garage may foster future illegal conversion. The Board received two form letters in objection to this application citing concerns over a lack of parking and overcrowding in the neighborhood. The Board received testimony from a civic organization within whose boundaries the Premises lies, opposing this application and stating concerns over the proposed connection of the cellar to the detached garage, illegal storage on the vacant lot, and that the lot is too small to accommodate the proposed residence.

II.

The Premises are a triangular lot located on the northwest corner of 46th Road and Clearview Expressway Service Road West, within an R3-1 zoning district, in Queens. With approximately 14'-8-1/4" of frontage along 46th Road, 101 feet of frontage along Clearview Expressway Service Road West, 26'-11-3/4" of width along the lot line opposite 46th Road, and 2,083 square feet of lot area, the Premises are currently vacant.

The applicant proposes to construct a three-story, plus cellar, single-family detached residence and detached one-car garage which does not comply with zoning provisions related to zero lot line buildings, FAR, minimum lot area and lot width, front yards, and side yards.

The proposed single-family residence would have 0.82 FAR (approximately 913 square feet of floor space in the cellar, 638 square feet of floor area on the first floor, 713 square feet of floor area on the second floor, and 348 square feet of floor area on the third floor), a front yard on 46th Road with 30'-6" of depth and a front yard on Clearview Expressway Service Road West with 4'-0" of depth, and one side yard with a width of 27'-6". In the subject R3-1 zoning district, the Zoning Resolution does not permit zero lot line buildings, *see* Z.R. § 22-00, permits a maximum of 0.5 FAR, with an increase up to 20 percent provided that any such increase in floor area is located directly under a sloping roof, *see* Z.R. § 23-142, requires a minimum lot area of 3,800 square feet and a minimum lot width of 40 feet, *see* Z.R. § 23-32, two front yards with minimum depths of 10 feet and 15 feet, *see* Z.R. § 23-45, and two side yards with minimum widths of 5 feet and 20 feet, *see* Z.R. § 23-461. Accordingly, the applicant seeks the relief requested herein.

III.

The Zoning Resolution vests the Board with wide discretion to "vary or modify [its] provision[s] so that the spirit of the law shall be observed, public safety secured and substantial justice done," Z.R. § 72-21.

In accordance with Z.R. § 72-21(a), the applicant submits that there are unique physical conditions inherent in the Premises—namely, the irregular, triangular lot shape and its narrow width—that 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. The applicant submits that the triangular lot, with an irregular width ranging between less than 15 feet and less than 27 feet in width, are unique conditions that would make compliance with side yard requirements impracticable and would result in an infeasible and unmarketable dwelling.

In support of this contention, the applicant surveyed properties within 1000 feet of the Premises and within an R3-1 or R3X zoning district (the "Study Area") finding that, of 519 properties within the Study Area, 73 are located on narrow lots with 21 feet of width or less. Of those 73 properties, the Premises is one of only two lots that were not pre-existing narrow lots created prior to the enactment of the Zoning Resolution and are not owned in common with an adjoining lot, so as to benefit from two lots joining to form a single development site.

The applicant also submitted as-of-right drawings demonstrating that strict conformance with Z.R. §§ 23-461 would result in an irregularly shaped building with its width varying from 1'-5-1/2" at the southern side lot line to 9'-5-1/4" at the northern side lot line with 65 feet of depth, and a 354.11 square-foot triangular floor plate, which would not be viable to construct, not comply with building code minimum space requirements for dwelling units or room size, circulation space, and, after the wall widths are accounted for, the remaining space is not habitable due to size. The applicant represents that compliance with underlying zoning regulations would not permit the habitable development of the Premises unless a variance is granted.

Accordingly, 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.

In accordance with Z.R. § 72-21(b), the applicant submits and the Board concurs that, because this application proposes a single-family residence, no showing need be made with respect to realizing a reasonable return.

In accordance with Z.R. § 72-21(c), the applicant represents that the requested variance would not alter the essential character of the neighborhood, impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare. Specifically, the applicant states that residential use is typical of, and two-story with attic and cellar buildings are prevalent in, the surrounding area, with one- to three-story attached and detached dwellings in all directions of the Premises. Further, to the north of the Premises are many pre-existing non-complying attached residential buildings, approximately 20-feet wide, and without providing side yards. As to floor area, the applicant submits that, within 400 feet of the Premises, there

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are 16 residential buildings constructed on lots with less than 21 feet of width, ranging in floor area between 800 square feet to 2,190 square feet, and the proposed floor area is typical of that on similarly narrow lots.

Accordingly, the Board finds that the proposed variance will not alter the essential character of the neighborhood or district in which the Premises are located; will not substantially impair the appropriate use or development of adjacent property; and will not be detrimental to the public welfare.

In accordance with Z.R. § 72-21(d), the applicant represents that the above practical difficulties or unnecessary hardship have not been created by the applicant or by a predecessor in title. Specifically, the applicant submits that, prior to the construction of the Clearview Expressway in 1961, the Premises was rectangular 40'x100' lot. When the right-of-way for the Expressway was mapped, it sliced through the existing properties and the Premises' original 40-foot width reduced to just 14.69 feet along the north side of 46th Road, and 26.67 feet along its northerly interior lot line.

Accordingly, the Board finds that the above practical difficulties or unnecessary hardship have not been created by the applicant or by a predecessor in title.

In accordance with Z.R. § 72-21(e), the applicant states that the variance request is the minimum necessary to develop a residence at the Premises. The applicant submits that all other bulk requirements will be in full compliance with the Zoning Resolution. Accordingly, the Board finds that the proposed variance is the minimum necessary to afford relief within the intent and purposes of the Zoning Resolution.

The project is classified as a Type II action pursuant to 6 NYCRR Part 617.5 and the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 19-BSA-029Q, dated January 11, 2021.

Based on the foregoing, the Board finds that the evidence in the record supports the findings required to be made under Z.R. § 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 makes each and every one of the required findings under Z.R. § 72-21 to *permit*, the construction of a three-story, plus cellar, single-family detached residence that does not comply with the zoning requirements for zero lot line buildings (Z.R. § 22-00), FAR (Z.R. § 23-142), minimum lot area and lot width (Z.R. § 23-32), front yards (Z.R. § 23-45), and side yards (Z.R. § 23-461), *on condition* that all work and site conditions shall conform to drawings filed with this application marked "Received June 2, 2020"—seventeen (17) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: a maximum of 0.82 FAR (approximately 913 square feet of floor space in the cellar, 638 square feet of floor area on the first floor, 713 square feet of floor area on the second floor, and 348 square feet of floor area on the

third floor), a front yard on 46th Road with a minimum depth of 30'-6" and a front yard on Clearview Expressway Service Road West with a minimum depth of 4'-0", and one side yard with a minimum width of 27'-6";

THAT the Premises shall remain free and clear of any storage or vehicles until construction begins;

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. 2018-142-BZ), shall be obtained within four years and an additional six months, in light of the current state of emergency declared to exist within the City of New York resulting from an outbreak of novel coronavirus disease, by July 14, 2025;

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 11, 2021.

2019-225-BZ thru 2019-253-BZ

APPLICANT – Philip L. Rampulla, AIA, for Tora Development, owner.

SUBJECT – Application August 29, 2019 – Variance (§72-21) to permit a fifty-six (56) attached single- and two-family building contrary to ZR §34-01. C3A zoning district.

PREMISES AFFECTED – 70-114 Tennyson Drive, 348-370 Nelson Avenue, 6-50 Fitzgerald Avenue, Block 5212, Lot 37, Borough of Staten Island.

COMMUNITY BOARD #31

ACTION OF THE BOARD – Application withdrawn.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta5

Negative:..... 0

THE RESOLUTION –

The decision of the Department of Buildings ("DOB"), dated June 23, 2020, acting on New Building Application Nos. 520378323, 520378314, 520378305, 520378298, 520376833, 520376815, 520376806, 520376799, 520376780, 520376762, 520376753, 520376744, 520376735, 520376708, 520378332, 520378341, 520378350, 520378378, 520378387, 520378396, 520378403, 520378458, 520378467, 520378476, reads in pertinent part:

1. ZR 32-00: The proposed cellar and three (3) story attached Residences on a Zoning Lot located in a C3A (R3A Residential

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Equivalent) zoning district is contrary to section 32-00 of the NYC Zoning Resolution.

2. ZR 23-631, ZR 25-23, ZR 23-711, ZR 23-532(A), ZR 23-532(B): The proposed building exceeds the height permitted under Section ZR 23-631, does not provide two (2) on-site parking spaces under Section ZR 25-23, does not provide the minimum distance between buildings pursuant to Section ZR 23-711 and does not meet the requirements for portions of Through Lots pursuant to Section ZR 23-532(A) and Section 23-532(B).”

This is an application for a variance, pursuant to Z.R. § 72-21, to permit, within a C3A zoning district, the construction of 56 attached single- and two-family residential buildings that would not comply with the zoning requirements for use (Z.R. § 32-00), height (Z.R. § 23631), parking spaces (Z.R. § 25-23), minimum distance between buildings (Z.R. § 23-711), and rear yard equivalents for through lots (Z.R. § 23-532). A public hearing was held on this application on October 20, 2020, after due notice by publication in *The City Record*, and then to decision on January 11, 2021.

Community Board 3, Staten Island, recommends disapproval of this application. Specifically, Community Board 3 states in part that the proposed variance is not in the best interest of the community, would disturb the neighborhood character, and does not meet the required hardship findings of Z.R. § 72-21. The Board received testimony in opposition to this application from the Staten Island Borough President and a State Senator raising concerns that the proposed variance would disturb the neighborhood character and effect a rezoning of the area. The Board received testimony in opposition to this application from two local community organizations raising concerns regarding damage to natural resources, flooding, parking, and disturbance to the neighborhood character. The Board also received 33 letters in opposition to this application from nearby residents raising concerns that the proposed variance would result in overcrowding of the neighborhood, flooding, excess pollution, increased parking demands, increased noise and traffic, and disturbance to the quality of life. The Board received one form letter in support of this application.

The Premises are bounded by Tennyson Drive to the south, Nelson Avenue to the west, Fitzgerald Avenue to the north, and Cleveland Avenue to the east. With approximately 723 feet of frontage along Tennyson Drive, 468 feet of frontage along Nelson Avenue, 459 feet of frontage along Fitzgerald Avenue, 101 feet of frontage along Cleveland Avenue, and 177,791 square feet of lot area, the Premises are currently vacant.

The Board has exercised jurisdiction over then-tax lot 85 since September 28, 1999, when, under BSA Cal. No. 60-99-A, the Board granted an application, under GCL § 35, to permit the construction within the bed of mapped street.

On September 1, 2005, the Board, by letter, permitted an increase in the number of stories, from two to three, and a reduction in the portion of the building being constructed in the bed of the mapped street, from 2,791 square feet to 446.4 square feet.

On February 14, 2012, under BSA Cal. No. 73-11-BZ, as to then tax lot 70, the Board granted a variance, under Z.R. § 72-21, to permit a three-story, 87-unit residential building with 114 accessory parking spaces, contrary to use regulations (Z.R. § 32-11), height (Z.R. § 23631), and parking regulations (Z.R. § 25-23), on condition that any and all work substantially conform to drawings as they apply to the objection, filed with the application; the following be the parameters of the building: three stories, 87 units, a floor area of 106,311 square feet (0.597 FAR), a height of 38'-2", and accessory parking for 114 vehicles, as illustrated on BSA-approved plans; the occupancy of the building be limited to persons 55 years of age or older, in accordance with applicable provisions of the Housing for Older Persons Act requirements; all other Housing for Older Persons Act requirements be complied with for the life of the proposed building; the conditions be listed on the certificate of occupancy; a Builder's Pavement Plan be filed and approved by DOT prior to the issuance of a building permit; a Declaration of Public Use guaranteeing pedestrian and vehicle access to all portions of the mapped bed of Tennyson Drive be filed with the Office of the County Clerk under the Builder's Pavement Plan; administrative certifications be obtained from the City Planning Commission as required by Z.R. §§ 107-64 (removal of trees), 107-65 (modification of topography), and 107-23 (school seats) prior to the issuance of a building permit; a permit not be issued for any grading, excavation, foundation, or other permit which involves soil disturbance until DEC has issued a tidal wetland adjacent area permit; 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; the approved plans be considered approved only for the portions related to the specific relief granted; construction be substantially completed in accordance with Z.R. § 72-23; 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, 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.

The applicant now proposes to construct 56 attached single- and two-family residential buildings that would not comply with the zoning requirements for use, height, parking spaces, minimum distance between buildings, and rear yard equivalents for through lots. Accordingly, the applicant seeks the relief requested herein.

The Zoning Resolution vests the Board with wide

MINUTES

discretion to “vary or modify [its] provision[s] so that the spirit of the law shall be observed, public safety secured and substantial justice done,” Z.R. § 72-21.

At hearing, the Board expressed concerns that the applicant has not demonstrated a unique physical condition inherent in the Premises nor a resulting hardship to warrant varying zoning regulations. Specifically, the Board expressed skepticism that any hardship would be proposed by the presence of a privately owned mapped, unbuilt street on the Premises—a condition common to many properties throughout the City and the Borough of Staten Island in particular, which here does not result in an unbuildable lot. To the contrary, the presence of a mapped street allows direct access to the interior of the Premises without any need to undertake a mapping action. The applicant also fails to demonstrate why, to develop the Premises as of right, each two-family residence would need to be built on separate zoning lots, how this would pose a hardship, or why the proposed waivers (especially parking and distance between buildings) would be appropriate or relate to the alleged hardship. With almost 178,000 square feet of lot area, as-of-right development would permit at least 46 dwelling units and the applicant has not demonstrated how that is a hardship. The applicant’s treatment of the Premises as a single zoning lot creates zoning non-compliances with respect to yards is a self-created hardship. By contrast, when the lots are divided, as proposed in the as of right plan, such yard non-compliances are not present. The applicant claims the Premises has too many frontages, which is a unique hardship. However, tax map data shows tax lot mergers of lots fronting on Fitzgerald Avenue and Cleveland Avenue into the subject lot 37 which, at that time, had frontage only on Tennyson Drive and Nelson Avenue and is a self-created hardship. The Board disagreed that a parking waiver is required as there is space for parking within the Premises and other parking configurations, like tandem parking, could be utilized.

Further, in light of the February 14, 2012, Z.R. § 72-21 variance granted to the Premises, the Board noted that circumstances have changed since the original grant and questioned whether the applicant could justify changes to as-of-right development plans and financial analyses related to the cost and number of piles required. Specifically, as-of-right proposal in the 2012 variance relied on an internal private street to access the houses on the lot, whereas the current as-of-right plan states it is not needed. The Board notes that flood resistant construction conditions cannot be used as unique conditions because they apply to all waterfront lots and all lots within “AE” flood zones. The soil conditions further upland from the Premises will be inherently different from those taken directly at the waterfront and, therefore, the sample soil borings should have been taken along the same topographical or geological boundaries as the Premises. Further, based on the test borings provided, the Board did not agree that piles would be required. The applicant claims that the requirement for sewer connections as it relates to the proposal constitutes a unique hardship; however, it is a general requirement

inherent in the scope of a development where area systems are inadequate to support the development. The Board states that the as of right proposal is underdeveloped and does not represent the maximum as-of-right potential development, which could have allowed for more residences and development along Cleveland Avenue.

By letter dated December 18, 2020, the applicant requested to withdraw the application without prejudice.

Therefore, it is Resolved, that the application is hereby *withdrawn*.

Adopted by the Board of Standards and Appeals, January 11, 2021.

2019-296-BZ

CEQR #20-BSA-045M

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 2374 Concourse Associates, LLC & 101 E. Burnside Partners LLC, owners; Acqua Ancien Bath New York LLC, lessee.

SUBJECT – Application November 26, 2019 – Special Permit (§73-36) to permit the operation of a physical cultural establishment (Aire Ancient Baths) contrary to ZR §32-10. C6-2A zoning district. Tribeca East Historic District.

PREMISES AFFECTED – 84 Franklin Street, Block 175, Lot 7, Borough of Manhattan.

COMMUNITY BOARD #1M

ACTION OF THE BOARD – Application granted.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta5

Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated November 1, 2019, acting on DOB Alteration Type I Application No. 123786705, reads in pertinent part:

“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.”

This is an application under Z.R. §§ 73-36 and 73-03 to permit, on a site located within a C6-2A zoning district and in the Tribeca East Historic District, the operation of a physical culture establishment (“PCE”) on portions of the first floor, first floor mezzanine, cellar, and sub-cellar of an existing four-story mixed-use residential and commercial building, contrary to Z.R. § 32-10.

A public hearing was held on this application on April 21, 2020, after due notice by publication in *The City Record*, with a continued hearing on June 16, 2020, and then to decision on January 11, 2021. Vice-Chair Chanda, Commissioner Ottley-Brown, and Commissioner Scibetta performed inspections of the Premises and surrounding area. Community Board 1, Manhattan, recommends approval of this application.

The Premises are located on the north side of Franklin

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Street, between Church Street and Franklin Place, within a C6-2A zoning district and in the Tribeca East Historic District, in Manhattan. With approximately 25 feet of frontage along Franklin Street, 100 feet of depth, and 2,504 square feet of lot area, the Premises are occupied by an existing four-story mixed-use residential and commercial building.

The Board notes that its determination is subject to and guided by Z.R. § 73-03. The Board notes that pursuant to Z.R. § 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. 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.

The applicant represents that the PCE will be an expansion and connect to an existing PCE located in the adjoining building at 88 Franklin Street, approved by the Board on August 23, 2011, under BSA Cal. No. 27-11-BZ, and will occupy 2,164 square feet of floor area on the first floor with massage areas, baths, sauna, and storage; 804 square feet of floor area on the first floor mezzanine with an additional pool/bath area; 2,600 square feet of floor space in the cellar with massage rooms and mechanical space; and 72 square feet of floor space in the sub-cellar with mechanical space. The PCE is proposed to operate as “Aire Ancient Baths,” from 8:00 a.m. to 11:00 p.m., daily.

The applicant represents that PCE use will neither impair the essential character nor the future use or development of the surrounding area because the subject PCE use will be located within an existing building in an area characterized by comparable commercial and manufacturing uses. Further, the applicant states that the subject PCE use is an expansion of an existing PCE that has operated since 2011 without incident. The applicant submits that the PCE contains facilities the practice of massage by New York State licensed masseurs or masseuses. 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. 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. The applicant submits that no adverse noise impacts are anticipated as the PCE plays only light ambient music and no weight-related activities occur. The applicant states that a sprinkler system and a fire alarm system will be maintained within the PCE space. By correspondence dated April 21, 2020, the Fire Department states that the Premises are protected by a sprinkler system that has been tested to

Fire Department rules and regulations. The Premises do not have a fire alarm system and, therefore, an application shall be filed with the Fire Department for plan review, approval and testing. The Fire Department has no objection to this application, and request that the Board of Standards and Appeals adds a condition to the application that a fire alarm system shall be installed in the PCE space.

The Landmarks Preservation Commission (“LPC”), by Certificate of No Effect (“CNE”) CNE-20-11229 issued December 29, 2020, approved work consisting of exterior work at the ground floor at the rear facade, including removing three pairs of stacked double hung windows, and installing three double-hung windows within the existing openings; at the second floor roof terrace, removing an existing skylight, raising a portion of the rear decking around the removed skylight by 10" to match the existing decking, and installing a new operable skylight assembly; and removing and reinstalling an existing wood fence at the terrace; and interior alterations, including but not limited to interior structural and excavation work, including constructing an elevator pit at the cellar, and access to the adjacent building at 88 Franklin Street.

Accordingly, 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. In addition, the Board finds that the operation of the PCE will not interfere with any public improvement project.

The project is classified as a Type II action pursuant to 6 NYCRR Part 617.5. The Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 20-BSA-045M, dated January 11, 2021.

Therefore, the Board has determined that the evidence in the record supports the requisite findings for the special permit pursuant to Z.R. §§ 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 Z.R. §§ 73-36 and 73-03 to *permit*, on a site located within a C6-2A zoning district and in the Tribeca East Historic District, the operation of a physical culture establishment on portions of the first floor, first floor mezzanine, cellar, and sub-cellar of an existing four-story mixed-use residential and commercial building, contrary to Z.R. § 32-10, *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked “Received May 27, 2020”—eight (8) sheets; and *on further condition*:

THAT this grant shall be limited to a term of ten years, expiring January 11, 2031;

THAT application shall be filed with the Fire Department for plan review, approval and testing of a fire alarm system;

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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-foot-wide exit pathways shall be maintained leading to the required exits and that pathways shall be maintained unobstructed, including from any equipment;

THAT an approved fire alarm and sprinkler system shall be maintained in the entire PCE space, as indicated on the Board-approved plans;

THAT accessibility shall be provided pursuant to the standards set forth in applicable accessibility laws, including but not limited to Chapter 11 of the NYC Building Code, the 2009 American National Standards Institute (ANSI) A117.1 and Title III of the Americans with Disabilities Act, as reviewed and approved by DOB;

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. 2019-296-BZ”), shall be obtained within one year and an additional six months, in light of the current state of emergency declared to exist within the City of New York resulting from an outbreak of novel coronavirus disease, by July 20, 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;

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 11, 2021.

2020-9-BZ

APPLICANT – Paul F. Bonfilio, R.A., for Emanuele Viola, owner

SUBJECT – Application January 14, 2020 – Variance (§72-21) to permit the development of a two-family, two story dwelling contrary to underlying bulk requirements. R4A zoning district.

PREMISES AFFECTED – 26-11 123rd Street, Block 4294, Lot 0019, Borough of Queens.

COMMUNITY BOARD #7Q

ACTION OF THE BOARD – Application withdrawn.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta5

Negative:..... 0

Adopted by the Board of Standards and Appeals, January 11, 2021.

2020-23-BZ

CEQR #20-BSA-072Q

APPLICANT – Goldman Harris LLC, for LIC Site B-1 Owner, LLC, owner.

SUBJECT – Application March 18, 2020 – Special Permit (§73-36) to permit the operation of a physical cultural establishment (Performance Lab) to be located on a portion of the first floor and cellar of an existing building contrary to ZR §42-10. M1-6/R10 Special Long Island City Mixed Use District.

PREMISES AFFECTED – 28-07 Jackson Avenue, Block 420, Lot 1, Borough of Queens.

COMMUNITY BOARD #1Q

ACTION OF THE BOARD – Application granted.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta5

Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated December 4, 2020, acting on DOB Application No. 420656873, reads in pertinent part:

“ZR 42-10; ZR 73-36: Proposed Physical Culture Establishment in a M1-6/R-10 (LIC) zoning district is contrary to Section 42-10 of the Zoning Resolution and requires a special permit from the BSA pursuant to Section 73-36 Zoning Resolution.”

This is an application under Z.R. §§ 73-36 and 73-03 to permit, on a site located within an M1-6/R10 zoning district and in the Special Long Island City Mixed Use District, the operation of a physical culture establishment (“PCE”) on portions of the first floor and cellar level of a proposed 27-story with mezzanine and cellar commercial building, contrary to Z.R. § 42-10.

A public hearing was held on this application on December 14, 2020, after due notice by publication in *The City Record*, and then to decision on January 11, 2021. Vice-Chair Chanda performed an inspection of the Premises and surrounding area.

The Premises are bounded by Jackson Avenue to the south, 42nd Road to the west, 28th Street to the north, and Queens Plaza South to the east, within an M1-6/R10 zoning district, in Queens. With approximately 403 feet of frontage along Jackson Avenue, 248 feet of frontage along 42nd Road, 55 feet of frontage along 28th Street, 299 feet of frontage along Queens Plaza South, and 121,100 square feet of lot area, the Premises are occupied by a proposed 27-story with mezzanine and cellar commercial building under construction.

The Board notes that its determination is subject to and guided by Z.R. § 73-03. The Board notes that pursuant to Z.R. § 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

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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. 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.

The applicant represents that the PCE will occupy 895 square feet of floor area on a portion of the first floor with the PCE entrance; and 8,170 square feet of floor space on the cellar level with areas for exercise, yoga, restrooms with showers, and office space. The PCE will operate, as “Performance Lab by the Wright Fit at JACX,” with the following hours of operation: weekdays, 5:30 a.m. to 9:30 p.m., and weekends, 8:00 a.m. to 2:00 p.m.

The applicant represents that PCE use will neither impair the essential character nor the future use or development of the surrounding area because the PCE will be consistent with the vibrant, mixed-use area, will be located on an entirely commercial block and the area surrounding the Premises are predominantly mixed-use commercial buildings, including several other physical culture establishments. 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.

The applicant submits that the PCE will include facilities for classes, instruction and programs for physical improvement, and yoga. The Board finds that the subject PCE use is consistent with those eligible pursuant to Z.R. § 73-36(a)(2) for the issuance of the special permit. 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. The applicant submits that, while the PCE only offers class or personal instruction and will be located primarily in the cellar, below a public food court, sound attenuation measures will be maintained to ensure that the PCE use does not adversely impact nearby occupied spaces. These measures include exercise areas with 1-1/4-inch thick resilient flooring to mitigate noise and vibrations and an insulated ceiling at the exercise studio with spray-applied thermal and acoustical finish.

The applicant states further that PCE use will not have an adverse impact on the privacy, quiet, light and air in the neighborhood and the proposed PCE will result in no hazards or disadvantages to the community at large and will confer a benefit on the surrounding neighborhood and its residents, as well as on the employees and guests of the Building’s retail and office tenants.

The applicant states that a sprinkler system and a fire alarm system will be maintained within the PCE space. By correspondence dated December 1, 2020, the Fire Department states that the Premises have a fire suppression system (standpipe and sprinkler) that has been tested and self-certified through the Department of Buildings and a

request for an inspection by the Bureau of Fire Prevention's Fire Suppression Unit has been made. The inspection of the standpipe and sprinkler systems will be done at a later date and should not delay the processing of the application. The fire alarm system has also been installed and currently waiting for final approval from the Fire Department. Based on the foregoing, the Fire Department has no objection to the application, as the Bureau of Fire Prevention will continue to inspect the Premises and enforce all applicable rules and regulations. Accordingly, 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. In addition, the Board finds that the operation of the PCE will not interfere with any public improvement project.

The project is classified as a Type II action pursuant to 6 NYCRR Part 617.5. The Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 20-BSA-072Q, dated January 11, 2021.

Therefore, the Board has determined that the evidence in the record supports the requisite findings for the special permit pursuant to Z.R. §§ 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 Z.R. §§ 73-36 and 73-03 to *permit*, on a site located within an M1-6/R10 zoning district, the operation of a physical culture establishment on portions of the first floor and cellar level of a proposed 27-story with mezzanine and cellar commercial building, contrary to Z.R. § 42-10, *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked “Received December 16, 2020”—six (6) sheets; and *on further condition*:

THAT this grant shall be limited to a term of ten years, expiring January 11, 2031;

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-foot-wide exit pathways shall be maintained leading to the required exits and that pathways shall be maintained unobstructed, including from any equipment;

THAT an approved fire alarm and sprinkler system shall be maintained in the entire PCE space, as indicated on the Board-approved plans;

THAT accessibility shall be provided pursuant to the standards set forth in applicable accessibility laws, including but not limited to Chapter 11 of the NYC Building Code, the 2009 American National Standards Institute (ANSI) A117.1 and Title III of the Americans with Disabilities Act, as reviewed and approved by DOB;

THAT the above conditions shall appear on the

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certificate of occupancy;

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 2020-23-BZ”), shall be obtained within four years and an additional six months, in light of the current state of emergency declared to exist within the City of New York resulting from an outbreak of novel coronavirus disease, by July 14, 2025;

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.

Adopted by the Board of Standards and Appeals, January 11, 2021.

2019-27-BZ

APPLICANT – Klein Slowik, PLLC, for Congregation P’Nei Menachem, owner.

SUBJECT – Application February 5, 2019 – Variance (72-21) to permit the development of a house of worship (UG 4) (*Congregation P’nei Menachem*) contrary to ZR 24-35 (minimum required side yards) and ZR 25-31 (parking). R5 zoning district.

PREMISES AFFECTED – 4533 18th Avenue, Block 5439, Lot 20, Borough of Brooklyn.

COMMUNITY BOARD #12BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Shelta, and Commissioner Scibetta5
Negative:0

ACTION OF THE BOARD – Laid over to February 22, 2021, at 10 A.M., for decision, hearing closed.

2019-67-BZ

APPLICANT – Sheldon Lobel, P.C., for Sheperd DT Corp., owner.

SUBJECT – Application March 29, 2019 – Variance (§72-21) to permit the development of a six-story, three-family residential building contrary to ZR §§ 23-32 (minimum lot area), 23-45 (front yard), and 23-631 (street wall, setback and total height). R5 zoning district.

PREMISES AFFECTED – 2781 Coyle Street, Block 8805, Lot 105, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to April 12, 2021, at 10 A.M., for adjourned hearing.

2019-298-BZ

APPLICANT – Sheldon Lobel, P.C., for Milt Holdings LLC, owner.

SUBJECT – Application November 27, 2019 – Special Permit (§73-19) to permit the operation of a school (UG 3) (Washington Heights and Inwood Music Community Charter School) contrary to ZR §32-10. C8-3 zoning district.

PREMISES AFFECTED – 506 West 181st Street, Block 2152, Lot 72, Borough of Manhattan.

COMMUNITY BOARD #12M

ACTION OF THE BOARD – Laid over to April 12, 2021, at 10 A.M., for continued hearing.

PUBLIC HEARINGS MONDAY-TUESDAY AFTERNOON JANUARY 11-12, 2021, 2:00 P.M.

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

ZONING CALENDAR

2018-26-BZ

APPLICANT – Gerald J. Caliendo, RA, AIA, for Ivan Duque, owner.

SUBJECT – Application February 21, 2018 – 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.

PREMISES AFFECTED – 79-03 Roosevelt Avenue, Block 1290, Lot 46, Borough of Queens.

COMMUNITY BOARD #3Q

ACTION OF THE BOARD – Laid over to April 12, 2021, at 10 A.M., for continued hearing.

2019-95-BZ

APPLICANT – Slater & Beckerman, P.C., for Caspcar III LLC, owner.

SUBJECT – Application May 15, 2019 – Variance (§72-21) to permit the construction of a six-story mixed-use building with conforming commercial use on the ground floor and residential uses on the upper floors contrary to ZR §32-10. C8-2 zoning district.

PREMISES AFFECTED – 19 Maspeth Avenue aka 220 Conselyea Street, Block 2893, Lot(s) 1 & 59, Borough of Brooklyn.

COMMUNITY BOARD #1BK

ACTION OF THE BOARD – Laid over to April 12, 2021, at 10 A.M., for continued hearing.

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2019-173-BZ

APPLICANT – Eric Palatnik, P.C., for PMG LI, LLC, owner.

SUBJECT – Application June 12, 2019 – 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. C2-4/R6A Special Downtown Jamaica District.

PREMISES AFFECTED – 187-01 Hillside Avenue, Block 9960, Lot 19, Borough of Queens.

COMMUNITY BOARD #8Q

ACTION OF THE BOARD – Laid over to March 8, 2021, at 10 A.M., for continued hearing.

2020-73-BZ

APPLICANT – Sheldon Lobel, P.C., for Lampros Mounouris, as Trustee, South Bronx Charter School for International Cultures and the Arts, lessee.

SUBJECT – Application September 14, 2020 – Special Permit (73-19) to permit the construction of a new school (UG 3) (South Bronx Charter School for International Cultures and the Arts) contrary to ZR 42-10. M1-4 zoning district.

PREMISES AFFECTED – 2500 Park Avenue, Block 2322, Lot 5, Borough of the Bronx.

COMMUNITY BOARD #2BX

ACTION OF THE BOARD – Laid over to March 8, 2021, at 10 A.M., for continued hearing.

Carlo Costanza, Executive Director

BULLETIN

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February 5, 2021

DIRECTORY

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Commissioners

Carlo Costanza, *Executive Director*

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HEARINGS HELD -	TELECONFERENCE PUBLIC HEARINGS
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2021-2-A

191-01 Hollis Avenue, , Block 10839, Lot(s) 0001, Borough of **Queens, Community Board: 12**. Proposed construction two-story two-family dwelling located partially within the bed of a mapped street contrary to General City Law § 35. C2-1/R3-2 zoning district. R3X, R3-2 (C2-3) district.

2021-3-A

191-09 Hollis Avenue, , Block 10839, Lot(s) 0050, Borough of **Queens, Community Board: 12**. Proposed construction two-story two-family dwelling located partially within the bed of a mapped street contrary to General City Law § 35. C2-1/R3-2 zoning district. R3X, R32 (C2-3) district.

2021-4-A

191-13 Hollis Avenue, , Block 10839, Lot(s) 0049, Borough of **Queens, Community Board: 12**. Proposed construction two-story two-family dwelling located partially within the bed of a mapped street contrary to General City Law § 35. C2-1/R3-2 zoning district. R3X, R3-2, (C2-3) district.

2021-5-A

192-01 Hollis Avenue, , Block 10839, Lot(s) 0048, Borough of **Queens, Community Board: 12**. Proposed construction two-story two-family dwelling located partially within the bed of a mapped street contrary to General City Law § 35. C2-1/R3-2 zoning district. R3X, R3-2 (C2-3) district.

2021-6-A

192-05 Hollis Avenue, , Block 10839, Lot(s) 0047, Borough of **Queens, Community Board: 12**. Proposed construction two-story two-family dwelling located partially within the bed of a mapped street contrary to General City Law § 35. C2-1/R3-2 zoning district. R3X, R3-2 (C2-) district.

2021-7-A

192-13 Hollis Avenue, , Block 10839, Lot(s) 0046, Borough of **Queens, Community Board: 12**. Proposed construction two-story two-family dwelling located partially within the bed of a mapped street contrary to General City Law § 35. C2-1/R3-2 zoning district. R3X, R3-2 (C2-3) district.

2021-8-BZ

79-26 214 Street, , Block 7770, Lot(s) 0018, Borough of **Queens, Community Board: 11**. Special Permit (§73-621) to permit an enlargement of an existing one-family residence. R2A zoning district. R2A district.

2021-9-BZ

145-163 Wolcott Street, , Block 00574, Lot(s) 1,23, and 24, Borough of **Brooklyn, Community Board: 6**. Variance (§72-21) to permit the development of a 15-story mixed-use residential, commercial and manufacturing building contrary to ZR §42-10 (Use), ZR §43-12 (FAR) and ZR §43-28 (Rear Yard). M2-1 zoning district. M2-1 district.

2021-10-A

3869 Victory Boulevard, , Block 2784, Lot(s) 0016, Borough of **Staten Island, Community Board: 2**. Proposed construction of a one-story commercial building (UG6) not fronting on a mapped street contrary to General City Law §36. M1-1 zoning district. M1-1 district.

2021-11-BZY

38-59 11th Street, , Block 00473, Lot(s) 559, Borough of **Queens, Community Board: 1**. Extension of time to complete construction a development pursuant to ZR §11-332 to renew building permits before December 20, 2018. M1-3 zoning district. M1-3 district.

2021-12-BZ

250 Westervelt Avenue, , Block 00041, Lot(s) 0025, Borough of **Staten Island, Community Board: 1**. Variance (§72-21) to permit the construction of a single-family dwelling contrary to ZR 23-45 (Front Yard Regulations). R3A Special Hillside Preservation District R3A 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

TELECONFERENCE PUBLIC HEARINGS
MARCH 8-9, 2021, MONDAY-TUESDAY
10:00 A.M. and 2:00 P.M.

NOTICE IS HEREBY GIVEN of teleconference public hearings, Monday, March 8, 2021, at 10:00 A.M. and 2:00 P.M., and Tuesday March 9, 2021, at 10:00 A.M. and 2:00 P.M., to be streamed live through the Board's website (www.nyc.gov/bsa), with remote public participation, on the following matters:

SPECIAL ORDER CALENDAR

523-58-BZ

APPLICANT – Glen V. Cutrona, AIA, for Yehuda LLC, owner; Farmers Mini Mart Inc., lessee.

SUBJECT – Application August 26, 2019 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of an automotive service station (UG 16B) which expired on May 7, 2014; Waiver of the Board's Rules. C1-3/R5D zoning district.

PREMISES AFFECTED – 117-30 Farmers Boulevard, Block 12448, Lot 0031, Borough of Queens.

COMMUNITY BOARD #12Q

648-88-BZ

APPLICANT – Rampulla Associates Architects, for Fratello Corp., owner.

SUBJECT – Application November 25, 2020 – Amendment of a previously approved Variance (§72-21) which permitted the development of a UG 6 Pharmacy. The amendment seeks to permit the change in use to a UG 6 food store, addition of refrigeration space, the removal of a curb cut and relocation of 2 parking spaces. R1-2 zoning district.

PREMISES AFFECTED – 2107 Richmond Road, Block 00899, Lot 0018, Borough of Staten Island.

COMMUNITY BOARD #2SI

6-09-BZ

APPLICANT – Rampulla Associates Architects for Joseph Romeo, owner.

SUBJECT – Application June 18, 2020 – Extension of Term of a previously approved Variance (§72-21) which permitted the use of Automotive Repair (UG 16B) which will expire on November 9, 2020. C4-1 Special South Richmond Development and Special Growth Management Districts.

PREMISES AFFECTED – 24 Nelson Avenue, Block 31, Lot 5429, Borough of Staten Island.

COMMUNITY BOARD #3SI

2019-299-BZ

APPLICANT – Nasir J. Khanzada, PE, for Adelmo Cioffi, owner.

SUBJECT – Application December 2, 2019 – Reinstatement (§11-411) of a previously approved variance which permitted the operation of an automotive service station (UG 16B) which expired on December 13, 1987; Amendment to permit the conversion of automotive repair bays to accessory convenience store; Waiver of the Board's Rules. C2-3/R6 zoning district.

PREMISES AFFECTED – 82-01 to 82-13 Queens Boulevard, Block 1542, Lot 0001, Borough of Queens.

COMMUNITY BOARD #4Q

APPEALS CALENDAR

2020-78-A & 2020-79-A

APPLICANT – Terminus Group, LLC, for John Barbieri, owner.

SUBJECT – Application October 8, 2020 – Common Law Vesting to allow for the reinstatement of alteration permits to obtain a Certificate of Occupancy under the former R3-2 zoning regulations.

PREMISES AFFECTED – 90 & 92 Elm Street, Block 00158, Lot(s) 0081, 0082

Borough of Staten Island.

COMMUNITY BOARD #1SI

ZONING CALENDAR

2017-145-BZ

APPLICANT – Mango & Lacoviello, LLP, for 59th Street Associates, owner; Tracy Anderson Mind and Body, LLC, lessee.

SUBJECT – Application May 10, 2017 – Special Permit (§73-36) to permit a physical culture establishment (Tracy Anderson Method) in the cellar, ground floor and ground floor mezzanine of floor of an existing building. C2-8, C1-5 and R8B zoning district.

PREMISES AFFECTED – 241 East 59th Street, Block 01414, Lot 17, Borough of Manhattan.

COMMUNITY BOARD #8M

2019-179-BZ

APPLICANT – Eric Palatnik, P.C., for Lee Yuen Fung Trading Co., Inc., owner.

SUBJECT – Application June 20, 2019 – Variance (§72-21) to permit the development of a twelve (12) story mixed-use building containing commercial use at the ground floor and twelve residential condominium units above contrary to ZR §42-00. M1-6 zoning district.

PREMISES AFFECTED – 118 West 28th Street, Block 00803, Lot 0051, Borough of Manhattan.

CALENDAR

COMMUNITY BOARD #5M

2019-277-BZ

APPLICANT – Jay Goldstein, Esq., for Bukharian Jewish Congregation of Hillcrest, owner.

SUBJECT – Application October 17, 2019 – Variance (§72-21) to permit the construction of a three-story plus cellar House of Worship (UG 4) (Bukharian Jewish Congregation of Hillcrest) contrary to ZR §24-11 (FAR); ZR §24-34 (front yard); ZR §24-521 (height) and ZR §24-35 (side yard). R2A zoning district.

PREMISES AFFECTED – 81-04 166th Street, Block 7026, Lot 0021, Borough of Queens.

COMMUNITY BOARD #8Q

2020-29-BZ

APPLICANT – Eric Palatnik, P.C., for WF Industrial III LLC, owner.

SUBJECT – Application April 2, 2020 – Variance (§72-21) to permit the enlargement of a UG 16 & 6 warehouse and office building previously before the Board contrary to ZR 22-00. R3-1 and R3-2 zoning districts.

PREMISES AFFECTED – 146-65 Springfield Boulevard, Block 13363, Lot 6, Borough of Queens.

COMMUNITY BOARD #13Q

Margery Perlmutter, Chair/Commissioner

MINUTES

**PUBLIC HEARINGS
MONDAY-TUESDAY MORNING
JANUARY 25-26, 2021, 10:00 A.M.**

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

SPECIAL ORDER CALENDAR

55-45-BZ

APPLICANT – Carl A. Sulfaro, Esq., for John Passarella, owner; Kingsland Service Station, LLC, lessee.

SUBJECT – Application March 25, 2019 – Extension of Term (§11-411) of a previously approved variance permitting the operation of an Automotive Service Station (UG 16B) (Spirit) with accessory automotive repair which expired on February 27, 2019. C2-4/R6B zoning district.

PREMISES AFFECTED – 63 Kingsland Avenue (f/k/a 51-61 Kingsland Avenue), Block 2866, Lot 40, Borough of Brooklyn.

COMMUNITY BOARD #3BK

ACTION OF THE BOARD – Laid over to April 12, 2021, at 10 A.M., for continued hearing.

169-49-BZ

APPLICANT – Rampulla Associates Architect, LLP, for 5270 Amboy Road, LLC, owner.

SUBJECT – Application April 20, 2020 – Amendment (§11-412) to permit the enlargement of an accessory repair establishment of a previously approved variance permitting the operation of an Automotive Service Station (UG 16B). R3A Special South Richmond District within the Lower Density Growth Management Area.

PREMISES AFFECTED – 5270 Amboy Road, Block 6523, Lot 80, Borough of Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Laid over to April 26, 2021, at 10 A.M., for continued hearing.

1070-84-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Epsom Downs Inc., owner.

SUBJECT – Application July 8, 2020 – Extension of Term of a previously approved variance permitting the operation of an eating and drinking establishment which expired on July 7, 2020, Extension of Time to Obtain a Certificate of Occupancy which expired on March 25, 2015; Waiver of the Board's Rules of Practice and Procedures. R8B zoning district.

PREMISES AFFECTED – 234 East 58th Street, Block 1331, Lot 32, Borough of Manhattan.

COMMUNITY BOARD #6M

ACTION OF THE BOARD – Laid over to March 8,

2021, at 10 A.M., for continued hearing.

92-99-BZIII, 94-99-BZ, 96-99-BZ, 98-99-BZ, 100-99-BZ, 102-99-BZ

APPLICANT – Goldman Harris LLC, for Walden Terrace Inc., owner.

SUBJECT – Application June 30, 2020 – Application to extend the term of a variance allowing transient parking at the above-referenced Premises pursuant to §1-07.1(a)(2); extend the Applicant's time to obtain Certificate of Occupancy pursuant to §1-07.1(a)(3); waiver pursuant to §1-07.3(d)(2). R7-1 zoning district.

PREMISES AFFECTED – 98-09, 98-25, 98-41, 98-51, 98-33, 98-19 64th Road, Block 2101, Lot (s)0001, 0016, 0024, 0029, 0021, 0015, Borough of Queens.

COMMUNITY BOARD #6Q

ACTION OF THE BOARD – Laid over to March 22, 2021, at 10 A.M., for postponed hearing.

200-01-BZ

APPLICANT – Davidoff Hatcher & Citron LLP, for Bowne Associates, owner; Hillside Manor Rehabilitation and Extended Care Center LLC, lessee.

SUBJECT – Application August 19, 2019 – Extension of Time to Obtain a Certificate of Occupancy of a previously approved variance (72-21) to permit the enlargement of an existing 11-story and penthouse rehabilitation and long-term care facility (Hillside Manor Rehabilitation and Extended Care Center) which expired on March 17, 2011; Waiver of the Board's Rules. C2-4/R6A Special Downtown Jamaica District.

PREMISES AFFECTED – 182-15 Hillside Avenue, Block 9950, Lot 1, Borough of Queens.

COMMUNITY BOARD #8Q

ACTION OF THE BOARD – Laid over to April 12, 2021, at 10 A.M., for adjourned hearing.

238-07-BZ

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for Graduate Center Foundation Housing Corporation, LIC, owner.

SUBJECT – Application September 22, 2020 – Extension of Time to Complete Construction of a previously approved variance (§72-21) which allowed the construction of a 12-story mixed-use residential/commercial building and a 6-story graduate student housing building which expired on September 23, 2020. M1-4 and M1-4/R6A Special Long Island City Purpose District.

PREMISES AFFECTED – 5-17 47th Avenue, Block 00028, Lot(s) 12, 15, 17, 18, 121, Borough of Queens.

COMMUNITY BOARD #2Q

ACTION OF THE BOARD – Laid over to April 26, 2021, at 10 A.M., for postponed hearing.

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281-09-BZ

APPLICANT – Kramer Levin Naftalis & Frankel LLP by Gary R. Tamoff for CIM Group LP, owner.

SUBJECT – Application February 11, 2020 – Extension of Term of a previously approved Special Permit (§73-36) which permitted the operation of a physical cultural establishment (Planet Fitness) on the fifth and sixth floors of a 42-story building which expired on February 23, 2020. M1-6 Special Hudson Square District.

PREMISES AFFECTED – 246 Spring Street, Block 491, Lot(s) 1201-1594; 1101-113, Borough of Manhattan.

COMMUNITY BOARD #2M

ACTION OF THE BOARD – Laid over to February 22, 2021, at 10 A.M., for deferred decision.

343-12-BZ

APPLICANT – Slater & Beckerman, P.C., for Kolel Beis Yakov LLC, owner; Ocean Avenue Education Support, Inc., lessee.

SUBJECT – Application July 23, 2019 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) to permit the construction of a Use Group 3 school (Brooklyn School for Medically Frail Children) with dormitory facilities which expires on July 28, 2019. R1-2/R7A zoning district.

PREMISES AFFECTED – 570 East 21st Street, Block 5184, Lot(s) 39, 62, 66, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Laid over to February 22, 2021, at 10 A.M., for deferred decision.

193-13-BZ

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

SUBJECT – Application February 21, 2020 – Extension of Time to Complete Construction of a previously approved Special Permit (§73-44) to permitting the reduction in the required number of accessory parking spaces for a Use Group (“UG”) 6 office space which expired on January 22, 2020. C2-2/R6A and R5 zoning district.

PREMISES AFFECTED – 4770 White Plains Road, Block 5114, Lot 14, Borough of Bronx.

COMMUNITY BOARD #12BX

ACTION OF THE BOARD – Laid over to April 26, 2021, at 10 A.M., for deferred decision.

2016-1185-A

APPLICANT – Pryor Cashman LLP, for MBAR Realty, LLC and MBAR Realty #2 LLC, owner; Treasure Island of Asbury Park Self Storage LLC, lessee.

SUBJECT – Application October 9, 2020 – Amendment to extend the time to obtain "all DOB related agency application(s) filed in connection with the authorized use and/ bulk will be signed off by DOB and all other relevant agencies by November 1, 2020.

PREMISES AFFECTED – 45-14 and 45-40 51st Street, Block 2283, Lot(s) 53,54, Borough of Queens.

COMMUNITY BOARD #2Q

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Shelta, and Commissioner Scibetta5
Negative:.....0

ACTION OF THE BOARD – Laid over to February 22, 2021, at 10 A.M., for decision, hearing closed.

2017-213-BZ

APPLICANT – Hirschen Singer & Epstein, LLP, for Dynamic Youth Community, Inc., owner.

SUBJECT – Application October 21, 2020 – Amendment of a previously approved variance (ZR 72-21) for a six-story with cellar, community-facility building (Use Group 3), contrary to use and bulk regulations. Amendment to reduce the size of the cellar level, modify interior program, and change certain finishing materials. C8-2 ZD/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 March 22, 2021, at 10 A.M., for continued hearing.

2017-261-BZ

APPLICANT – Davidoff Hutcher & Citron LLP, for Congregation Chabad-In-Reach-Aliya, owners.

SUBJECT – Application September 5, 2017 – Variance (§72-21) to permit the development of a five-story and cellar house of worship (UG 4) (*Congregation Chabad-In-Reach-Aliya*) contrary to ZR §24-11 (Lot Coverage) and ZR §24-36 (Required 30 Foot Rear Yard). R6 zoning district.

PREMISES AFFECTED – 527 East New York Avenue, Block 1332, Lot 74, Borough of Brooklyn.

COMMUNITY BOARD #9BK

ACTION OF THE BOARD – Laid over to March 22, 2021, at 10 A.M., for deferred decision.

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 (§11-41) 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

THE VOTE TO CLOSE HEARING –

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Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Shelta, and Commissioner Scibetta5
Negative:.....0

ACTION OF THE BOARD – Laid over to March 8, 2021, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

2020-56-A

APPLICANT – Kramer Levin Naftalis & Frankel LLP by Gary Tamoff, for H Hotel LLC, owner.

SUBJECT – Application July 14, 2020 – Common Law Vesting application requesting that the Board determine that the property owner secured a vested right to complete construction of a development of a hotel prior to the adaption of a zoning text amendment. M1-6 and C5-3 Special Midtown District.

PREMISES AFFECTED – 58-60 West 39th Street, Block 00840, Lot 0081, Borough of Manhattan.

COMMUNITY BOARD #5M

ACTION OF THE BOARD – Application granted.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Shelta, and Commissioner Scibetta5
Negative:.....0

THE RESOLUTION –

This is an application, based on the common-law doctrine of vested rights, to establish the right to continue construction and to renew building permits lawfully issued by the Department of Buildings, acting on New Building Application No. 123111952 (the “New Building Application”), before the effective date of an amendment to the Zoning Resolution, which have lapsed as a result of such amendment.

A public hearing was held on this application on November 30, 2020, after due notice by publication in *The City Record*, and then to decision on January 25, 2021. Commissioner Ottley-Brown performed an inspection of the Premises and surrounding neighborhood.

I.

The Premises are located on the south side of West 39th Street, between Fifth Avenue and Avenue of the Americas, in an M1-6 zoning district, in Manhattan. With approximately 42 feet of frontage along West 39th Street, 99 feet of depth, and 4,148 square feet of lot area, they are to be developed with the adjacent tax lot 6 to be occupied by a 31-story commercial building for use as a transient hotel (the “Hotel Building”).

On November 13, 2018, the Department of Buildings determined that the Hotel Building would comply with all applicable zoning regulations and issued building permits authorizing work associated with the New Building Application culminating in the issuance of a new-building permit on November 30, 2018. By letter dated January 22,

2021, the Department of Buildings represents that building permits associated with the New Building Application were lawfully issued.

Effective December 20, 2018 (the “Effective Date”), the City amended the Zoning Resolution such that use of the Hotel Building as a transient hotel is no longer permitted as of right, *see* Z.R. §§ 42-111 and 74-803.

Because not all work on the Hotel Building’s foundation had been completed prior to the Effective Date, the permits associated with the New Building Application lapsed as an operation of law, *see* Z.R. § 11-331. Further, because the building permit for the Hotel Building was not issued on or before April 23, 2018, as per Z.R. § 42-111, such construction cannot be started or continued. Accordingly, the applicant seeks to establish the right to continue construction of the Hotel Building, based on the common-law doctrine of vested rights, and to renew building permits authorizing work associated with the New Building Application for four years.

II.

“Under New York law, a property owner has no right to an existing land-use benefit unless that right has ‘vested.’ In New York, a vested right can be acquired when, pursuant to a legally issued permit, the landowner demonstrates a commitment to the purpose for which the permit was granted by effecting substantial changes and incurring substantial expenses to further the development. *Town of Orangetown v. Magee*, 88 N.Y.2d 41, 47, 643 N.Y.S.2d 21, 665 N.E.2d 1061 (1996). In order to gain the vested right, the landowner’s actions relying on a valid permit must be so substantial that the municipal action results in serious loss rendering the improvements essentially valueless,” *Cine SK8, Inc. v. Town of Henrietta*, 507 F.3d 778, 784 (2d Cir. 2007) (internal quotation marks omitted); *see also Zahra v. Town of Southold*, 48 F.3d 674, 681 (2d Cir. 1995) (recognizing a “protectible ‘property interest’ in a benefit that affects land use—i.e. a building permit, certificate of occupancy, zoning variance, excavation permit or business license”).

Notwithstanding this general framework, “there is no fixed formula which measures the content of all the circumstances whereby a party is said to possess a vested right,” *Estate of Kadin v. Bennett*, 163 A.D.2d 308, 309 (N.Y. App. Div. 1990) (internal quotation marks omitted).

A.

First, as noted above, the record shows that the owner of the Premises obtained lawfully issued permits to construct the Hotel Building in accordance with the New Building Application before the Effective Date.

B.

Second, the applicant submitted evidence that, in accordance with the building permits authorizing work associated with the New Building Application, the owner has effected substantial construction to further development of the Hotel Building.

In particular, the applicant submits that excavation and support of excavation, and completion of approximately 70% of other foundation work, consisting of installation of

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100% of the caisson piles and 60% of the pile caps, and completion of the working slabs and installation of rebar for the foundation mat slab and installation of shear wall dowels has occurred prior to the Effective Date. In addition, a total of 185 cubic yards of concrete were poured prior to the Effective Date, representing approximately 29% required for the total foundation.

With the above work in place, construction has progressed to the point of completing 318 days out of a total 1,209 days (26 percent).

Accordingly, the record reflects that, in accordance with the building permits authorizing work associated with the New Building Application, the owner has effected substantial construction to further development of the Hotel Building.

C.

Third, the applicant submitted evidence that, by December 2018, substantial expenses had been incurred, totaling approximately \$11.03 million (15.2 percent) of the total hard costs (approximately \$7.5 million) and soft costs (approximately \$3.5 million) of \$72.6 million of the Hotel Building. More particularly, the applicant notes that approximately more than \$6.6 million has been spent on site construction, including demolition, excavation, caisson piles, and foundation, \$25 million for land acquisition, and \$3.5 million on an architect, engineer, surveys, and related expenses. Accordingly, the record reflects that the owner has incurred substantial expenses to further development of the Hotel Building.

D.

Fourth, the applicant submitted evidence that, if the right to continue construction of the Hotel Building were denied, the owner would suffer serious loss—that is, substantial economic harm.

In particular, the applicant submits that redesigning the Hotel Building into a conforming office use would eliminate approximately half the Hotel Building's economic value. Specifically, the applicant submitted an appraisal report demonstrating that, estimating the Hotel Building's as-complete value at \$43,600,000 and the as-stabilized value at \$52,000,000, the office alternative would have an as-complete value that is \$21,800,000 lower than that of the Hotel Building, and would have an as-stabilized value that is \$25,700,000 lower respectively. Alternatively, the applicant represents that the possibility of obtaining a special permit from the City Planning Commission to allow the subject hotel would subject the development to incur additional time and significant carrying costs, thereby preventing the owner from recovering its costs. The applicant notes that, if property acquisition cost is included, the applicant has already expended approximately \$36.2 million in furtherance of the Hotel Building.

Because of the substantial nature of the financial losses pertaining to redesigning the Hotel Building into an office building, it is unnecessary for the Board to determine the full extent of the economic harm that would be inflicted were common-law vested rights denied herein.

Accordingly, the record reflects that, if the right to

continue construction of the Hotel Building were denied, the owner would suffer serious loss in the form of substantial economic harm.

III.

Based on the foregoing, the Board finds that the evidence in the record supports the establishment of a right to continue construction of the Hotel Building, based on the common-law doctrine of vested rights, and that the applicant has substantiated a basis to warrant renewal of building permits authorizing work associated with the New Building Application.

Nothing herein shall inhibit any tolling applicable by virtue of any executive order related to the current state of emergency declared to exist within the City of New York resulting from an outbreak of novel coronavirus disease.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *grant* this application, based on the common-law doctrine of vested rights, to *establish* the right to continue construction and to *renew* building permits lawfully issued by the Department of Buildings, acting on New Building Application No. 123111952, before the effective date of an amendment to the Zoning Resolution, which have lapsed as a result of such amendment, as well as all related permits for various work types, either already issued or necessary to complete construction and obtain a certificate of occupancy, for four years and an additional six months, in light of the current state of emergency declared to exist within the City of New York resulting from an outbreak of novel coronavirus disease, expiring July 25, 2025, or such later date as may be allowed by applicable tolling.

Adopted by the Board of Standards and Appeals, January 25, 2021.

2019-68-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Kings Loop Realty LLC, owner.

SUBJECT – Application March 29, 2019 – Proposed construction of a one-story warehouse building (UG 16) on site not fronting on a mapped street contrary to General City Law §36. M3-1 Special South Richmond.

PREMISES AFFECTED – 235 Industrial Loop, Block 7206, Lot 314, Borough of Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Laid over to March 22, 2021, at 10 A.M., for adjourned hearing.

2019-195-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for CAM LLC, owner.

SUBJECT – Application July 22, 2019 – Proposed development of a one-story warehouse (UG 16) not fronting on a mapped street contrary to General City Law §36. M3-1 Special South Richmond District.

PREMISES AFFECTED – 191 Industrial Loop, Block 7206, Lot 299, Borough of Staten Island.

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COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Laid over to March 22, 2021, at 10 A.M., for adjourned hearing.

2020-3-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Lorenzo McFarlane, owner.

SUBJECT – Application January 10, 2020 – Proposed development of a two-family residential building located partially inside the bed of the street contrary to General City Law §35. R3X zoning district.

PREMISES AFFECTED – 142-18 Hook Creek Boulevard, Block 13616, Lot 105, Borough of Queens.

COMMUNITY BOARD #13Q

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Shelta, and Commissioner Scibetta5
Negative:.....0

ACTION OF THE BOARD – Laid over to March 22, 2021, at 10 A.M., for decision, hearing closed.

2020-24-A

APPLICANT – Law Offices of Marvin B. Mitzner LLC, for Sela 27th Street LLC, owner.

SUBJECT – Application March 20, 2020 – Appeal seeking a determination that the owner has acquired a common law vested right to obtain a Certificate of Occupancy for a development commenced under the prior zoning district regulations.

PREMISES AFFECTED – 39-35 27th Street, Block 397, Lot 2, Borough of Queens.

COMMUNITY BOARD #1Q

ACTION OF THE BOARD – Laid over to February 22, 2021, at 10 A.M., for continued hearing.

ZONING CALENDAR

2020-38-BZ

CEQR #20-BSA-085Q

APPLICANT – Law Office of Jay Goldstein, for 22-12 Jackson Avenue Owners, LLC, owner; Blue Giant Fitness d/b/a F45, lessee.

SUBJECT – Application May 4, 2020 – Special Permit (§73-36) to permit the operation of a physical cultural establishment (F45) located on a portion of the first floor of an existing building contrary to ZR §42-10. M1-5/R7X Special Long Island City Purpose District.

PREMISES AFFECTED – 22-18 Jackson Avenue, Block 72, Lot 65, Borough of Queens.

COMMUNITY BOARD #2Q

ACTION OF THE BOARD – Application granted.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta5
Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated April 20, 2020, acting on DOB Alteration Type I Application No. 420666979, reads in pertinent part:

“The proposed Physical Culture Establishment in M1-5/R7X zoning district is not permitted as of right as per ZR42-10 and is referred to the Board of Standards and Appeals for special permit under ZR73-36.”

This is an application under Z.R. §§ 73-36 and 73-03 to legalize, on a site located within an M1-5/R7X zoning district and in the Special Long Island City Mixed Use District, the operation of a physical culture establishment (“PCE”) on a portion of the first floor of an existing 11-story mixed-use residential and commercial building, contrary to Z.R. § 42-10.

A public hearing was held on this application on December 1, 2020, after due notice by publication in *The City Record*, and then to decision on January 25, 2021. Vice-Chair Chanda performed an inspection of the Premises and surrounding area. Community Board 2, Queens, recommends approval of this application on condition that the applicant demonstrate their commitment to community engagement.

The Premises are located on the north side of Jackson Avenue, between 21st Street and Crane Street, within an M1-5/R7X zoning district and in the Special Long Island City Mixed Use District, in Queens. With approximately 150 feet of frontage along Jackson Avenue, 227 feet of depth, and 33,900 square feet of lot area, the Premises are occupied by an existing 11-story mixed-use residential and commercial building.

The Board notes that its determination is subject to and guided by Z.R. § 73-03. The Board notes that pursuant to Z.R. § 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

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and community at large. The Board notes further that such conditions and safeguards shall be incorporated in the building permit and certificate of occupancy of the subject building, and that failure to comply with such conditions or restrictions shall constitute a violation of the Zoning Resolution and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies. 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.

The applicant represents that the PCE occupies 2,214 square feet of floor area on the first floor with an exercise studio, lockers, storage, showers, and restrooms. The PCE began operation on January 26, 2020, as “F45 Training Long Island City,” but closed as a result of COVID on March 15, 2020, and reopened with limited capacity on November 9, 2020, weekdays, 5:30 a.m. to 9:00 p.m., Saturday, 8:00 a.m. to 2:00 p.m., and Sunday, 9:00 a.m. to 1:00 p.m.

The applicant represents that PCE use will neither impair the essential character nor the future use or development of the surrounding area because the subject PCE use is entirely contained within the first floor of the existing commercial portion of the Premises and is consistent with the character of the uses in the surrounding area, which is characterized by transportation/utility, industrial/manufacturing, commercial, community facility, and residential uses. Further, the applicant states that the PCE does not attract significant additional traffic to the area and does not have a negative impact on the adjacent tenants or the neighborhood. The applicant submits that the PCE contains facilities for classes, instruction and programs for physical improvement. 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. 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. The applicant submits that sound attenuation measures will be maintained to ensure that sound and vibration from PCE use does not negatively impact nearby occupied spaces. These measures include partitions in the PCE isolated from the adjacent structure by two layers of 5/8" sheetrock, 3-3/4" batt insulation with acoustic sealant, and one layer outside of the studio with acoustic sealant. All flooring in the PCE is a 3/4" rubber tiled floating floor system for airborne and impact sound and vibration isolation; a vibration isolated drop ceiling system protects the ceiling in the PCE, and acoustic sealant has been used at ceiling penetrations. Partitions have an STC rating of 63, and the ceiling has an STC rating of 60. Further, speakers are controlled by an amplifier with password protected limiters. The limiters can be adjusted by a qualified individual to ensure that there is no audible sound in the adjacent acoustically sensitive spaces. The applicant represents that the PCE use will produce no adverse effect on the privacy, quiet, light and air

in the neighborhood because the surrounding area is comprised primarily of transportation/utility, industrial/manufacturing, commercial, community facility, and residential uses, as well as parking facilities and vacant land. Further, most of the patrons walk or use mass transit to access the PCE, so the PCE does not increase traffic to the surrounding area.

The applicant states that a sprinkler system and a fire alarm system will be maintained within the PCE space. By correspondence dated December 1, 2020, the Fire Department states that the Premises are protected by a fire suppression system (standpipe and sprinkler) that has been tested and self-certified through the Department of Buildings and a request for an inspection by the Bureau of Fire Prevention's Fire Suppression Unit has been made. The inspection of the standpipe and sprinkler systems will be done at a later date and should not delay the processing of this application. The fire alarm system has also been installed and tested satisfactory as per the rules and regulations of the Fire Department. Based on the foregoing, the Fire Department has no objection to the application, as the Bureau of Fire Prevention will continue to inspect the Premises and enforce all applicable rules and regulations.

Accordingly, 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. In addition, the Board finds that the operation of the PCE will not interfere with any public improvement project.

The project is classified as a Type II action pursuant to 6 NYCRR Part 617.5. The Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 20-BSA-085Q, dated January 25, 2021.

Therefore, the Board has determined that the evidence in the record supports the requisite findings for the special permit pursuant to Z.R. §§ 73-36 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion. The term of the special permit has been reduced to reflect the period the PCE operated without approval from the Board.

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 Z.R. §§ 73-36 and 73-03 to *legalize*, on a site located within an M1-5/R7X zoning district and in the Special Long Island City Mixed Use District, the operation of a physical culture establishment on a portion of the first floor of an existing 11-story mixed-use residential and commercial building, contrary to Z.R. § 42-10, *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked “Received January 7, 2021”—four (4) sheets; and *on further condition*:

THAT this grant shall be limited to a term of ten years, expiring November 9, 2030;

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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-foot-wide exit pathways shall be maintained leading to the required exits and that pathways shall be maintained unobstructed, including from any equipment;

THAT an approved fire alarm and sprinkler system shall be maintained in the entire PCE space, as indicated on the Board-approved plans;

THAT accessibility shall be provided pursuant to the standards set forth in applicable accessibility laws, including but not limited to Chapter 11 of the NYC Building Code, the 2009 American National Standards Institute (ANSI) A117.1 and Title III of the Americans with Disabilities Act, as reviewed and approved by DOB;

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. 2020-38-BZ”), shall be obtained within one year and an additional six months, in light of the current state of emergency declared to exist within the City of New York resulting from an outbreak of novel coronavirus disease, by July 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;

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 25, 2021.

2019-30-BZ

APPLICANT – Eric Palatnik, P.C., for Georgy Reyderman, owner.

SUBJECT – Application November 19, 2019 – Special Permit (§73-622) to permit the enlargement of an existing single-family home, contrary to rear yard requirements (ZR §23-47) and side yard (ZR §23-461). R4 zoning district.

PREMISES AFFECTED – 2705 East 28th Street, Block 8791, Lot 120, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to April 12, 2021, at 10 A.M., for adjourned hearing.

2019-196-BZ

APPLICANT – Eric Palatnik, P.C., for Jane Goldberg, owner.

SUBJECT – Application July 22, 2019 – Special Permit (§73-36) to permit the legalization of a physical culture establishment (*La Casa Day Spa*) contrary to ZR §42-10. M1-5M zoning district.

PREMISES AFFECTED – 41 East 20th Street, Block 849, Lot 29, Borough of Manhattan.

COMMUNITY BOARD #5M

ACTION OF THE BOARD – Laid over to May 10, 2021, at 10 A.M., for adjourned hearing.

PUBLIC HEARINGS MONDAY-TUESDAY AFTERNOON JANUARY 25-26, 2021, 2:00 P.M.

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

ZONING CALENDAR

2019-192-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 16 Harrison Place Partners LLC, owner.

SUBJECT – Application July 18, 2019 – Variance (§72-21) to permit the construction of a cellar and four-story residential building contrary to ZR §42-10. M1-2 zoning district.

PREMISES AFFECTED – 16 Harrison Place, Block 3093, Lot 13, Borough of Brooklyn.

COMMUNITY BOARD #1BK

ACTION OF THE BOARD – Laid over to April 12, 2021, at 10 A.M., for continued hearing.

2019-200-BZ

APPLICANT – Sheldon Lobel, P.C., for 83-32 Parsons Blvd LLC, owner; Queensfitness dba Orangetheory Fitness

SUBJECT – Application July 26, 2019 – Special Permit (§73-36) to permit the legalization of the operation of a physical cultural establishment (*OrangeTheory Fitness*) located on a portion of the first floor and cellar of an existing building contrary to ZR §31-10. C2-2/R6B and C8-1 zoning districts.

PREMISES AFFECTED – 41-19 Bell Boulevard, Block 6290, Lot 5, Borough of Queens.

COMMUNITY BOARD #11Q

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Shelta, and Commissioner Scibetta5
Negative:.....0

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ACTION OF THE BOARD – Laid over to April 12, 2021, at 10 A.M., for decision, hearing closed.

2019-294-BZ

APPLICANT – The Law Offices of Marvin B. Mitzner LLC, for GM7 Realty LLC, owner.

SUBJECT – Application November 15, 2019 – Variance (§72-21) to permit the construction of a mixed-use residential building (UG 2) with ground floor commercial (UG 6) contrary to underlying bulk requirements. C2-4/R7D zoning district.

PREMISES AFFECTED – 241-243 Throop Avenue, Block 1756, Lot 6, Borough of Brooklyn.

COMMUNITY BOARD #3BK

ACTION OF THE BOARD – Laid over to April 26, 2021, at 10 A.M., for postponed hearing.

2019-301-BZ

APPLICANT – Eric Palatnik, P.C., for 26 ARISTA Realty LLC, owner.

SUBJECT – Application December 3, 2019 – Special Permit (§73-36) to permit the legalization of the operation of a physical cultural establishment (CrossFit 718) contrary to ZR §41-10. M1-2D zoning district.

PREMISES AFFECTED – 148 26th Street, Block 657, Lot 12, Borough of Brooklyn.

COMMUNITY BOARD #7BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Shelta, and Commissioner Scibetta5

Negative:.....0

ACTION OF THE BOARD – Laid over to March 8, 2021, at 10 A.M., for decision, hearing closed.

2020-25-BZ

APPLICANT – Sheldon Lobel, P.C., for Angela Guarino, owner.

SUBJECT – Application March 27, 2020 – Variance (§72-21) to legalize an existing single-family house contrary to ZR §§23-45 & 23-48 (side and front yard requirements. R1-2 zoning district.

PREMISES AFFECTED – 142-30 13th Avenue, Block 4435, Lot 27, Borough of Queens.

COMMUNITY BOARD #7Q

ACTION OF THE BOARD – Laid over to April 12, 2021, at 10 A.M., for continued hearing.

2020-63-BZ

APPLICANT – Jay Goldstein, Esq., for Gennady Belenkiy, owner.

SUBJECT – Application August 7, 2020 – Special Permit (§73-622) to permit the enlargement of an existing one-family home contrary to underlying bulk requirements. R3-2 zoning district.

PREMISES AFFECTED – 1718 East 28th Street, Block 6810, Lot 12, Borough of Brooklyn.

COMMUNITY BOARD #12BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Shelta, and Commissioner Scibetta5

Negative:.....0

ACTION OF THE BOARD – Laid over to March 8, 2021, at 10 A.M., for decision, hearing closed.

Carlo Costanza, Executive Director

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**SPECIAL MEETING
THURSDAY MORNING
JANUARY 28, 2021, 10:00 A.M.**

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

SPECIAL ORDER CALENDAR

CORRECTION: This resolution adopted on January 28, 2021, under Calendar No. 125-97-BZ, is hereby corrected to read as follows:

125-97-BZ

APPLICANT – Gerald J. Caliendo, AIA, for Renato Devincenzi, Carranza Italy Inc., owner; 61-01 Woodhaven Boulevard Assoc. LLC., lessee.

SUBJECT – Application March 11, 2020 – Extension of Term of a previously approved Variance (§72-21) which permitted the construction of an of a one-story and cellar retail (UG 6) building with accessory parking for 21 vehicles which expired on March 10, 2018; Waiver of the Board Rules of Practice and Procedures. R7A & R4 zoning districts

PREMISES AFFECTED – 61-01 Alderton Street, Block 3101, Lot 1, Borough of Queens.

COMMUNITY BOARD #6Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

This is an application for a waiver of the Board’s Rules of Practice and Procedures and an extension of term of a variance, previously granted by the Board pursuant to Z.R. § 72-21, which permitted the erection of a one-story and cellar retail building with 21 accessory parking spaces (Use Group 6) and expired on March 10, 2018.

A public hearing was held on this application on October 19, 2020, after due notice by publication in *The City Record*, with a continued hearing on December 14, 2020, and then to decision on January 28, 2021. Vice-Chair Chanda, Commissioner Ottley-Brown, and Commissioner Scibetta performed inspections of the Premises and surrounding neighborhood. Community Board 6, Queens, recommends approval of this application.

The Premises are located on the northeast corner of Alderton Street and Woodhaven Boulevard, located partially within an R7A zoning district and partially within an R4 zoning district, in Queens. With approximately 61 feet of frontage along Alderton Street, 197 feet of frontage along Woodhaven Boulevard, and 19,298 square feet of lot area,

the Premises are occupied by an existing one-story and cellar retail building (Use Group 6) with 21 off-street accessory parking spaces.

The Board has exercised jurisdiction over the Premises since March 10, 1998, when, under the subject calendar number, the Board granted a variance, under Z.R. § 72-21, to permit the erection of a one-story and cellar retail drug store with accessory parking (Use Group 6) on condition that all work substantially conform to drawings as they apply to the objections, filed with the application; the term of the variance be limited to 20 years, to expire on March 10, 2018; the hours of operation be limited to Monday through Saturday 9:00 a.m. to 9:30 p.m. and Sundays 9:00 a.m. to 6:00 p.m.; all illuminated signs at the Premises be turned off 30 minutes after closing; on-site accessory parking spaces and loading areas be maintained in accordance with BSA-approved plans and be secured when the store is not in operation; a sign be posted indicating right-turn only at the Alderton Street exit; lighting be positioned down and away from the nearby residential uses; screening and fencing be maintained in accordance with BSA-approved plans; landscaping be maintained in accordance with BSA-approved plans; the conditions appear on the certificate of occupancy; the following conditions set forth in the conditional negative declaration adopted by reference therein be complied with: the Applicant submit a sampling protocol for soil gas and soil/groundwater testing on Block 3101, Lot 1 to DEP’s Bureau of Air, Noise Hazardous Materials (BANHM) for review and approval. The applicant is also required to complete any remedial actions determined by DEP to be appropriate based on the sampling. In addition, no sampling, site grading, excavation, demolition or building construction and/or remediation can begin until DEP/BANHM provides written approval of the sampling protocol; 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 shall be completed in accordance with Z.R. § 72-23.

The term of the variance having expired, the applicant now seeks an extension. Because this application was filed less than two 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 Procedures (the Board’s Rules), of § 1-07.3(b)(2), of the Board’s Rules to permit the filing of this application. In accordance with the Board’s Rules, the applicant provided receipts, rental payments, utility bills, property tax payments, and correspondence to demonstrate that the Premises has been used continuously from the expiration of term through the filing of the application and states that, absent the Board’s waiver, substantial prejudice would result.

The applicant represents that a new Use Group 6 retail use will occupy the site, the hours of operation will shift on Sundays to 10:00 a.m. to 7:00 p.m., but all conditions of the Board’s grant have been complied with. Further, to facilitate

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the new retail tenant, the applicant proposes minor changes to interior partitions and interior doors; new exterior finishes and an updated storefront; proposed signage of three signs on the site which comply with zoning regulations; and, an increase in the height of parapet wall by eight feet. The applicant requests a 27-year term, which will run coincident with the lease for the new retail tenant. The Board notes that, in light of the circumstances, that the Premises has been well maintained and no evidence to the contrary has been presented, a 27-year term is appropriate in this instance.

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 *amends* the resolution, dated March 10, 1998, so that as amended this portion of the resolution shall read: “to extend the term of the variance for 27 years, to expire on January 28, 2048; *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked ‘Received November 20, 2020—Eleven (11) sheets’; and *on further condition*:

THAT the hours of operation shall be limited to Monday through Saturday 9:00 a.m. to 9:30 p.m. and Sundays 10:00 a.m. to 7:00 p.m.;

THAT all illuminated signs at the Premises be turned off 30 minutes after closing;

THAT on-site accessory parking spaces and loading areas shall be maintained in accordance with BSA-approved plans and be secured when the store is not in operation;

THAT a sign shall be maintained indicating right-turn only at the Alderton Street exit;

THAT lighting shall be positioned down and away from the nearby residential uses;

THAT screening and fencing shall be maintained in accordance with BSA-approved plans;

THAT landscaping shall be maintained in accordance with BSA-approved plans;

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. 125-97-BZ”), shall be obtained within one year and an additional six months, in light of the current state of emergency declared to exist within the City of New York resulting from an outbreak of novel coronavirus disease, by August 1, 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;

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 28, 2021.

128-00-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Roza 14W LLC, owner; Equinox Wall Street, Inc., lessee.
SUBJECT – Application March 11, 2020 – Extension of Term of a Special Permit (ZR §73-36) for the continued operation of a physical culture establishment (*Equinox*) which expires on September 12, 2020. C5-5(LM) zoning district. Individual Landmark Building.

PREMISES AFFECTED – 14 Wall Street, Block 46, Lot 9, Borough of Manhattan.

COMMUNITY BOARD #1M

ACTION OF THE BOARD – Application granted.

THE VOTE –

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

Negative:.....0

THE RESOLUTION –

This is an application for an extension of term of a special permit, previously granted by the Board pursuant to Z.R. § 73-36, which permitted the operation of a physical culture establishment (“PCE”) and expired on September 12, 2020.

A public hearing was held on this application on January 12, 2021, after due notice by publication in *The City Record*, and then to decision on January 28, 2021. Community Board 1, Manhattan, waives its recommendation of this application.

The Premises are bounded by Wall Street to the south, Nassau Street to the east, and Pine Street to the north, within a C5-5 zoning district and in the Special Lower Manhattan District, in Manhattan. With approximately 160 feet of frontage along Wall Street, 196 feet of frontage along Nassau Street, 178 feet of frontage along Pine Street, and 32,947 square feet of lot area, the Premises are occupied by an existing 31-story, with mezzanine and basement, commercial building, designated by the Landmarks Preservation Commission as an individual landmark.

The Board has exercised jurisdiction over the Premises since September 12, 2000, when, under the subject calendar number, the Board granted a special permit, under Z.R. § 73-36, to permit the operation of a PCE on the first floor (19,178 square feet of floor area) and second floor (13,116 square feet of floor area) of the Premises, for a term of ten years, to expire on September 12, 2010, on condition that there be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board; all individuals practicing massage at the Premises possess valid New York State licenses for such practice which licenses be prominently displayed at the Premises; an automatic wet sprinkler system, smoke detector system and fire alarm system be installed and all be connected to a Fire Department

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approved central station; 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, a new certificate of occupancy be obtained within one year, by September 12, 2001.

On February 8, 2011, under the subject calendar number, the Board amended the special permit to extend the term for ten years, to expire on September 12, 2020, on further condition that signage at the Premises comply with C5 district regulations.

The term of the special permit having expired, the applicant now seeks an extension.

The applicant represents that no physical changes to the PCE have occurred or are proposed, and the PCE continues to operate as “Equinox,” but the hours of operation have changed to Monday to Thursday, 5:00 a.m. to 10:00 p.m., Friday, 5:00 a.m. to 9:00 p.m., and, Saturday and Sunday, 9:00 a.m. to 6:00 p.m. The applicant provided evidence that all individuals practicing massage at the Premises possess valid New York State licenses for such practice, and represents that the PCE continues to be protected by an interior fire alarm system and sprinkler system.

The Fire Department states, by letter dated December 29, 2020, that the Premises are protected by a fire suppression system (standpipe and sprinkler) that was tested and witnessed by members of the Bureau of Fire Prevention and has current permits. In addition, the fire alarm system was also tested satisfactorily as witnessed by members of the Fire Department. Annual inspections of the PCE by the Bureau’s Licensed Public Place of Assembly Unit have been conducted and permits are current. Based on the foregoing, the Fire Department has no objection to the application, as the Bureau of Fire Prevention will continue to inspect the Premises and enforce all applicable rules and regulations.

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 *amend* the resolution, dated September 12, 2000, as amended through February 8, 2011, so that as amended this portion of the resolution shall read: “to extend the term of the special permit for ten years, to expire on September 12, 2030; *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked ‘Received July 9, 2020— five (5) sheets’; and *on further condition*:

THAT the term of the special permit shall expire on September 12, 2030;

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 individuals practicing massage at the Premises shall possess valid New York State licenses for such practice which licenses shall be prominently displayed

at the Premises;

THAT an automatic wet sprinkler system, smoke detector system and fire alarm system shall be maintained and all be connected to a Fire Department approved central station;

THAT signage at the Premises shall comply with C5 district regulations;

THAT minimum three-foot-wide exit pathways shall be maintained leading to the required exits and that pathways shall be maintained unobstructed, including from any equipment;

THAT accessibility shall be provided pursuant to the standards set forth in applicable accessibility laws, including but not limited to Chapter 11 of the NYC Building Code, the 2009 American National Standards Institute (ANSI) A117.1 and Title III of the Americans with Disabilities Act, as reviewed and approved by DOB;

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. 128-00-BZ”), shall be obtained within one year and an additional six months, in light of the current state of emergency declared to exist within the City of New York resulting from an outbreak of novel coronavirus disease, by August 1, 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;

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 28, 2021.

85-10-BZ

APPLICANT – Akerman LLP, for DG Fordham, LLC, owner; Fordham Fitness Group, LLC, lessee.

SUBJECT – Application February 4, 2020 – Extension of Term of a previously approved Special Permit (§73-36) which permitted the operation of a physical cultural establishment (Planet Fitness) on the first and second floors of a two-story commercial building which expired on February 1, 2020. C4-4 zoning district.

PREMISES AFFECTED – 309-311 East Fordham Road, Block 3154, Lot 94, Borough of Bronx.

COMMUNITY BOARD #7BX

ACTION OF THE BOARD – Application granted.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta5

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Negative:.....0

THE RESOLUTION –

This is an application for an extension of term of a special permit, previously granted by the Board pursuant to Z.R. § 73-36, which permitted the operation of a physical culture establishment (“PCE”) and expired on February 1, 2020, and an amendment to change the previously approved hours of operation and correct the floor area.

A public hearing was held on this application on December 14, 2020, after due notice by publication in *The City Record*, and then to decision on January 28, 2021. Community Board 7, The Bronx, recommends approval of this application.

The Premises are located on the northwest corner of Kingsbridge Road and East Fordham Road, within a C4-4 zoning district, in The Bronx. With approximately 49 feet of frontage along East Fordham Road, 95 feet of frontage on East Kingsbridge Road, 11,184 square feet of lot area, the Premises are occupied by an existing two-story commercial building.

The Board has exercised jurisdiction over the Premises since September 21, 2010, when, under the subject calendar number, the Board granted a special permit, pursuant to Z.R. § 73-36, the legalization of a PCE on the first and second floor of the Premises, on condition that all work substantially conform to drawings as they apply to the objection, filed with application; the term be for ten years, to expire on February 1, 2020; there be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board; all massages be performed by New York State licensed massage therapists; the above conditions appear on the certificate of occupancy; a certificate of occupancy be obtained within one year, by June 8, 2011; fire safety measures be installed and/or maintained as shown on the Board-approved plans; the approval is 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 portions related to the specific relief granted; and the Department of Buildings ensure compliance with 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.

The term of the special permit having expired, the applicant now seeks an extension and an amendment to the special permit.

The applicant represents that the Premises continues to operate as “Planet Fitness” but seeks an amendment to allow 24-hour, seven-day per week operation. Due to adjustments to the interior layout of the PCE, the applicant also seeks an amendment to reflect a correction in the PCE’s floor area, from 16,044 square feet to 17,753 square feet. The PCE occupies 6,726 square feet of floor area on the first floor and 11,027 square feet of floor area on the second floor.

The applicant states that the PCE is equipped with fire safety protection measures, including an interior fire alarm system, which includes area smoke detectors, manual pull

stations, local audible and visual alarms with a connection to a central monitoring station, and an automatic wet sprinkler.

By correspondence dated December 8, 2020, the Fire Department states that the Premises are protected by a fire suppression system (sprinkler) that has been tested satisfactory, as witnessed by the Fire Department, and FDNY permits are current. A fire alarm system is also installed, which was also tested satisfactory. The Fire Department’s Licensed Public Place of assembly (LPPA) last inspected these Premises on October 7, 2020 and issued no violations and a permit has been issued. Based upon the foregoing, the Fire Department has no objection to the application, and the Bureau of Fire Prevention will continue to inspect these Premises and enforce all applicable rules and regulations.

In response to questions from the Board at hearing the applicant clarifies that outstanding violations pertain to a wheelchair lift and otherwise relate to a different commercial use at the Premises unrelated to the PCE, and the applicant further notes that those violations are in the process of being corrected with an inspection scheduled.

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.

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 *amends* the resolution dated September 21, 2010, so that as amended this portion of the resolution shall read: “to *extend* the term of the special permit for ten years, expiring February 1, 2030, and *permit* new hours of operation; *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked “Received July 23, 2020”—Seven (7) sheets; and *on further condition*:

THAT this grant shall be limited to a term of ten years, expiring February 1, 2030;

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 minimum three-foot-wide exit pathways shall be maintained leading to the required exits and that pathways shall be maintained unobstructed, including from any equipment;

THAT an approved fire alarm and sprinkler system shall be maintained in the entire PCE space, as indicated on the Board-approved plans;

THAT accessibility shall be provided pursuant to the standards set forth in applicable accessibility laws, including but not limited to Chapter 11 of the NYC Building Code, the 2009 American National Standards Institute (ANSI) A117.1 and Title III of the Americans with Disabilities Act,

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as reviewed and approved by DOB;

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 85-10-BZ”), shall be obtained within one year and an additional six months, in light of the current state of emergency declared to exist within the City of New York resulting from an outbreak of novel coronavirus disease, by August 3, 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;

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 28, 2021.

2017-257-BZ

APPLICANT – Law Offices of Marvin B. Mitzner, LLC, for GMI Realty, owner; CorePower Yoga LLC, lessee.

SUBJECT – Application February 3, 2020 – Extension of Time to Obtain a Certificate of Occupancy. 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 – Application granted.

THE VOTE –

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

THE RESOLUTION –

This is an application for an extension of time to obtain a certificate of occupancy, pursuant to a special permit, previously granted by the Board pursuant to Z.R. § 73-36, which legalized the operation of a physical culture establishment (“PCE”), and expired on January 8, 2020.

A public hearing was held on this application on December 14, 2020, after due notice by publication in *The City Record*, and then to decision on January 28, 2021. Vice-Chair Chanda performed an inspection of the Premises and surrounding neighborhood.

The Premises are located on the north side of North 4th Street, between Bedford Avenue and Driggs Avenue, within an M1-2/R6B zoning district and in the Special Mixed Use District, in Brooklyn. With approximately 76 feet of frontage along North 4th Street, 100 feet of depth, and 7,550 square feet of lot area, the Premises are occupied by an existing five-story mixed-use residential and

commercial building.

The Board has exercised jurisdiction over the Premises since January 8, 2019, when, under the subject calendar number, the Board granted a special permit, under Z.R. § 73-36, to legalize the operation of a PCE on portions of the cellar level (5,870 square feet of floor space) and first floor (3,979 square feet of floor area), operated as “CorePower Yoga,” on condition that the term of the PCE grant expire on September 1, 2027; there be no change in ownership or operating control of the PCE without prior application to and approval from the Board; accessibility compliance under Local Law 58/87 be as reviewed and approved by DOB; the existing sprinkler system be maintained as indicated on the Board-approved plans; minimum 3-foot-wide exit pathways be provided leading to the required exits and such pathways always be maintained unobstructed, including from any equipment; the conditions appear on the certificate of occupancy; a certificate of occupancy, also indicating the approval and calendar number (“BSA Cal. No. 2017-257-BZ”), be obtained within one year, by January 8, 2020; 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.

The time to obtain a certificate of occupancy having expired, the applicant seeks the subject relief. The applicant represents that, since the Board’s approval, plans have been amended to show lockers along the corridor of the yoga studio and to include a changing area in the front of the Premises. Further, the applicant states that the fire alarm application has taken much longer than expected to get approved by the Fire Department and, this reason, seeks a one-year extension of time to complete the project and obtain a certificate of occupancy.

The Fire Department states, by correspondence dated December 7, 2020, that the Premises are protected by a fire suppression system (wet and dry sprinkler systems) has been tested satisfactorily, as witnessed by FDNY, and permits are current. A fire alarm system is also installed and tested satisfactorily as well. Based on the foregoing, the Fire Department has no objection to the application, as the Bureau of Fire Prevention will continue to inspect the Premises and enforce all applicable rules and regulations.

Based upon its review of the record, the Board has determined that the requested extension of time to obtain a certificate of occupancy is appropriate with certain conditions as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *amend* the resolution, dated January 8, 2019, so that as amended this portion of the resolution shall read: “to grant a one year extension of time to obtain a certificate of occupancy, to January 28, 2022; *on condition*:

THAT the term of the PCE grant will expire on

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September 1, 2027;

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

THAT the existing sprinkler system shall be maintained as indicated on the Board-approved plans;

THAT minimum three-foot-wide exit pathways shall be maintained leading to the required exits and that pathways shall be maintained unobstructed, including from any equipment;

THAT accessibility shall be provided pursuant to the standards set forth in applicable accessibility laws, including but not limited to Chapter 11 of the NYC Building Code, the 2009 American National Standards Institute (ANSI) A117.1 and Title III of the Americans with Disabilities Act, 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 certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No.2017-257-BZ”), shall be obtained within one year, by January 28, 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;

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 28, 2021.

189-12-BZ

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for Bossert LLC, owner.

SUBJECT – Application January 11, 2017 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) to permit the conversion of an existing building into a transient hotel (UG 5), contrary to use regulations (§22-00) which expired on January 8, 2017. C1-3/R7-1 and R6 (LH-1) zoning districts. Property is located within the Brooklyn Heights Historic District.

PREMISES AFFECTED – 98 Montague Street, Block 248, Lot 15, Borough of Brooklyn.

COMMUNITY BOARD #2BK

ACTION OF THE BOARD – Laid over to March 8, 2021, at 10 A.M., for deferred decision.

APPEALS CALENDAR

2018-198-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Debbie Ann Culotta, owner.

SUBJECT – Application December 12, 2018 – Proposed construction of a two-story, two-family residential building not fronting on a mapped street contrary to General City Law §36. R3X Special South Richmond District.

PREMISES AFFECTED – 85 Trenton Court, Block 6708, Lot 13 (tent.), Borough of Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Application granted.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated November 19, 2018, acting on New Building Application No. 520316783, reads in pertinent part: “The street giving access to proposed building is not duly placed on the official map of the City of New York therefore: A) No Certificate of Occupancy can be issued pursuant to Article 3, Section 36 of the General City Law. B) Proposed construction does not have at least 8% of the total perimeter of building fronting directly upon a legally mapped street or frontage space contrary to section 501.3.1 of the 2014 NYC Building Code.”

This is an application requesting waiver of the General City Law § 36(2) requirement that the proposed residential building be accessed from a legally mapped street and to instead allow the proposed building to be accessed from an unmapped street owned by the City of New York.

I.

A public hearing was held on this application on December 10, 2019, after due notice by publication in *The City Record*, with continued hearings August 11, 2020, and January 12, 2021, and then to decision on January 28, 2021.

Vice-Chair Chanda, Commissioner Ottley-Brown, and Commissioner Scibetta performed inspections of the Premises and surrounding neighborhood.

Community Board 3, Staten Island, recommends disapproval of this application, citing concerns with the potential for on-street parking and the improved street width.

II.

The Premises are located on the west side of Trenton Court, an unmapped but improved street owned by the City of New York. Located in an R3X zoning district, the Premises have approximately 50 feet of frontage along Trenton Court, 100 feet of depth, 5,000 square feet of lot area, and are currently vacant.

III.

The General City Law provides that municipalities “may establish an official map of the city” that is “deemed to be final and conclusive with respect to the location and

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width of streets, highways, drainage systems and the location of parks shown thereon” in order “to conserve and promote the public health, safety and general welfare.” General City Law § 26. Under Section 198 of the New York City Charter, the City Map serves this purpose within the City of New York.

Consistent with this framework, Section 36(2) of the General City Law (emphasis added) provides, in pertinent 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 *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 make any reasonable exception and issue the certificate of occupancy subject to conditions that will protect any future street or highway layout. Any such decision shall be subject to review under the provisions of article seventy-eight of the civil practice law and rules.

This provision vests the Board with the authority, under certain circumstances, to “make any reasonable exception” to the requirement that “any building” issued a certificate of occupancy have “access” to “a street or highway . . . duly placed on the official map or plan.” *Id.*

To make such exception, the Board requires an applicant to affirmatively demonstrate the findings set forth in General City Law § 36(2): that both enforcing the mapped-street access requirement “would entail practical difficulty or unnecessary hardship” and that “the circumstances of the case do not require the structure to be related to existing or proposed streets or highways.” General City Law § 36(2).

IV.

The applicant proposes to develop the Premises with a two-story, two-family residential building with 2,997 square feet of floor area (0.599 FAR), and the applicant represents that the proposed building would be in conformance with applicable zoning regulations. The proposed building would be accessed by Trenton Court, which is not laid out on the City Map. Accordingly, the applicant requests that exceptions be made to the General City Law and the New York City Building Code.

First, the applicant notes that Trenton Court is a built street that is owned and maintained by the City of New York. Trenton Court is paved and improved adjacent to the Premises to varying widths and currently provides access to existing residences at 95 Trenton Court (Block 6708, Lot 15 and 98 Trenton Court (Block 6701, Lot 38) on its eastern side.

Because of the Premises only has access from existing Trenton Court, the applicant posits that requiring the single proposed residence to be accessible from a mapped street presents practical difficulty or unnecessary hardship. There is no other means to access the Premises except by Trenton Court, which the applicant has no control over since it is owned and maintained by the City of New York.

Additionally, the applicant notes that Trenton Court already provides access to two residential buildings that are similar to the proposed building, and, like those other buildings, the circumstances here do not require the proposed building to have access to a mapped street. Trenton Court would provide safe access to the proposed building, and, since it is already improved and maintained by the City of New York, this application would not present the same concerns as a larger development of numerous residences fronting on a proposed unmapped street, such as fire safety, urban planning, neighborhood character, street design, and maintenance issues.

The Department of City Planning, by letter dated November 17, 2016, states that the following applications have been approved: certification under Z.R. § 107-121 that sufficient school capacity exists to accommodate two dwelling units at the Premises and certification of future subdivision from one zoning lot into two zoning lots under Z.R. § 107-08.

The New York State Department of Environmental Conservation, by letter dated July 12, 2016, notes its approval of Fresh Wetlands Permit No. 2-6405-00619/00001 under Article 24 of the Environmental Conservation Law.

The Department of Environmental Protection’s Bureau of Water and Sewer Operations, by form dated June 6, 2017, has approved a house connection for the proposed building.

The Fire Department states, by correspondence dated January 28, 2021, that it has no objection to this application.

In response to questions from the Board at hearing the applicant notes that Trenton Court does not feature sidewalks, including adjacent to a newly constructed residential building across the street, and that pedestrian traffic will be minimal because of its arrangement as a dead-end street. The applicant also notes that the Premises are not

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located within a flood zone, and the proposed building would provide zoning-compliant parking that does not present the same concerns in terms of fire safety or potential impact on the street system that a larger development with numerous buildings might.

Accordingly, 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 November 19, 2018, acting on New Building Application No. 520316783, under the powers vested in the Board by Section 36 of the General City Law, to *permit* the construction of a building 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 “December 19, 2018”—one (1) sheet; and *on further condition*:

That all curbs, curb cuts, and pavement to the middle of the street shall comply with the requirements of the Department of Transportation;

That all street trees shall comply with the requirements of the Department of Parks and Recreation;

That all fire hydrants and manual fire-alarm stations shall comply with the requirements of the Fire Department, and documentation of Fire Department approval shall be submitted to the Department of Buildings prior to the issuance of certificates of occupancy;

That any street lighting shall comply with the requirements of the Department of Transportation;

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. 2018-198-A”), shall be obtained within four years and an additional six months in light of the current state of emergency declared to exist within the City of New York resulting from an outbreak of novel coronavirus disease, by August 3, 2025;

That the Department of Buildings must ensure that the Board-approved plans comply to the maximum extent feasible with all applicable zoning regulations as if the unimproved street were not mapped;

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 28, 2021.

2020-47-A

APPLICANT – Law Office of Jay Goldstein, for Miles Davis, owner.

SUBJECT – Application June 8, 2020 – Application filed pursuant to General City Law (“GCL”) 36, to allow the proposed construction of a single-family home on a property not fronting on a mapped street. R3-1 zoning district.

PREMISES AFFECTED – 4810 Beach 48th Street, Block 7035, Lot 10, Borough of Brooklyn.

COMMUNITY BOARD #13BK

ACTION OF THE BOARD – Application granted.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated May 26, 2020, acting on DOB Application No. 321958173, reads in pertinent part: “The street giving access to proposed building is not duly placed on the official map of the City of New York. Therefore: (A) No certificate of occupancy can be issued pursuant to Article 3, Section 36 of the General City Law. (B) Proposed construction does not have at least 8% of the total perimeter of building fronting directly upon a legally mapped street or frontage space contrary to Sec. 501.3.1 of the 2014 NYC Building Code.”

This is an application requesting waiver of the General City Law § 36 requirement that the proposed residential building be accessed from a legally mapped street and to instead allow the proposed building to be accessed from an unmapped street owned by the City of New York.

I.

A public hearing was held on this application on January 12, 2021, after due notice by publication in *The City Record*, and then to decision on January 28, 2021.

Community Board 13, Brooklyn, recommends approval of this application.

II.

The Premises are located on the north side of Beach 48th Street, an unmapped but improved and open privately owned street, between Surf Avenue and the Lower New York Bay shoreline. Located in an R3-1 zoning district, the Premises have approximately 134 feet of frontage along Beach 48th Street, 116 feet of depth, 14,221 square feet of lot area, and are occupied by an existing two-story, two-family residence.

III.

The General City Law provides that municipalities “may establish an official map of the city” that is “deemed to be final and conclusive with respect to the location and width of streets, highways, drainage systems and the location of parks shown thereon” in order “to conserve and promote the public health, safety and general welfare.” General City Law § 26. Under Section 198 of the New York City Charter, the City Map serves this purpose within the City of New York.

Consistent with this framework, Section 36(2) of the

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General City Law (emphasis added) provides, in pertinent 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 *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 make any reasonable exception and issue the certificate of occupancy subject to conditions that will protect any future street or highway layout. Any such decision shall be subject to review under the provisions of article seventy-eight of the civil practice law and rules.

This provision vests the Board with the authority, under certain circumstances, to “make any reasonable exception” to the requirement that “any building” issued a certificate of occupancy have “access” to “a street or highway . . . duly placed on the official map or plan.” *Id.*

To make such exception, the Board requires an applicant to affirmatively demonstrate the findings set forth in General City Law § 36(2): that both enforcing the mapped-street access requirement “would entail practical difficulty or unnecessary hardship” and that “the circumstances of the case do not require the structure to be related to existing or proposed streets or highways.” General City Law § 36(2).

IV.

The applicant proposes to develop the Premises with a two-story, with attic, single-family residential building with 7,058 square feet of floor area (0.49 FAR), and the applicant represents that the proposed building would be in conformance with applicable zoning regulations. The proposed building would be accessed by Beach 48th Street, which is not laid out on the City Map. Accordingly, the

applicant requests that exceptions be made to the General City Law and the New York City Building Code.

First, the applicant notes that Beach 48th Street is a built street that is open and in use, but it privately owned and is not a final mapped street. Beach 48th Street is paved and improved adjacent to the Premises to a width of 40 feet and currently provides access to existing residences on both side of the street.

The applicant states that, as the subject lot is only accessible from the unmapped Beach 48th Street, the requirement that the Premises be accessible from a street duly placed on the official City Map results in practical difficulty and unnecessary hardship in development of the subject lot and that denial of the requested relief would bar development of the Premises.

The Office of the Brooklyn Borough President states, by correspondence dated September 16, 2020, that the Premises will be located in a private community and Beach 48th Street is not mapped by the City of New York.

The Department of Environmental Protection (“DEP”) states, by letter dated December 29, 2020, that based on the DEP maps, there is an existing 8"-diameter City water main in Beach 48th Street, between Surf Avenue and New York Bay. There is an 18"-diameter sanitary sewer in Neptune Avenue & 37th Street. The HOA (Sea Gate Association) is shown on the certified Site Connection Proposal (“SCP”) # 15909. The proposed sanitary and storm will be discharged as per the certified SCP. The proposed water connection will be to the existing 8"-diameter water main in Beach 48th Street. It is anticipated that the proposed water connection, and the proposed sanitary and storm discharge will be maintained by the owner and will not be maintained by the City of New York. Based on the above, DEP has no objections to the application.

The Fire Department states, by letter dated January 21, 2021, that, as per plans filed with the Board, an automatic sprinkler system will be installed and monitored by a central monitoring system. Beach 48th Street currently has “No Parking” signs installed by the Department of Transportation across from the Premises; no additional signs are required. Based on the foregoing, the Fire Department has no objection to the application, as the Bureau of Fire Prevention will continue to inspect the Premises and enforce all applicable rules and regulations.

In response to questions from the Board at hearing the applicant confirmed that the streets surrounding the Premises are plowed by the City, and noted on plans 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, and are not reviewed by the Board.

Accordingly, 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

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Department of Buildings, dated May 26, 2020, acting on DOB Application No. 321958173, under the powers vested in the Board by Section 36 of the General City Law, to *permit* the construction of a building 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 “May 28, 2020”—one (1) sheet; and *on further condition*:

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, also indicating this approval and calendar number (“BSA Cal. No. 2020-47-A”), shall be obtained within four years and an additional six months in light of the current state of emergency declared to exist within the City of New York resulting from an outbreak of novel coronavirus disease, by August 3, 2025;

That the Department of Buildings must ensure that the Board-approved plans comply to the maximum extent feasible with all applicable zoning regulations as if the unimproved street were not mapped;

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 28, 2021.

ZONING CALENDAR

2019-35-BZ

CEQR #19-BSA-093K

APPLICANT – Eric Palatnik, P.C. for Leonid Berlinkov, owner.

SUBJECT – Application February 19, 2019 – Special Permit (§73-622) to permit the enlargement of an existing single-family home, contrary to floor area requirements (ZR §23-142). R3-1 zoning district.

PREMISES AFFECTED – 235 Beaumont Street, Block 8740, Lot 0087, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Application granted.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated January 22, 2019, acting on Alteration Type 1 Application No. 321607855, reads in pertinent part:

“ZR 23-142: Proposed FAR exceeds maximum permitted 0.50 in an R3-1 district.”

This is an application under Z.R. §§ 73-622 and 73-03 to permit, in an R3-1 zoning district, the enlargement of an existing single-family, two-story with cellar residence that does not comply with zoning regulations for floor area ratio (“FAR”) (Z.R. § 23-142).

A public hearing was held on this application on June 16, 2020 after due notice by publication in *The City Record*, with continued hearings on October 20, 2020 and December 15, 2020, and then to decision on January 28, 2021. Vice-Chair Chanda performed an inspection of the Premises and surrounding neighborhood. Community Board 15, Brooklyn, recommends approval of this application. The Board is also in receipt of one form letter in support of the application.

The Premises are located on the east side of Beaumont Street, between Oriental Boulevard and the beachfront Esplanade, within an R3-1 zoning district, in Brooklyn. With approximately 40 feet of frontage along Beaumont Street, 100 feet of depth, and 4,000 square feet of lot area, the Premises are occupied by an existing two-story with cellar, single-family detached residence.

The Board notes that its determination herein is subject to and guided by, inter alia, Z.R. §§ 73-01 through 73-04. As a threshold matter, the Board notes that the Premises are within the boundaries of a designated area in which the subject special permit is available. The Board notes further that this application seeks to enlarge an existing detached single-family residence, as contemplated in Z.R. § 73-622.

The existing single-family residence is a two-story, with cellar, single-family, detached building with approximately 2,393 square feet of floor area, (0.60 FAR), 67% of open space, 33% of lot coverage, a front yard with a depth of 15'-2", a rear yard with a depth of 30'-9", and two

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side yards with widths of 5'-7" and 10'-0". The applicant requests an enlargement to the residence's floor area by adding a third story with 507 square feet of floor area and 141 square feet of floor area to the second floor of the existing home, thereby increasing the FAR to 0.76 (3,041 square feet).

At the Premises, a maximum of 0.50 FAR is permitted, pursuant to Z.R. § 23-142, which may be increased by up to 20 percent provided that any such increase in floor area be located directly under a sloping roof in accordance with Z.R. § 23-142(a). The applicant represents that the proposed single-family residence as enlarged is consistent with the built character of the neighborhood. In support of this contention, the applicant surveyed single- and two-family residences within 400 feet of the Premises and with the same relevant bulk regulations (the "Study Area"), finding that of the 93 qualifying, 59 residences (63 percent) have an FAR of 0.50 or more, and 21 residences (23 percent) have an FAR of 0.76 or greater.

Based upon its review of the record and inspections of the Premises 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.

In response to questions from the Board at hearing about the massing of the proposed building, the applicant submitted a revised design, reflecting a decrease in height of the building from 32'-4" to 32'-3" to more reflect the neighborhood character and submitted a demolition plan which demonstrates that the residence will retain 100% of the existing floor plan while parts of the roof will be demolished. Additionally, this revised design demonstrated that the enlargement will not be a substantial improvement and thus, will comply with Appendix G.

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. The proposed modification of bulk regulations will not interfere with any pending public improvement project.

The project is classified as a Type II action pursuant to 6 NYCRR Part 617.5, as noted in CEQR Checklist No. 19BSA093K.

The Board finds that the evidence in the record supports the findings required to be made under Z.R. §§ 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 make each and every one of the required findings under Z.R. §§ 73-622 and 73-03 to permit the enlargement of an existing two-story with cellar, single-family, detached residence that does not comply with zoning regulations for floor area ratio, contrary to Z.R. § 23-142; *on condition* that all work and site conditions shall conform to drawings filed with this application marked "January 6,

2021"- Nineteen (19) sheets; and *on further condition:*

THAT the bulk parameters of the building shall be as follows: a maximum FAR of 0.76 (3,041.15 square feet of floor area), as illustrated on the Board-approved plans; and

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, also indicating this approval and calendar number ("BSA Cal. No. 2019-35-BZ"), shall be obtained within four years and an additional six months, in light of the current state of emergency declared to exist within the City of New York resulting from an outbreak of novel coronavirus disease, by August 2, 2025;

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 28, 2021.

2020-12-BZ

CEQR #20-BSA-062K

APPLICANT – Law Office of Jay Goldstein, for Freewy the LLC, owner; Viking Panda LLC d/b/a Row House, lessee. SUBJECT – Application February 19, 2020 – Special Permit (§73-36) to permit the operation of a physical cultural establishment (Row House Williamsburg) located in the cellar and a portion of the first floor of an existing building contrary to ZR §42-10. M1-4/R6-A & MX-8 zoning districts.

PREMISES AFFECTED – 356 Wythe Avenue (354-360 Wythe Avenue, 45-51 South 3 Street, 60-62 South 2 Street), Block 2415, Lot(s) 22, Borough of Brooklyn.

COMMUNITY BOARD #1BK

ACTION OF THE BOARD – Application granted.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings ("DOB"), dated June 9, 2020, acting on DOB Application No. 322016590, reads in pertinent part:

"Proposed 'Physical Culture Establishment' in a M1-4/R-6A/MX-8 zoning district is contrary to ZR 42-10. A special permit from the New York

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City Board of Standards and Appeals (BSA) is required per 73-36”

This is an application under Z.R. §§ 73-36 and 73-03 to permit, within a M1-4/R6-A in the Special Mixed Use District (MX-8) zoning district, the operation of a physical culture establishment (“PCE”) on a portion of the first floor and cellar level of an existing five-story, with cellar, mixed-use residential and commercial building, contrary to Z.R. § 42-10.

A public hearing was held on this application on December 15, 2020, after due notice by publication in *The City Record*, and then to decision on January 28, 2021.

The Premises are located on the west side of Wythe Avenue between South Second Street and South Third Street, within a M1-4/R6-A in the Special Mixed Use District (MX-8) zoning district, in Brooklyn. The lot has approximately 175 feet of frontage along Wythe Avenue, 165 feet frontage along South Third Street, 55 feet of frontage along South Second Street, and 28,998 square feet of lot area. The Premises are occupied by an existing five-story, with cellar, mixed-use residential and commercial building.

The Board notes that its determination is subject to and guided by Z.R. § 73-03. The Board notes that pursuant to Z.R. § 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. As a threshold matter, the Board notes that the Premises are within the boundaries of a designated area in which the subject special permit is available.

The applicant represents that the PCE occupies 2,345 square feet of floor space on a portion of the cellar level with a studio, showers, bathrooms, and lockers; and 47 square feet of floor area on a portion of the first floor with a reception area. The PCE will operate as “Row House Williamsburg,” with the following hours of operation: 5:30 a.m. to 9:30 p.m., Monday through Friday; 8:30 a.m. to 6:30 p.m., Saturday and Sunday.

The applicant represents that PCE use will neither impair the essential character nor the future use or development of the surrounding area because the PCE will be entirely contained within the cellar and a portion of the first floor of an existing mixed-use residential and commercial building, and, as such, visibility from the street will be limited. The applicant further states that the surrounding area is primarily comprised of residential, commercial, manufacturing, and community facilities uses, and the PCE will not attract significant additional traffic to the area.

The applicant submits that sound attenuation measures

will be maintained to ensure the PCE operation does not negatively impact nearby occupied spaces. These measures include: all typical partitions at the studio will be isolated 2” (filled with BATT insulation) from the adjacent structure with two layers 5/8” sheetrock inside the studio and two layers outside studio, with green glue, and 2.5” sound attenuated BATT insulation; all flooring at the studio will be an ecore 3/8” rubber tolled out mat; each penetration at the studio ceilings and partitions will be sealed with mineral fiber insulation and caulked; the studio door will have acoustic seals, with an STC rating of 35; the ceiling at the studio will be protected by two layers of 5/8” sheetrock hung on isolators; the HVAC system will be ceiling mounted beneath acoustic ceiling; the partitions will have an STC rating of 60; the ceiling will have an STC rating of 69.

The applicant states that the Premises are equipped with a fire alarm and sprinkler system. By correspondence dated December 15, 2020, the Fire Department, Bureau of Fire Prevention states that the Premises have a fire suppression system (sprinkler) that has been tested under the Department of Buildings self-certification program. The Premises have a fire alarm system (base Building) also installed and has been inspected by the Fire Department and accepted. Based upon the foregoing, the Fire Department has no objection to the application. The Bureau of Fire Prevention will continue to inspect these Premises and enforce all applicable rules and regulations.

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.

The applicant submits that the PCE contains facilities for classes, instruction and programs for physical improvement, body building, weight reduction, and aerobics. 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.

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.

Based on the foregoing, 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. In addition, the Board finds that the operation of the PCE will not interfere with any public improvement project.

The project is classified as a Type II action pursuant to 6 NYCRR Part 617.5, as noted in CEQR Checklist No. 20BSA062K.

Accordingly, the Board has determined that the evidence in the record supports the requisite findings for the special permit pursuant to Z.R. §§ 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 make each and every one of the findings required under Z.R. §§ 73-36 and 73-03 to *permit*,

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within a M1-4/R6-A in the Special Mixed Use District (MX-8) zoning district, the operation of a physical culture establishment on a portion of the first floor and cellar level of an existing five-story, with cellar, mixed-used residential and commercial building, contrary to Z.R. § 42-10, *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked “Received June 11, 2020”—Five (5) sheets; and *on further condition*:

THAT this grant shall be limited to a term of ten years, expiring January 28, 2031;

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-foot-wide exit pathways shall be maintained leading to the required exits and that pathways shall be maintained unobstructed, including from any equipment;

THAT an approved fire alarm and sprinkler system shall be maintained in the entire PCE space, as indicated on the Board-approved plans;

THAT accessibility shall be provided pursuant to the standards set forth in applicable accessibility laws, including but not limited to Chapter 11 of the NYC Building Code, the 2009 American National Standards Institute (ANSI) A117.1 and Title III of the Americans with Disabilities Act, as reviewed and approved by DOB;

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. 2020-12-BZ”), shall be obtained within one year and an additional six months, in light of the current state of emergency declared to exist within the City of New York resulting from an outbreak of novel coronavirus disease, by August 2, 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;

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 28, 2021.

2020-61-BZ

APPLICANT – Sheldon Lobel, P.C., for East Harlem HS LLC, owner; East Harlem Scholars Academy Charter School, lessee.

SUBJECT – Application July 21, 2020 – Variance (§72-21) to permit the development of a school (UG 3) (*East Harlem Scholars Academy Charter School*) contrary to underlying bulk requirements. R7A, C2-5/R8A zoning districts.

PREMISES AFFECTED – 342-346 East 104th Street, Block 1675, Lot(s) 30, 31, 32, 33, Borough of Manhattan.

COMMUNITY BOARD #11M

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 February 8, 2021, at 10 A.M., for decision, hearing closed.

2020-72-BZ

APPLICANT – Kramer Levin Naftalis & Frankel, for LTF Club Operations, owner.

SUBJECT – Application September 11, 2020 – Special Permit (§73-36) to permit the operation of a physical cultural establishment (Life Time) located in the cellar, ground and mezzanine floors of an existing building contrary to ZR §42-10. M1-2/R8 (MX-2) zoning district.

PREMISES AFFECTED – 85 Jay Street, Block 54, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #2BK

ACTION OF THE BOARD – Laid over to February 22, 2021, at 10 A.M., for deferred decision.

Carlo Costanza, Executive Director

BULLETIN

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2021-13-A

664 Coney Island Avenue, Block 5378, Lot(s) 0005, Borough of **Brooklyn, Community Board: 12**. Appeal of a New York City Department of Buildings determination. 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

TELECONFERENCE PUBLIC HEARINGS MARCH 22-23, 2021, MONDAY-TUESDAY 10:00 A.M. and 2:00 P.M.

NOTICE IS HEREBY GIVEN of teleconference public hearings, Monday, March 22, 2021, at 10:00 A.M. and 2:00 P.M., and Tuesday March 23, 2021, at 10:00 A.M. and 2:00 P.M., to be streamed live through the Board's website (www.nyc.gov/bsa), with remote public participation, on the following matters:

SPECIAL ORDER CALENDAR

92-99-BZIII, 94-99-BZ, 96-99-BZ, 98-99-BZ, 100-99-BZ, 102-99-BZ

APPLICANT – Goldman Harris LLC for Walden Terrace Inc., owner.

SUBJECT – Application June 30, 2020 – Application to extend the term of a variance allowing transient parking at the above-referenced Premises pursuant to §1-07.1(a)(2); extend the Applicant's time to obtain Certificate of Occupancy pursuant to §1-07.1(a)(3); waiver pursuant to §1-07.3(d)(2). R7-1 Zoning District.

PREMISES AFFECTED – 98-09, 98-25, 98-41, 64th Road, 98-51, 98-33, 98-19 64th Avenue, Block 2101, Lot (s)0001, 0016, 0024, Block 2100, lot (s)0029, 0021, 0015, Borough of Queens.

COMMUNITY BOARD #6Q

299-99-BZ

APPLICANT – Glen V. Cutrono, AIA, for M & V LLC, owner.

SUBJECT – Application August 7, 2019 – Extension of Term (11-411) of a previously approved variance which permitted the operation of automotive service station (UG 16B) (Getty) which will expire on July 25, 2020. C2-4/R6A zoning district.

PREMISES AFFECTED – 8-16 Malcom X Boulevard, Block 1599, Lot 40, Borough of Brooklyn.

COMMUNITY BOARD #3BK

42-08-BZ

APPLICANT – Eric Palatnik, P.C., for Grigoriy Katsura, owner.

SUBJECT – Application September 11, 2020 – Amendment of a previously approved Special Permit (§73-622) which permitted the enlargement of an existing home; Extension of Time to Complete Construction which expired on September 18, 2019; Waiver of the Board's Rules of Practice and Procedures. R3-1 zoning district.

PREMISES AFFECTED – 182 Girard Street, Block 8749, Lot 0275, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ZONING CALENDAR

2018-13-BZ

APPLICANT – Law Office of Lyra J. Altman, for Joseph Mamrout, owner.

SUBJECT – Application January 30, 2018 – 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.

PREMISES AFFECTED – 30-32 Village Road North, Block 7123, Lot (s) 29 & 30, Borough of Brooklyn.

COMMUNITY BOARD #15BK

2020-55-BZ

APPLICANT – Eric Palatnik, P.C., for 1284 Plaza LLC, owner.

SUBJECT – Application July 2, 2020 – Variance (§72-21) to permit the development of and eight story and cellar residential building contrary to ZR §23-47 (rear yard). R7A zoning district.

PREMISES AFFECTED – 1284 East 19th Street, Block 6738, Lot (s) 31, Borough of Brooklyn.

COMMUNITY BOARD #14BK

2020-76-BZ

APPLICANT – Law Office of Jay Goldstein, for 8904 5th Avenue LLC, owner; The Learning Experience d/b/a TLE, lessee.

SUBJECT – Application September 25, 2020 – Special Permit (§73-19) to permit the operation of a daycare facility (TLE) contrary to ZR §32-10.

C8-2 Special Bay Ridge Purpose District.

PREMISES AFFECTED – 8902 5th Avenue (8902-8906 5th Avenue, 442-452 89th Street), Block 6066, Lot 26, Borough of Brooklyn.

COMMUNITY BOARD #10BK

Margery Perlmutter, Chair/Commissioner

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**PUBLIC HEARINGS
MONDAY-TUESDAY MORNING
FEBRUARY 8-9, 2021, 10:00 A.M.**

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

SPECIAL ORDER CALENDAR

389-85-BZ

APPLICANT – Walter T. Gorman, P.E., P.C., for GTY-CPG (QNS/BX) Leasing, Inc, owner; Global Partners LP, lessee.

SUBJECT – Application February 21, 2019 – Extension of Term of a previously approved Special Permit (§73-211) which permitted the operation of a Automotive Service Station (UG 16B)(Mobil) which expired on November 26th 2015; Waiver of the Board’s Rules.

PREMISES AFFECTED – 2090 Bronxdale Avenue, Block 4283, Lot 1, Borough of Bronx.

COMMUNITY BOARD #11BX

ACTION OF THE BOARD – Application granted on condition.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta5

Negative:.....0

THE RESOLUTION –

This is an application for a waiver of the Board’s Rules of Practice and Procedures and an extension of term of a special permit, previously granted by the Board pursuant to Z.R. § 73-211, which permitted the operation of an automotive service station with accessory uses, and expired on November 26, 2015.

A public hearing was held on this application on November 26, 2019, after due notice by publication in *The City Record*, with continued hearings on January 14, 2020, January 28, 2020, July 13, 2020, October 5, 2020, and January 11, 2021, and then to decision on February 9, 2021. Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta performed inspections of the Premises and surrounding neighborhood.

The Premises are bounded by Bronxdale Avenue to the south, Bronx Park East to the west, Brady Avenue to the north, and White Plains Road to the east, within a C2-3 (R7-1) zoning district, in the Bronx. With approximately 163 feet of frontage along Bronxdale Avenue, 78 feet of frontage along Bronx Park East, 150 feet of frontage along Brady Avenue, 175 feet of frontage along White Plains Road, and 17,120 square feet of lot area, the Premises are occupied by an existing automotive service station and one-story building with accessory convenience store.

The Board has exercised jurisdiction over the Premises since November 26, 1985, when, under the subject calendar

number, the Board granted a special permit, under Z.R. § 73-211, to permit the reconstruction of an automotive service station with accessory uses and the installation of a double-faced, illuminated, non-flashing business sign on condition that all work substantially conform to drawings as they apply to the objection, filed with the application; the special permit be limited to a term of 15 years; parking be limited to eight automobiles; 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 in accordance with Z.R. § 73-30.

On October 26, 1999, under the subject calendar number, the Board waived its Rules of Practice and Procedures and amended the resolution to extend the term of the special permit for 15 years, to expire on November 26, 2015, on condition that 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 year, by October 26, 2000.

On December 9, 2008, under the subject calendar number, the Board waived its Rules of Practice and Procedure and further amended the resolution to permit the legalization and conversion of the service bays to an accessory convenience store, in accordance with Department of Buildings Technical Policy and Procedure Notice # 10/99, and granted an extension of time to obtain a certificate of occupancy to December 9, 2009, on condition that all signage comply with C2 zoning district regulations; all conditions from prior resolutions not specifically waived by the Board remain in effect; the approved plans be considered approved only for the portions related to the specific relief granted; 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.

On December 15, 2009, under the subject calendar number, the Board further amended the special permit to grant an extension of time to obtain a certificate of occupancy, to December 15, 2010.

The term of the special permit having expired, the applicant now seeks an extension. Because this application was filed more than two 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 Procedures (the Board’s Rules), of § 1-07.3(b)(3), of the Board’s Rules to permit the filing of this application.

The applicant represents that the automotive service station and accessory convenience store operate 24 hours per day, seven days per week. There are seven parking

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spaces for patrons using the convenience store; one of the spaces located on the west side of the convenience store is a handicap space and, because a handicap space will be provided on the east side of the convenience store as well, the total number of spaces will be reduced from seven to six parking spaces. The applicant states that six spaces are adequate because no auto repairs are performed at the Premises.

Over the course of hearings, the Board expressed concern regarding the maintenance of the site, the compliance with the Board's previous grants, and the operation of the site. In response, the applicant performed adjustments to the signage, lighting, planting, and relocated the air tower and car vacuum. The building and the canopy were repainted, and overall site conditions are proposed and/or completed including striping and the installation of new trash enclosure doors. Additional resealing of the asphalt will be completed as soon as weather permits.

The Fire Department states, by letter dated November 23, 2019, that a review of Fire Department records indicates that the Premises are current with permits for the storage of combustible liquids, leak detection equipment, underground storage tank, and the fire suppression (dry-chemical) system. Based on the foregoing, the Fire Department has no objection to the application, and the Bureau of Fire Prevention will continue to inspect the Premises and enforce all applicable rules and regulations.

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 *amends* the resolution, dated November 26, 1985, as amended through December 15, 2009, so that as amended this portion of the resolution shall read: "to extend the term of the special permit for 15 years, to expire on November 23, 2030; *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked 'Received February 5, 2021 – Eleven (11) sheets'; and *on further condition*:

THAT the applicant shall seal coat the asphalt as soon as weather permits, and cracks shall be repaired, asphalted, and sealed as necessary;

THAT signs, including that indicating parking restrictions, shall be provided in accordance with BSA-approved plans;

THAT the building and canopy shall be repainted and maintained in first rate condition;

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, also indicating this approval and calendar number ("BSA Cal. No. 389-85-BZ"), shall be obtained within one year and an additional six months, in light of the current state of emergency declared to exist within the City of New York resulting from an outbreak of novel coronavirus disease, by August 16, 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;

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 9, 2021.

294-99-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 821 Fifth Avenue Investors IV LLC, owner; Equinox Rockefeller Center Inc., lessee.

SUBJECT – Application December 31, 2019 – Extension of Term of a previously approved Special Permit (§73-36) which permitted the operation of a physical cultural establishment (Equinox) which expires on May 9, 2020. C5-2.5 and C5-3 Midtown Special Purpose District – Rockefeller Center National Historic Landmark.

PREMISES AFFECTED – 521 5th Avenue, Block 1278, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #5M

ACTION OF THE BOARD – Application granted.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta5

Negative:0

THE RESOLUTION –

This is an application for an extension of term of a special permit, previously granted by the Board pursuant to Z.R. § 73-36, which permitted the operation of a physical culture establishment ("PCE") and expired on May 9, 2020.

A public hearing was held on this application on January 12, 2021, after due notice by publication in *The City Record*, and then to decision on January 28, 2021. Community Board 5, Manhattan, waives its recommendation of this application.

The Premises are located on the northeast corner of Fifth Avenue and East 43rd Street, partially within a C5-3 zoning district and partially in a C5-2.5 zoning district, and within the Special Midtown District, in Manhattan. The PCE is located on portions of the first floor (1,576 square feet of floor area), cellar (18,424 square feet of floor space), and sub-cellar level (4,445 square feet of floor space) of the existing 37-story commercial building.

The Board has exercised jurisdiction over the Premises since May 9, 2000, when, under the subject calendar number, the Board granted a special permit, under Z.R. § 73-36, to permit the operation of a PCE on portions of the first floor, cellar level, and sub-cellar level of the Premises, for a term of ten years, to expire on May 9, 2010,

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on condition that there be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board; all individuals practicing massage at the Premises possess valid New York State licenses for such practice which licenses be prominently displayed at the Premises; fire protection measures, including an automatic wet sprinkler system connected to a Fire Department-approved central station, be provided and maintained in accordance with BSA-approved plans; 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, a new certificate of occupancy be obtained within one year, by May 9, 2001.

On November 16, 2010, under the subject calendar number, the Board amended the special permit to extend the term for ten years, to expire on May 9, 2020, on further condition that signage at the Premises comply with C5 district regulations, and the flagpole and banner signage be subject to DOB review and approval.

By letter, dated May 1, 2015, the Board approved the removal of an interior partition within the PCE.

The term of the special permit having expired, the applicant now seeks an extension.

The applicant represents that no physical changes to the PCE have occurred or are proposed, and the PCE continues to operate as “Equinox,” Monday to Thursday, 5:30 a.m. to 10:00 p.m., Friday, 5:30 a.m. to 9:00 p.m., and Saturday and Sunday, 9:00 a.m. to 6:00 p.m. The applicant provided evidence that all individuals practicing massage at the Premises possess valid New York State licenses for such practice, and represents that the PCE continues to be protected by an interior fire alarm system and sprinkler system.

The Fire Department states, by letter dated December 29, 2020, that the Premises are protected by a fire suppression system (sprinkler) that was tested and witnessed by members of the Bureau of Fire Prevention and has current permits. In addition, the fire alarm system (base building system) was also tested satisfactorily as witnessed by members of the Fire Department. Annual inspections of the PCE by the Bureau’s Licensed Public Place of Assembly Unit have been conducted and permits are current. Based on the foregoing, the Fire Department has no objection to the application, as the Bureau of Fire Prevention will continue to inspect the Premises and enforce all applicable rules and regulations.

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 *amend* the resolution, dated May 9, 2000, as amended through November 16, 2010, so that as amended this portion of the resolution shall read: “to extend the term of the special permit for ten years, to expire on May 9, 2030; *on condition* that all work, site conditions and

operations shall conform to drawings filed with this application marked ‘Received January 14, 2021—Five (5) sheets’; and *on further condition*:

THAT the term of the special permit shall expire on May 9, 2030;

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 individuals practicing massage at the Premises shall possess valid New York State licenses for such practice which licenses shall be prominently displayed at the Premises;

THAT fire safety measures shall be maintained in accordance with BSA-approved plans;

THAT signage at the Premises shall comply with C5 district regulations;

THAT minimum three-foot-wide exit pathways shall be maintained leading to the required exits and that pathways shall be maintained unobstructed, including from any equipment;

THAT accessibility shall be provided pursuant to the standards set forth in applicable accessibility laws, including but not limited to Chapter 11 of the NYC Building Code, the 2009 American National Standards Institute (ANSI) A117.1 and Title III of the Americans with Disabilities Act, as reviewed and approved by DOB;

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 294-99-BZ”), shall be obtained within one year and an additional six months, in light of the current state of emergency declared to exist within the City of New York resulting from an outbreak of novel coronavirus disease, by August 16, 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;

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 8, 2021.

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

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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 March 8-9, 2021, at 10 A.M. for decision, hearing closed.

863-48-BZ

APPLICANT – Alfonso Duarte, for Dilip Datta, owner.
SUBJECT – Application October 29, 2018 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of an automotive repair and automotive sales establishment (UG 16B) which expired on November 25, 2018; Amendment to remove the use of automotive sales. R2 zoning district.

PREMISES AFFECTED – 259-16 Union Turnpike, Block 8876, Lot 1, Borough of Queens.

COMMUNITY BOARD #13Q

ACTION OF THE BOARD – Laid over to June 14-15, 2021, at 10 A.M. for continued hearing.

207-68-BZ

APPLICANT – Gerald J. Caliendo, RA, AIA for Steve Green/Deerfield Meadows Inc., owner.

SUBJECT – Application September 24, 2018 – Extension of Term of a previously approved Variance (§72-21) which permitted the use manufacture and storage of paper vacuum bags (UG’s 16 & 17), with accessory parking, which expired on June 18, 2013; Waiver of the Board’s Rules. R3-2 zoning district.

PREMISES AFFECTED – 115-58 Dunkirk Street, westerly side of Dunkirk Street, 80 feet north of Newburg Street. Block 10315, Lot 134, Borough of Queens.

COMMUNITY BOARD #12Q

ACTION OF THE BOARD – Laid over to March 22-23, 2021, at 10 A.M. for continued hearing.

599-76-BZII

APPLICANT – Eric Palatnik, PC, for Jeffrey Mink, owner.

SUBJECT – Application March 3, 2020 – Amendment and Extension of Term of a previously approved Variance (72-21) which permitted the operation of a two-story (UG 17) accessory storage and shipping building (FM Brush Company) which expired on December 21, 2016. The amendment seeks to amend the Board’s condition of term to re-instate the variance; Waiver of the Board’s Rules of Practice and Procedures. R4-1 zoning district.

PREMISES AFFECTED – 72-02 72nd Place, Block 03664, Lot 7, Borough of Queens.

COMMUNITY BOARD #5Q

ACTION OF THE BOARD – Laid over to May 10-11, 2021, at 10 A.M. for continued hearing.

334-78-BZ

APPLICANT – Eric Palatnik, P.C., for 9123 LLC, owner.
SUBJECT – Application August 23, 2019 – Extension of Term of a previously approved Variance (§72-21) which permitted the operation of an Automotive Repair Facility (UG 16B) which expired on July 24, 2019. R1-2 zoning district.

PREMISES AFFECTED – 233-20 Northern Boulevard, Block 8166, Lot 25, Borough of Queens.

COMMUNITY BOARD #11Q

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 March 8-9, 2021, at 10 A.M. for decision, hearing closed.

315-90-BZIII

APPLICANT – Vassalotti Associates Architects, LLP, for Hills Fuels, LLC, owner.

SUBJECT – Application May 21, 2020 – Extension of Term (§11-411) for the continued operation of an Automotive Service Station (BP Amoco) with accessory convenience store which expires on January 25, 2021. C2-2/R4 zoning district.

PREMISES AFFECTED – 82-06 Astoria Boulevard, Block 1094, Lot 0001, Borough of Queens.

COMMUNITY BOARD #3Q

ACTION OF THE BOARD – Laid over to April 26-27, 2021, at 10 A.M. for continued hearing.

122-95-BZ

APPLICANT – Capell Barnett Matalon & Schoenfeld LLC, for 152-65 Realty Company LLC, owner.

SUBJECT – Application October 1, 2019 – Extension of Term of a previously approved Variance (§72-21) which permitted a warehouse (UG 16) and trucking terminal (UG 17) with accessory offices, loading and unloading contrary to use regulations which expired on July 11, 2016; Amendment to permit a change in the hours of operation and a request to eliminate the term. C2-2/R3-1 zoning district.

PREMISES AFFECTED – 152-65 Rockaway Boulevard, Block 12278, Lot 60, Borough of Queens.

COMMUNITY BOARD #12Q

ACTION OF THE BOARD – Laid over to April 12-13, 2021, at 10 A.M. for continued hearing.

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395-04-BZIV

APPLICANT – Vassalotti Associates Architects, LLP, for Congregation Imrei Yehudah, owner; Rabbi Meyer Unsderfer, lessee.

SUBJECT – Application May 21, 2020 – Extension of Time to Complete Construction of a previously approved variance (§72-21) for the construction of a UG4 synagogue which expired on June 5, 2016; waiver of the Rucles. R5 zoning district.

PREMISES AFFECTED – 1232 54th Street, Block 5676, Lot(s) 0017, Borough of Brooklyn.

COMMUNITY BOARD #12BK

ACTION OF THE BOARD – Laid over to April 12-13, 2021, at 10 A.M. for continued hearing.

24-09-BZ

APPLICANT – Bryan Cave Leighton Paisner LLP, for Meadow Park Rehabilitation and Health Care Center, owner.

SUBJECT – Application July 26, 2019 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) permitting the enlargement of a community facility (Meadow Park Rehabilitation and Health Care Center) which expired on July 26, 2015; Waiver of the Board’s Rules. R3-2 zoning district.

PREMISES AFFECTED – 78-10 164th Road, Block 6851, Lot(s) 9, 11, 12, 23, 14, Borough of Queens.

COMMUNITY BOARD #8Q

THE VOTE TO REOPEN HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta5
Negative:.....0

ACTION OF THE BOARD – Laid over to April 26-27, 2021, at 10 A.M. for continued hearing.

APPEALS CALENDAR

2018-68-A thru 2018-90-A

APPLICANT – Sanna & Loccisano Architects, P.C., for Rubicon SGA, LLC, owner.

SUBJECT – Application May 14, 2018 – 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.

Mm PREMISES AFFECTED – 90, 84, 78, 72, 66, 60, 54, 48, 42, 36, 37, 43, 49, 55, 61, 67, 73, 79, 85, 91, 97, 103, 96 Santina Drive, Block 6517, Tentative Lots, 76, 80, 81, 82, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, Borough of Staten Island.

COMMUNITY BOARD #5SI

ACTION OF THE BOARD – Laid over to May 10-11, 2021, at 10 A.M. for continued hearing.

2018-178-A

APPLICANT – Rampulla Associates Architects, LLP, for Sushanta Mukherjee, owner.

SUBJECT – Application November 15, 2018 – 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.

PREMISES AFFECTED – 2 Oaktree Way aka 300 Ocean Terrace, Block 864, Lot 1 (Ten.3), Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Laid over to April 12-13, 2021, at 10 A.M. for continued hearing.

2018-188-A & 2018-189-A

APPLICANT – Sheldon Lobel, P.C., for 3861 Realty LLC, owner.

SUBJECT – Application November 21, 2018 – Proposed construction of two two-story, single-family detached residential buildings seeking waivers of General City Law § 35, which are partially within the bed of a mapped but unbuilt portion of Clover Place. R1-2 zoning district.

PREMISES AFFECTED – 194-28 & 194-32 Dunton Avenue, Block 10509, Lot 160, Lot 61, Borough of Queens.

COMMUNITY BOARD #8Q

ACTION OF THE BOARD – Laid over to May 10-11, 2021, at 10:00 A.M. for continued hearing.

2019-265-BZ & 603-71-A

APPLICANT – Sheldon Lobel, P.C., for Faith Community Church International Inc., owner.

SUBJECT – Application September 12, 2019 – Variance (72-21) to permit the conversion and enlargement of a one-story plus mezzanine House of Worship (UG 4) Faith Community Church) contrary to ZR 24-34 & 104-461 (front yards) and ZR 24-35 & 107-464 (side yards). C1-1/R2 Special South Richmond District.

PREMISES AFFECTED – 35 Giffords Lane, Block 4624, Lot 20, Borough of Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Laid over to May 10-11, 2021, at 10:00 A.M. for continued hearing.

2020-49-A

APPLICANT – Law Office of Marvin B. Mitzner LLC, for 38-30 28th Street LLC, owner.

SUBJECT – Application June 8, 2020 – Extension of time to complete construction and obtain a Certificate of Occupancy of a previously granted common law vested right to construct an 8-story hotel, which expired on October 7, 2018.

PREMISES AFFECTED – 38-30 28th Street, Block 00386, Lot 0027, Borough of Queens.

COMMUNITY BOARD #1Q

ACTION OF THE BOARD – Laid over to April 12-

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13, 2021, at 10:00 A.M. for continued hearing.

ZONING CALENDAR

2020-61-BZ

CEQR #21-BSA-004M

APPLICANT – Sheldon Lobel, P.C., for East Harlem HS LLC, owner; East Harlem Scholars Academy Charter School, lessee.

SUBJECT – Application July 21, 2020 – Variance (§72-21) to permit the development of a school (UG 3) (*East Harlem Scholars Academy Charter School*) contrary to underlying bulk requirements. R7A, C2-5/R8A zoning districts.

PREMISES AFFECTED – 342-346 East 104th Street, Block 1675, Lot(s) 30, 31, 32, 33, Borough of Manhattan.

COMMUNITY BOARD #11M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta5
Negative:0

THE RESOLUTION –

The decision of the Department of Buildings, dated July 13, 2020, acting on New Building Application No. 121207693, reads in pertinent part:

1. ZR 24-11 The portion of the building in the R7A district exceeds the lot coverage requirements of ZR 24-11. The one-story portion of the building exceeds 23 feet above flood resistant construction elevation and shall not be excluded pursuant to ZR 24-12.
2. ZR 24-36 (Rear yard) A 30-foot rear yard is not provided as required by ZR 24-36. The one-story portion in the required rear yard area exceeds 23 feet above flood resistant construction elevation and shall not be considered a permitted obstruction pursuant to ZR 24-33.
3. ZR 23-661(a) (LOCATION OF STREET WALL (R7A)) – The proposed street wall is located at the lot line rather than aligned with the adjacent building.
4. ZR 35-651(b) The proposed street wall is not located at the street line of First Avenue.
5. ZR 23-662(b) (Maximum Building Height/Setback) – The proposed height exceeds the permitted maximum base height, setback, and maximum building height. Mechanical equipment on the roof is not screened and is not considered a permitted obstruction to height pursuant to ZR 64-332/23-62.
6. ZR 25-811/25-83 (Enclosed bicycle parking spaces) – Required bicycle spaces are not

enclosed.

This is an application for a variance under Z.R. § 72-21 to permit—partially in an R7A zoning district and partially in a C2-5 (R8A) zoning district—the construction of a six-story school building that would not comply with zoning regulations for lot coverage (Z.R. § 24-11), rear yards (Z.R. § 24-36), street-wall location (Z.R. §§ 23-661(a) and 35-651(b)), building height and setback (Z.R. § 23-662(b)), and rooftop permitted obstructions (Z.R. §§ 64-332 and 23-62)).

This application is brought by East Harlem Scholars HS LLC (the “School”), a public educational institution.

A public hearing was held on this application on October 20, 2020, after due notice by publication in *The City Record*, with continued hearings on December 15, 2020, and January 28, 2021, and then to decision on February 8, 2021.

Vice-Chair Chanda performed an inspection of the Premises and surrounding neighborhood.

Community Board 11, Manhattan, recommends approval of this application.

I.

The Premises are located on the south side of East 104th Street, between First Avenue and Second Avenue, partially in an R7A zoning district and partially in a C2-5 (R8A) zoning district, in Manhattan. With approximately 250 feet of frontage along East 104th Street, a depth of 101 feet, and 17,659 square feet of lot area, the Premises are currently vacant.

II.

The applicant now proposes to construct a school building with 66,426 square feet of floor area (3.76 FAR), lot coverage of 97.4 percent, no rear yard, a maximum base building height to the roof of 86’-0”, a maximum building height of 109’-0”, no street-wall setback in the R7A zoning district and a street-wall setback of 80’-2” in the C2-5 (R8A) zoning district, and rooftop obstructions covering 25 percent of lot coverage without screens (the “Proposed Building”).

The Proposed Building could not be constructed as of right because lot coverage may not exceed 65% in R7A zoning districts, *see* Z.R. §§ 77-24 and 24-11; rear yards must have at least 30 feet of depth in R7A zoning districts and community facilities in rear yards cannot exceed 23’-0” and one story, *see* Z.R. §§ 24-36 and 24-33; and maximum base height cannot exceed 75’-0” in R7A zoning districts, 15’-0” setbacks are required, and maximum building height cannot exceed 85’-0”, *see* Z.R. §§ 23-662(b) and 64-131; at the Premises in the R7A zoning district, street walls must set back 8’-9” from the street line; and rooftop permitted obstructions cannot exceed 30 percent of lot coverage and must be screened, *see* Z.R. § 64-332 and 23-62.

Accordingly, the applicant requests the relief set forth herein.

III.

The Zoning Resolution vests the Board with wide discretion to “vary or modify [its] provision[s] so that the spirit of the law shall be observed, public safety secured and

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substantial justice done,” Z.R. § 72-21, and 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 this application. Specifically, as held in *Cornell University v. Bagnardi*, 68 N.Y.2d 583 (1986), a zoning board is to 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. General concerns about traffic and disruption of the residential character of the neighborhood are insufficient grounds for the denial of such applications.

A.

Consistent with Z.R. § 72-21, the applicant submits that there are 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 that the Proposed Building is necessary to accommodate the School’s programmatic needs.

In support of this contention, the applicant furnished a detailed report on the School’s programmatic needs (the “Programmatic Needs Report”) that outlines the School’s educational program, sets forth how an as-of-right building would not accommodate the School’s educational program, and details how the Proposed Building would alleviate these deficiencies.

As to the School’s program, the School requires sufficient space to accommodate an enrollment of high-school 600–650 students with 70 staff members. Its college-preparatory curriculum includes daytime instruction and after-school instruction and tutoring in science, art, music, drama, physical education, and after-school activities. To provide this curriculum, the School needs the following types of spaces: academic instructional classrooms (both for general studies and specialized instruction); smaller conference rooms and breakout spaces; a cafeteria, a gymnasium (for school sports, including basketball and volleyball, cultural activities, and community events); a college-access suite; a theater; administrative space; and outdoor recreation space.

The Programmatic Needs report shows that the School’s program could not be met with an as-of-right development. In particular, an as-of-right building would provide 20 undersized classrooms, only 4 specialized rooms (music, art, and two science laboratories), three conference rooms, and a cafeteria. This combination gymnasium–cafeteria would be undersized, could not accommodate competitive sports or spectator seating, and would not allow sufficient space during lunch periods. No theater or college-access suite could be provided.

The Programmatic Needs Report further shows that the Proposed Building would accommodate all the School’s educational program. The first floor would provide sufficient space for a main lobby, a bicycle room, a full competition-size gymnasium and auditorium with roll-away bleachers and double-height ceiling to accommodate 663

people, locker rooms, gym storage, a theater to accommodate 171 people, and an office. On the second floor, the Proposed Building would have a nurse’s office, a waiting room, a leadership office, a conference room, a breakout room, a gym balcony, and mechanical and storage rooms. The third floor would have a cafeteria to accommodate 148 students, a kitchen, a college-access suite for 94 people along with an advisory office, a leadership office, a breakout room, two classrooms, restrooms, and an occupiable terrace. On the fourth floor, there would be six sufficiently sized classrooms, an art classroom for 38 students, a teacher’s work room, a conference room, two storage rooms, restrooms, and a leadership office with a small breakout space. The fifth floor would have five classrooms, a dry science classroom for 35 people, a wet science classroom for 40 people, a science preparatory area, a storage area, a leadership office, a breakout space, and restrooms. The sixth floor would provide six classrooms, a music classroom for 41 students, a teacher work room with a conference room, a leadership office, a small breakout space, storage, and restrooms. The rooftop would have mechanical equipment and a fire tank with no occupancy proposed. In total, the Proposed Building would allow for 20 sufficiently sized classrooms, six specialized classrooms (for music, art, science, breakout spaces, and conference rooms), a full competition-sized double-height gymnasium–auditorium with locker rooms, a cafeteria, a theater, and a college-access suite (with a library and compute room), all of which would accommodate the School’s programmatic needs.

Accordingly, the Board finds that there are 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 that the Proposed Building is necessary to accommodate the School’s programmatic needs.

B.

Because the School is a non-profit organization, the applicant need not demonstrate that there is no reasonable possibility that developing the Premises in strict conformity with the Zoning Resolution would result in a reasonable return.

C.

The applicant submits that the Proposed Building would not alter neighborhood character, impair adjacent properties, or be detrimental to the public welfare. In support of this contention, the applicant studied the surrounding area, finding a mixture of residential and commercial land uses.

With respect to the built environment, the record reflects that nearly all the buildings on the block have been built to their front lot line without setback of the street wall, as proposed. The Proposed Building’s height is also consistent with the surrounding area, especially given the one-foot increase from the height allowed as of right, and the rooftop has been arranged to minimize the mechanical equipment’s street-level visibility. Additionally, the Proposed Building’s rear-yard incursion is consistent with

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other buildings on the block that do not provide rear yards.

As to traffic, the applicant proposes a number of roadway and pedestrian improvements: To facilitate vehicle loading and unloading associated with the school, “No Standing School Days” signage would be requested along the 104th Street frontage of the Premises from 7 a.m.–4:00 p.m. The existing drop curb along the East 104th Street frontage of the Premises would be eliminated and reconstructed as full-height curb and sidewalk. The existing pedestrian ramps at the intersection of East 104th Street and First Avenue would be upgraded in accordance with the latest accessibility standards accepted by the Department of Transportation. And, at the intersection of Second Avenue and East 105th Street, signal timing would be modified with a two-second shift of green time from the southbound phase to the westbound phase during the midday peak hour (3:15 p.m.–4:15 p.m.).

With respect to noise, the applicant proposes a buffered planting area and a 6’-0” precast concrete wall in the entry plaza, and “no loitering” signage would be installed. The applicant further submits that, for the terrace, student access would be restricted within the western boundary using planted areas with shrubs and 6’-0” edging. Additionally, a composite window-wall attenuation of 28 dBA would be provided for the southern building facades for floors three through six. A composite window-wall attenuation of 28 dBA would be provided for the eastern building façade. To maintain an interior noise level of 45 dBA with a closed window condition, an alternate means of ventilation will be required. Standard building materials would be adequate along the northern and western building facades to achieve an interior noise level of 45 dBA with a closed window condition.

In response to questions from the Board at hearing, the applicant notes that the Proposed Building would include a rainscreen wall system for a portion of the façade.

Accordingly, the Board finds that the proposed variance will not alter the essential character of the neighborhood or district in which the Premises are located; will not substantially impair the appropriate use or development of adjacent property; and will not be detrimental to the public welfare.

D.

The applicant notes that the above practical difficulties or unnecessary hardship have not been created by the School or a predecessor in title and are instead inherent in meeting the School’s programmatic needs. Accordingly, the Board finds that the above practical difficulties or unnecessary hardship have not been created by the applicant or by a predecessor in title.

E.

The applicant submits that the Proposed Building reflects the minimum variance necessary to afford relief within the intents and purposes of the Zoning Resolution. As reflected in the Programmatic Needs Report and discussed in detail above, an as-of-right development would not meet the School’s programmatic needs because, among other things, it would not provide sufficiently sized

classrooms and would require elimination of multiple components of the School’s educational curriculum (including the theater and college-access suite).

Accordingly, the Board finds that the proposed variance is the minimum necessary to afford relief within the intent and purposes of the Zoning Resolution.

IV.

The Board has conducted an environmental review of the proposed action, which is classified as an Unlisted action pursuant to 6 NYCRR, Part 617.2, and has documented relevant information about the project in the Final Environmental Assessment Statement CEQR No. 21BSA004M (February 8, 2021).

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.

The Department of City Planning states, by correspondence dated October 22, 2020, that the proposed project will not substantially hinder the achievement of any Waterfront Revitalization Program policy.

With respect to air quality, the Department of Environmental Protection (“DEP”) states, by letter dated November 9, 2020: Based on the results of the mobile- and stationary-source air quality analyses performed as per 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 regard to air quality.

With respect to hazardous materials, DEP states, by letter dated January 19, 2021: DEP has reviewed the December 2020 Remedial Action Plan and Remedial Design (RAP) and the December 2020 Site-Specific Construction Health and Safety Plan (CHASP). The December 2020 RAP proposes proper handling, transportation and disposal of excavated materials from the site in accordance with applicable local, state and federal laws and regulations; dust suppression procedures; air monitoring procedures; excavated soils stockpiled on and covered with plastic sheeting; all found underground or aboveground storage tanks (including dispensers, piping, and fillports) will be properly closed and removed in accordance with applicable local, state and federal laws and regulations; dewatering, if necessary, conducted in accordance with a New York City Department of Environmental Protection Sewer Discharge Permit; the installation of a 20-mil W.R. Grace Florprufe 120 (or equivalent) vapor barrier beneath the building slab and on foundation sidewalls; the installation of a geosynthetic liner or 2-inch thick foam core between the sub-grade and the vapor barrier, as well as the installation of two feet of certified clean fill/top soil in any landscaped/grass covered areas of the site not capped with concrete/asphalt if necessary. The December 2020 CHASP

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addresses worker and community health and safety during redevelopment. The Sample Location Plan and the Remedial Investigation Workplan Site Boundary Plan (Figure 2) and the Vapor Barrier Detail (Figure 3) must be included or clarified. Specific dust management techniques must be described (e.g., use of water spray for roads, excavation areas and stockpiles, etc.). The results of the community air monitoring must also be made available for DEP review and included in the Professional Engineer (P.E.) certified Remedial Closure Report. As long as the aforementioned information is incorporated into the RAP, DEP finds the December 2020 RAP and CHASP, which addresses worker and community health and safety during construction acceptable. At the completion of the project, a Professional Engineer (P.E.) certified Remedial Closure Report must be submitted for DEP review and approval for the proposed project. The P.E. certified Remedial Closure Report should indicate that all remedial requirements have been properly implemented (i.e., transportation/disposal manifests for removal and disposal of soil in accordance with applicable federal, state and local laws and 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.). The applicant submitted a revised RAP dated January 21, 2021, addressing the items from DEP's January 19, 2021 letter.

With respect to noise, DEP states, by letter dated January 20, 2021: Based on the results of the mobile- and stationary-source noise analyses performed as per the City Environmental Quality Review Technical Manual, it was determined that the proposed project would not result in any potential for significant adverse impacts. Please note that this conclusion is a direct result of the proposed conditions addressing the potential noise issues from the third-floor terrace and entry plaza. Therefore, these conditions must be incorporated into the EAS and Noise chapter. Additionally, the proposed restricted area on the third-floor terrace be large enough such that there is a minimum of 43 feet distance between the windows of the adjacent building (330 East 104th Street) and the western boundary of the terrace/playground. The applicant submitted a revised EAS addressing the items from DEP's January 20, 2021 letter. By correspondence dated January 26, 2021 DEP states: The conditions requested in the conditional sign off letter have now been incorporated in the most recent EAS. There are no further comments.

The Department of Transportation states, by letter dated January 27, 2021: The EAS identifies improvement measures involving the modification of signal timing (transfer two second from the southbound avenue to the westbound street) at the intersection of Second Avenue and East 105th Street. NYC DOT has determined this improvement is feasible, and actual implementation will be determined upon field survey of the build condition. Additional improvements include the reconstruction of the drop curb along the East 104th St frontage to full-height curb and sidewalk, upgrading all the existing pedestrian

ramps at the intersection of East 104th Street and First Avenue in accordance with the latest ADA standards, and implementing "No Standing School Days 7 AM – 4 PM" signage along the East 104th Street frontage of the proposed school building. The applicant should inform NYC DOT six months prior to the completion and occupancy of the proposed project.

No other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable. Accordingly, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

V.

Based on the foregoing, the Board finds that the evidence in the record supports the findings required to be made under Z.R. § 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 Z.R. § 72-21 to *permit*—partially in an R7A zoning district and partially in a C2-5 (R8A) zoning district—the construction of a six-story school building that would not comply with zoning regulations for lot coverage (Z.R. § 24-11), rear yards (Z.R. § 24-36), street-wall location (Z.R. §§ 23-661(a) and 35-651(b)), building height and setback (Z.R. § 23-662(b)), and rooftop permitted obstructions (Z.R. §§ 64-332 and 23-62); *on condition* that all work, operations, and site conditions shall conform to drawings filed with this application marked "Received February 4, 2021"—twenty-six (26) sheets; and *on further condition*:

THAT the maximum bulk parameters of the building shall be as follows: maximum lot coverage of 97.4 percent, no rear yard, a maximum base building height to the roof of 86'-0", a maximum building height of 109'-0", no street-wall setback in the R7A zoning district and a street-wall setback of 80'-2" in the C2-5 (R8A) zoning district, and rooftop obstructions covering a maximum of 25 percent of lot coverage without screens, as illustrated on the Board-approved drawings;

THAT a 6'-0" high solid fence shall be installed along the western portion of the third-floor terrace with student access restricted within the identified area;

THAT as described in the Final Environmental Assessment Statement (CEQR No. 21BSA004M) Chapter 19: Noise Analysis, the proposed restricted area on the third-floor terrace shall be large enough such that there is a minimum of 43-foot distance between the windows of the adjacent building (330 East 104th street) and the western boundary of the terrace and playground;

THAT exterior walls and windows shall provide a minimum composite window-wall attenuation of 28 dBA on floors three through six of the southern building façade and on the eastern building façade;

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THAT to maintain an acceptable interior noise level of 45 dBA with a closed window condition, an alternate means of ventilation shall be provided;

THAT the entry court shall not be used for gathering, and “no loitering” signs shall be posted;

THAT a vapor barrier shall be installed, and soil removal and disposal shall be conducted in accordance with New York State Department of Environmental Conservation regulations;

THAT a Remedial Closure Report shall be submitted to the Department of Environmental Protection for review and approval before completion of the project;

THAT all transportation measures as described in Chapter 16: Transportation of the EAS shall be implemented with final approval of measures to be determined by the Department of Transportation;

THAT implementation of transportation improvement measures involving the modification of signal timing (transfer two second from the southbound avenue to the westbound street) at the intersection of Second Avenue and East 105th Street shall be determined upon field survey of the built condition;

THAT additional improvements include the reconstruction of the drop curb along the East 104th Street frontage to full-height curb and sidewalk, upgrading all the existing pedestrian ramps at the intersection of East 104th Street and First Avenue in accordance with the latest ADA standards, and implementing “No Standing School Days 7 a.m.–4 p.m.” signage along the East 104th Street frontage of the proposed school building;

THAT the School shall notify the Department of Transportation six months before the completion and occupancy of the proposed project;

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. 2020-61-BZ”), shall be obtained within four years and an additional six months, in light of the current state of emergency declared to exist within the City of New York resulting from an outbreak of novel coronavirus disease, by July 12, 2025;

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, February 8, 2021.

2016-4463-BZ

APPLICANT – Law Office of Jay Goldstein, for The AM Foundation c/o Arthur Meisels, owner; Mosdos Satmar BP, lessee.

SUBJECT – Application December 8, 2016 – Variance (§72-21) to permit the construction of a Use Group 3 school (Mosdos Satmar BP) contrary to Use (§42-00 and §77-11), Floor Area/Floor Area Ratio (§43-122, §24-11 and §77-22), Lot Coverage (§24-11 and §77-24), Height, Setbacks and Sky Exposure Plane (§43-43) and §24-521), Front Yard (§24-34 and §77-27), Side Yard (§24-35 and §77-27), Rear Yard (§24-36 and §77-27), Side Yard Setback (§24-551 and §77-28) and Required Yard Along District Boundary (§43-301) regulations. ZR 73-19 to permit a school in an M1-1 ZD. M1-1/R5B zoning district.

PREMISES AFFECTED – 6202 14th Avenue (1372-1384 62nd St., 1370 62nd St, 6210 14th Avenue) Block 5733, Lot(s) 35, 36, 42, Borough of Brooklyn.

COMMUNITY BOARD #10BK

ACTION OF THE BOARD – Laid over to May 10-11, 2021, at 10 A.M. for continued hearing.

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

ACTION OF THE BOARD – Laid over to March 8-9, 2021, at 10 A.M. for deferred decision.

2019-16-BZ

APPLICANT – Pryor Cashman LLP, for McDonald’s Corp., owner.

SUBJECT – Application January 22, 2019 – Special Permit (§73-243) to permit an accessory drive-through to a proposed eating and drinking establishment (UG 6) (McDonald’s) contrary to ZR §32-15. C1-2/R3-1 and R2A zoning districts.

PREMISES AFFECTED – 250-01 Northern Boulevard, Block 8129, Lot 1, Borough of Queens.

COMMUNITY BOARD #11Q

ACTION OF THE BOARD – Laid over to May 24-25, 2021, at 10 A.M. for deferred decision.

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2019-25-BZ

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

SUBJECT – Application February 1, 2019 – Variance (72-21) to permit the development of a nine-story plus cellar mix-use commercial and residential building contrary to ZR 24-154(b) (residential FAR); ZR 23-22 (dwelling units); 23-662(c)(1) (street wall setback) and ZR 25-23 (parking). M1-2/R6 zoning district. MX-8.

PREMISES AFFECTED – 40-48 Commercial Street, Block 2482, Lot(s) 1, 4 and 6, Borough of Brooklyn.

COMMUNITY BOARD #1BK

THE VOTE 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 April 26-27, 2021, at 10 A.M. for decision, hearing closed.

2019-263-BZ

APPLICANT – Eric Palatnik, P.C., for Andrew Lester, owner.

SUBJECT – Application September 11, 2019 – Special Permit (§73-243) to permit an eating and drinking establishment (Starbucks) with an accessory drive-thru contrary to ZR §32-10. C1-2/R3-2 zoning district.

PREMISES AFFECTED – 2122 Richmond Avenue, Block 2102, Lot 120, Borough of Richmond.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Laid over to April 26-27, 2021, at 10 A.M. for continued hearing.

2019-269-BZ

APPLICANT – Snyder & Snyder LLP on behalf of New York SMSA Limited Partnership d/b/a Verizon Wireless, for Anthony Wood Corporation, owner.

SUBJECT – Application September 24, 2019 – Special Permit (§73-30) to permit non-accessory antennas to be affixed to signs or other similar structures. M1-1 zoning district.

PREMISES AFFECTED – 3425 Rombouts Avenue, Block 5270, Lot 20, Borough of Bronx.

COMMUNITY BOARD #12BX

ACTION OF THE BOARD – Laid over to June 14-15, 2021, at 10 A.M. for adjourned hearing.

2019-271-BZ

APPLICANT – New York SMSA Limited Partnership d/b/a Verizon Wireless c/o Amato Law Group, PLLC, for 3708 Hylan Boulevard Corp., owner.

SUBJECT – Application October 3, 2019 – Special Permit (§73-30) to permit a non-accessory radio tower consisting of a cupola on the roof of the building. C3A Special South Richmond district.

PREMISES AFFECTED – 37 Mansion Avenue, Block 5190, Lot 85, Borough of Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Laid over to June 14-15, 2021, at 10 A.M. for adjourned hearing.

2019-278-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 9201 Fith LLC, owner.

SUBJECT – Application October 21, 2019 – Special Permit (§73-44) to permit the reduction of required accessory off-street parking spaces for a UG 6B office use and ambulatory diagnostic or treatment facilities (UG 4) (PRC-B1 parking category) contrary to ZR §36-21. C2-3/R6B & R5B Special Bay Ridge District.

PREMISES AFFECTED – 9201 5th Avenue, Block 6109, Lot 23, Borough of Brooklyn.

COMMUNITY BOARD #10BK

ACTION OF THE BOARD – Laid over to April 26-27, 2021, at 10 A.M. for adjourned hearing.

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**PUBLIC HEARINGS
MONDAY-TUESDAY AFTERNOON
FEBRUARY 8-9, 2021, 2:00 P.M.**

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

ZONING CALENDAR

2020-1-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 31 West 27th Street Property Investors IV, LLC, owner; Equinox West 27th Street, Inc., lessee.

SUBJECT – Application January 3, 2020 – Special Permit (§73-36) to permit the operation of a physical culture establishment (Equinox) within an existing commercial building §42-10. M1-6 zoning district. Madison Square North Historic District.

PREMISES AFFECTED – 31 West 27th Street, Block 829, Lot 16, Borough of Manhattan.

COMMUNITY BOARD #5M

ACTION OF THE BOARD – Laid over to April 26-27, 2021, at 10 A.M. for postponed hearing.

2020-30-BZ

APPLICANT – Eric Palatnik, P.C., for PFAS Realty Corp., owner; Fortified Holistic LLC, lessee.

SUBJECT – Application April 2, 2020 – Special Permit (§73-36) to permit the operation of a physical cultural establishment (CrossFit Dutch Kills) to be located on a portion of the first-floor and mezzanine of an existing building contrary to ZR §42-10. M1-2 Special Long Island City Mixed Use District.

PREMISES AFFECTED – 37-40 31st Street, Block 372, Lot 35, Borough of Queens.

COMMUNITY BOARD #1Q

THE VOTE 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 March 8-9, 2021, at 10 A.M. for decision, hearing closed.

2020-37-BZ

APPLICANT – Law Office of Jay Goldstein, for 7th and 23rd Associates, LP, owner; Mind Body Project, lessee.

SUBJECT – Application April 28, 2020 – Special Permit (§73-36) to permit the operation of Physical Cultural Establishment (Mind Body Project) located in a portion of the first floor of an existing building contrary to ZR §32-10. C6-3X, R8A.C2-5 and C6-3A zoning districts.

PREMISES AFFECTED – 217 Seventh Avenue, Block

00798, Lot 7502, Borough of Manhattan.

COMMUNITY BOARD #4M

THE VOTE 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 March 8-9, 2021, at 10 A.M. for decision, hearing closed.

2020-41-BZ

APPLICANT – Akerman LLP, for DE Boulevard LLC, owner; PFNY LLC, lessee.

SUBJECT – Application May 6, 2020 – Special Permit (§73-36) to permit the operation of a physical cultural establishment (Planet Fitness) to locate on a portion of the cellar and first floor of a new building contrary to ZR §32-10. C4-5X, C4-4A, Special Forest Hills District

PREMISES AFFECTED – 107-02 Queens Boulevard, Block 03238, Lot 44, Borough of Queens.

COMMUNITY BOARD #6Q

THE VOTE 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 March 8-9, 2021, at 10 A.M. for decision, hearing closed.

2020-42-BZ

APPLICANT – Eric Palatnik, PC, for Dmitry and Marianna Gorelik, owner.

SUBJECT – Application May 13, 2020 – Special Permit (§73-622) to permit the enlargement of an existing one-family dwelling. R3-1 zoning district.

PREMISES AFFECTED – 155 Girard Street, Block 8750, Lot 0383, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to April 26-27, 2021, at 10 A.M. for continued hearing.

2020-45-BZ & 127-15-BZ

APPLICANT – Goldman Harris LLC, for Queens Theater Owner LLC, owner.

SUBJECT – Application May 22, 2020 – Variance (ZR §72-21) to permit the construction of a 16-story mixed-use building contrary to Residential FAR (ZR §23-151), Commercial FAR (ZR §33-121), and Total FAR (ZR §35-311(d)); Open Space and Open Space Ratio (ZR §23-151) and (ZR §35-32), permitted obstruction in the rear yard (ZR §24-339(b)(3) and ZR §33-23(b)(3)), Density (ZR §23-22), location of eating and drinking establishment above the ground floor (ZR §32-421), and contrary to maximum height for new buildings in the Airport Approach District (ZR §61-21); Amendment of a previously approved Special

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Permit (ZR §73-66) for the construction of a building in excess of the height limits in the Airport Approach District (ZR §61-21). R6 (C2-2) Zoning District.

PREMISES AFFECTED – 135-35 Northern Boulevard, Block 4958, Lot 38, Borough of Queens.

COMMUNITY BOARD #7Q

ACTION OF THE BOARD – Laid over to May 10-11, 2021, at 10 A.M. for continued hearing.

2020-48-BZ

APPLICANT – Akerman LLP, for Barry’s Bootcamp (PCE Operator) owner.

SUBJECT – Application June 5, 2020 – Special Permit (§73-36) to permit the operation of a new Physical Culture Establishment (PCE), a Barry's Bootcamp fitness center, on the cellar level and ground floor of an existing 18-story, mixed residential and commercial building contrary to ZR §32-10. C2-8A zoning district.

PREMISES AFFECTED – 237-241 East 86th Street, Block 1532, Lot(s) 0016, Borough of Manhattan.

COMMUNITY BOARD #8M

THE VOTE 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 March 8-9, 2021, at 10 A.M. for decision, hearing closed.

Carlo Costanza, Executive Director

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CORRECTION: This resolution adopted on January 28, 2020, under Calendar No. 2018-191-BZ, is hereby corrected to read as follows:

2018-191-BZ

CEQR #19-BSA-063K

APPLICANT – Slater & Beckerman, P.C., for 215N 10 Partners LLC, owner.

SUBJECT – Application November 29, 2018 – 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.

PREMISES AFFECTED – 215 North 10th Street, Block 2299, Lot 21, Borough of Brooklyn.

COMMUNITY BOARD #1BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated November 19, 2018, acting on New Building Application No. 321383551, reads in pertinent part:

“The proposed number of parking spaces is less than the amount of parking required, contrary to 44-21.”

This is an application under Z.R. §§ 73-44 and 73-03 to permit, in an M1-2/R6A zoning district, and in the Special Mixed Use (MX-8) zoning district, a reduction in the number of accessory off-street parking spaces required for commercial office building (Use Group 6B) use in parking requirement category B1 (Use Group 6, 7, 8, 9, 10, 11, 14, 16), contrary to Z.R. § 44-21.

A public hearing was held on this application on September 17, 2019, after due notice by publication in *The City Record*, with continued hearings on November 26, 2019, and January 28, 2020, and then to decision on January 28, 2020. Vice-Chair Chanda, Commissioner Ottley-Brown and Commissioner Sheta performed inspections of the site and surrounding neighborhood. Community Board 1, Brooklyn, recommends approval of this application.

The Premises are located on the northwest corner of North 10th Street and Roebling Street, in an M1-2/R6A zoning district, and in the Special Mixed Use (MX-8) District, in Brooklyn. The Premises have approximately 180 feet of frontage along North 10th Street, 100 feet of frontage along Roebling Street, 18,000 square feet of lot area and is under construction of a proposed six-story plus cellar mixed-use residential and commercial office building that will contain approximately 30,898 square feet of Use Group 6B commercial office floor area.

The Board notes that its determination herein is also subject to and guided by, inter alia, Z.R. §§ 73-01 through

73-04. 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. Pursuant to Z.R. § 73-44, the Board may reduce the required parking for commercial office building (Use Group 6B) use in parking requirement category B1 (Use Group 6, 7, 8, 9, 10, 11, 14, 16) at the Premises 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.

The applicant submitted an affidavit stating that the building will be occupied by commercial office building (Use Group 6B) use in parking requirement category B1 (Use Group 6, 7, 8, 9, 10, 11, 14, 16). The applicant further states that any certificate of occupancy for the building will state that no subsequent certificate of occupancy may be issued if commercial office building (Use Group 6B) use in parking requirement category B1 (Use Group 6, 7, 8, 9, 10, 11, 14, 16) 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. The Board finds the affidavit credible and that the applicant has submitted sufficient evidence of good faith in maintaining the proposed Use Group 6 commercial office use. Further, the Board states that the retail space is not eligible for a parking reduction, there must be no retail space on the site and the entire commercial use must be designated as Use Group 6B office space.

Over the course of hearings, the Board raised concerns regarding the use of overhead vehicle lifts in the cellar of the proposed building and whether the loading and unloading areas in relation to the valet fostered effective circulation. In response to the Board’s comments at hearing the applicant submitted an operational plan and revised drawings to show short-, medium-, and long-term parking areas, designated loading areas with striping and signage, and documentation demonstrating the specifications of the vehicle lifts.

By letter dated November 25, 2019, the Fire Department (“FDNY”) stated that, after consultation with members in the Fire Department’s Technology Management Unit (“TMU”), it is FDNY’s position that plans of the proposed “Clearspan Electric Auto Lift” be filed for review; a concern of TMU is clearance of sprinkler lines around the proposed auto lift (stackers), firefighter access to automobiles, and ingress and egress from the parking garage; the applicant must request a letter of no objection to the installation of the proposed auto lift stackers by submitting signed and sealed plans and a completed TMU to the FDNY Bureau of Fire Prevention, TMU for plan review. By letter dated January 26, 2020, FDNY states that plans for the “Clearspan Electric Auto Lift” are being reviewed by TMU for compliance with the original objection and FDNY is confident that the plans address concerns regarding firefighting operations at these premises; FDNY has no objection to the application. The Board finds that, under the conditions and safeguards imposed, any hazard or

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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. The proposed modification of parking regulations will not interfere with any pending public improvement project.

The project is classified as an Unlisted action pursuant to 6 NYCRR, Part 617.2. 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. 19BSA063K, received January 9, 2020. 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; Infrastructure; Solid Waste and Sanitation Services; Energy; Transportation; Air Quality; Greenhouse Gas Emissions; Noise; Public Health; Neighborhood Character; or Construction Impacts. An (E) designation (E-138) was placed on the site for hazardous materials in connection with the 2005 Greenpoint-Williamsburg FEIS. With regards to hazardous materials, the (E) designation requires two tasks: 1) that the applicant submit to the New York City Office of Environmental Remediation (“OER”), for review and approval, a soil and groundwater testing protocol including a description of methods and a site map with all sampling locations clearly and precisely represented; no sampling program should begin until written approval of a protocol is received from OER; the number and location of sample sites should be selected to adequately characterize the site, the specific source of suspected contamination (i.e. petroleum based contamination and non-petroleum based contamination) and the remainder of the site’s condition; the characterization should be complete enough to determine what remediation strategy (if any) is necessary after review of sampling data; guidelines and criteria for selecting sampling locations and collecting samples will be provided by OER upon request, and 2) a written report with findings and a summary of the data must be submitted to OER after completion of the testing phase and laboratory analysis for review and approval; after receiving such test results, a determination will be made by OER if the results indicate that remediation is necessary; if OER determines that no remediation is necessary, written notice shall be given by OER; if remediation is indicated from the test results, a proposed remediation plan must be submitted to OER for review and approval; the applicant must complete such remediation as determined necessary by OER; the applicant should then provide proper documentation that the work has been satisfactorily completed; an OER-approved construction-related health and safety plan will be implemented during excavation and construction activities to protect workers and the community from potentially significant adverse impacts associated with contaminated soil and/or groundwater; the Plan will be submitted to OER for review and approval prior

to implementation. By correspondence dated November 25, 2019, the Department of City Planning represents that the proposed project will not substantially hinder the achievement of any Waterfront Revitalization Program (“WRP”) policy and determines that the project is consistent with WRP policies. The Board has determined that the proposed action will not have a significant adverse impact on the environment and that no other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable.

The Board finds that the evidence in the record supports the findings required to be made under Z.R. §§ 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 Z.R. §§ 73-44 and 73-03 to *permit*, in an M1-2/R6A zoning district, and in the Special Mixed Use (MX-8) zoning district, a reduction in the number of accessory off-street parking spaces required for commercial office building (Use Group 6B) use in parking requirement category B1 (Use Group 6, 7, 8, 9, 10, 11, 14, 16), contrary to Z.R. § 44-21; *on condition* that all work and site conditions shall conform to drawings filed with this application marked “Received January 28, 2020”-Nineteen (19) sheets; and *on further condition*

THAT 67 parking spaces (51 spaces for office use, 16 for residential use) shall be provided on site, as shown on the BSA-approved plans;

THAT patrons entering the garage shall be greeted by a valet then instructed to park and exit their vehicle within the approximately 800 square foot (~20’ wide x ~40’ deep) unloading zone just inside the garage entrance, which shall be maintained marked with reflective striping for visual prominence;

THAT no patrons are allowed outside of the unloading zone;

THAT when the garage is busy with inbound traffic, the valets shall move the cars from the unloading zone and temporarily park the cars in the first available space in order to make room for more inbound patrons, and once the garage activity has slowed down, the valets shall reposition cars that were temporarily parked during the busy period to a position that corresponds with the patron’s stated exit date and time;

THAT the valet shall categorize patrons into one of three categories of parkers, as short-, medium-, and long-term;

THAT the certificate of occupancy issued for the building within which the commercial office building (Use Group 6B) use in parking requirement category B1 (Use Group 6, 7, 8, 9, 10, 11, 14, 16) is located shall state that no certificate shall thereafter be issued if the Use Group 6

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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, also indicating this approval and calendar number (“BSA Cal. No. 2018-191-BZ”), shall be obtained within four (4) years and an additional six months, in light of the current state of emergency declared to exist within the City of New York resulting from an outbreak of novel coronavirus disease, by October 24, 2024;

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.

Adopted by the Board of Standards and Appeals, January 28, 2020.

BULLETIN

OF THE
NEW YORK CITY BOARD OF STANDARDS
AND APPEALS

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Volume 106, Nos. 9-10

March 5, 2021

DIRECTORY

MARGERY PERLMUTTER, *Chair*

SHAMPA CHANDA, *Vice-Chair*

DARA OTTLEY-BROWN

NASR SHETA

SALVATORE SCIBETTA

Commissioners

Carlo Costanza, *Executive Director*

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**MINUTES of Public Hearings,
Monday-Tuesday, February 22-23, 2021**

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Affecting Calendar Numbers:

825-86-BZ	1703 Bronxdale Avenue, Bronx
25-09-BZ	277 Canal Street, Manhattan
281-09-BZ	246 Spring Street, Manhattan
343-12-BZ	570 East 21 st Street, Brooklyn
2016-1185-A	45-14 and 45-40 51 st Street, Queens
378-45-BZ	116-60 Sutphin Boulevard, Queens
677-53-BZ	61-28 Fresh Meadow Lane Queens
590-76-BZ	243 East 59th Street, Manhattan
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2020-8-BZ	173 East 83 rd Street, Manhattan

DOCKETS

New Case Filed Up to February 22-23, 2021

2021-14-BZ

2010 Victory Boulevard, Block 00723, Lot(s) 0004, Borough of **Staten Island, Community Board: 5**. Special Permit (§73-243) to allow for an eating and drinking establishment (UG 6) (Starbucks) with an accessory drive-through facility. C1-1/R3-2 zoning district. R3-2, C1-1 district.

2021-15-BZ

81 Beaver Street, Block 3135, Lot(s) 0027, Borough of **Brooklyn, Community Board: 4**. Variance (§72-21) to permit the residential conversion of an existing manufacturing building contrary to §ZR 42-10. M1-1 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

TELECONFERENCE PUBLIC HEARINGS
APRIL 12-13, 2021, MONDAY-TUESDAY
10:00 A.M. and 2:00 P.M.

NOTICE IS HEREBY GIVEN of teleconference public hearings, Monday, April 12, 2021, at 10:00 A.M. and 2:00 P.M., and Tuesday April 13, 2021, at 10:00 A.M. and 2:00 P.M., to be streamed live through the Board's website (www.nyc.gov/bsa), with remote public participation, on the following matters:

SPECIAL ORDERED CALENDAR

758-84-BZIII

APPLICANT – David L. Businelli, for Gina Sgarlato Benfante, owner.

SUBJECT – Application January 7, 2021 – Extension of Term of a variance (§72-21) permitted the operation of two-story and cellar commercial building contrary to use regulations which expired on July 2, 2020 ; Waiver of the Board's Rules of Practice and Procedures. R3X zoning district.

PREMISES AFFECTED – 1444 Clove Road, Block 658, Lot 20, Borough of Staten Island.

COMMUNITY BOARD #1SI

12-01-BZII

APPLICANT – Greenberg Traurig, LLP, for German Rodriguez, owner.

SUBJECT – Application November 2, 2020 – Amendment or Extension of Term of a previously approved Variance (§72-21) which permitted the development of a one-story commercial building (UG 6) with 93 accessory parking spaces which is set to expire on July 17, 2021. The application seeks to change to remove the Board's condition of term. R4 zoning district.

PREMISES AFFECTED – 2829 Edson Avenue, Block 4800, Lot 0018, Borough of Bronx.

COMMUNITY BOARD #12BX

APPEALS CALENDAR

2020-34-A

APPLICANT – Goldner Architects by Davis Iszard, RA, for Vlad Tsirkin, CFO, 45 John NY, LLC, owner.

SUBJECT – Application April 10, 2020 – Application requesting a variance of the Multiple Dwelling Law to existing HACA multiple dwelling to be partially converted to a hotel. An existing inner court supplying legal light and air to apartments does not meet the size requirements for hotels. C6-4 Lower Manhattan Special Purpose District.

PREMISES AFFECTED – 45 John Street, Block 00078,

Lot 28, Borough of Manhattan.
COMMUNITY BOARD #1M

ZONING CALENDAR

2020-65-BZ

APPLICANT – Law Office of Lyra J. Altman, for 1215 East 22nd LLC by David Herzka, owner.

SUBJECT – Application August 21, 2020 – Special Permit (§73-622) to permit the enlargement and combination of two single-family residences into one single-family residence. R2) zoning district.

PREMISES AFFECTED – 1215-1217 East 22nd Street, Block 7622, Lot 24, 26, Borough of Brooklyn.

COMMUNITY BOARD #14BK

2020-70-BZ

APPLICANT – Law Office of Lyra J. Altman, for The Albert Dweck Irri Trust FBO Morris Dweck, owner.

SUBJECT – Application September 11, 2020 – Special Permit (§73-622) to permit the enlargement of a single-family residences into one single-family residence. R4-1 zoning district.

PREMISES AFFECTED – 1903 Homecrest Avenue, Block 7291, Lot 0168, Borough of Brooklyn.

COMMUNITY BOARD #15BK

2020-75-BZ

APPLICANT – Eric Palatnik, P.C., for 474 Associates, Inc., owner.

SUBJECT – Application September 22, 2020 – Special Permit (§73-36) to permit the legalization of a physical cultural establishment (Spa 7) located in the third floor an existing building contrary to ZR §42-10. M1-6 zoning district.

PREMISES AFFECTED – 474 7th Avenue, Block 00785, Lot 0043, Borough of Manhattan.

COMMUNITY BOARD #5M

2020-80-BZ

APPLICANT – Eric Palatnik, P.C., for 459 Lexington Associates, Inc., owner; Spa 45, lessee.

SUBJECT – Application October 8, 2020 – Special Permit (§73-36) to permit the operation of a Physical Culture Establishment (Spa 45) contrary to ZR §32-10. C5-3 Special Midtown Purpose District.

PREMISES AFFECTED – 459 Lexington Avenue, Block 1300, Lot 0023, Borough of Manhattan.

COMMUNITY BOARD #6M

CALENDAR

2020-87-BZ

APPLICANT – Eric Palatnik, PC., for 30 West 32nd Street, owner; NY Spa 32 Inc., lessee.

SUBJECT – Application November 13, 2020 – Special Permit (§73-36) to permit the operation of a physical culture establishment (Spa 32) contrary to ZR §32-10. C6-4 zoning district.

PREMISES AFFECTED – 30 West 32nd Street, Block 00833, Lot 0061, Borough of Manhattan.

COMMUNITY BOARD #5M

2020-88-BZ

APPLICANT – Sheldon Lobel, P.C., for 315 Berry St Corp., owner; Microgrid Networks, lessee.

SUBJECT – Application November 16, 2020 – Special Permit (§73-14) to permit the construction of an electric utility substation (UG 6D) on the roof of an existing building contrary to ZR §22-10. R6 zoning district.

PREMISES AFFECTED – 315 Berry Street, Block 2430, Lot 2, Borough of Brooklyn.

COMMUNITY BOARD #1BK

Margery Perlmutter, Chair/Commissioner

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**PUBLIC HEARINGS
MONDAY-TUESDAY MORNING
FEBRUARY 22-23, 2021, 10:00 A.M.**

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

SPECIAL ORDER CALENDAR

825-86-BZ

APPLICANT – Akerman, LLP, for Ban Realty LLC, owner.
SUBJECT – Application July 27, 2018 – Extension of Term of a previously approved Variance (§72-21) which permitted the operation of a commercial banquet hall (UG 9) and eating and drinking establishment (UG 6) contrary to zoning use regulations which expired on June 30, 2017: Amendment to permit the extension of the banquet hall by approximately 1,104 square feet and the addition of two new mezzanines for a total of 2,461 square feet, permit an increase in the maximum permitted occupancy from 850 people to a maximum occupancy of 1,008 people and propose to reduce the parking from 75 to 65 attendant parking spaces; Waiver of the Rules. R5 Zoning District. PREMISES AFFECTED – 1703 Bronxdale Avenue, Block 4045, Lot 29, Borough of Bronx.

COMMUNITY BOARD #11BX

ACTION OF THE BOARD – Application granted on condition.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta5
Negative:0

THE RESOLUTION –

This is an application for a waiver of the Board’s Rules of Practice and Procedures, an extension of term of a variance, under Z.R. § 72-21, which permitted use of portions of the Premises as a commercial banquet hall (Use Group (“UG”) 9) and eating and drinking establishment UG 6 and expired on June 30, 2017, and an amendment to legalize alterations to the Premises for a bridal suite/private room, an addition of a new 820 square-foot mezzanine bridal suite/private room, an addition of a new 538 square-foot mezzanine kitchen storage space, and to permit a reduction in the required number of attended accessory off-site parking spaces from 75 to 65.

A public hearing was held on this application on March 24, 2020, after due notice by publication in *The City Record*, with continued hearings on August 24, 2020, November 9, 2020, and January 11, 2021, and then to decision on February 22, 2021. Vice-Chair Chanda, Commissioner Ottley-Brown, and Commissioner Scibetta performed inspections of the Premises and surrounding area. Community Board 11, the Bronx, recommends approval of this application.

The Premises are located on the northwest corner of Bronxdale Avenue and Van Nest Avenue, within an R5 zoning district, in the Bronx. With approximately 172 feet of frontage along Bronxdale Avenue, 180 feet of frontage along Van Nest Avenue, and 24,700 square feet of lot area, the Premises are occupied by an existing two-story with mezzanine and basement commercial building.

The Board has exercised jurisdiction over the Premises since April 19, 1983, when, under BSA Cal. No. 598-82-BZ, the Board granted a variance, under Z.R. § 72-21, to permit the erection of a one-story enlargement to an adjoining catering establishment, banquet hall, and eating and drinking establishment, on condition that all work substantially conform to drawings as they apply to the objection, filed with the application; signs conform to the regulations of the C1 district; adequate acoustical and vibration dampening be provided to insulate abutting residential uses from possible adverse noise impacts; the facility meet the requirements for an N-2 ambient noise quality zone at abutting residential areas; a smoke detector be installed in the residential portion of the second floor of the existing establishment; all laws, rules, and regulations applicable be complied with; and, substantial construction be completed in accordance with Z.R. § 72-23.

On June 30, 1987, under the subject calendar number, the Board granted a new variance to permit a one-story enlargement of a one-story catering and banquet establishment (UG 9) and eating and drinking establishment (UG 6) which increases the degree of non-conformity, on condition that all work substantially conform to drawings as they apply to the objection, filed with the application; the variance be limited to a term ten years; there be no increase in the maximum permitted occupancy of 850; signs conform to C1 district regulations; adequate acoustical and vibration dampening be provided to insulate abutting residential uses from possible adverse noise impacts; the facility meet the requirements for an N-2 ambient noise quality zone at abutting residential areas; a smoke detector be installed in the residential portion of the second floor of the existing establishment; there be sanitation pickup on Sundays, Mondays, Wednesdays, Fridays, and Saturdays no earlier than 8:00 a.m.; there be no double parking or any other obstruction of vehicular traffic; there be off-site valet parking for no less than 75 vehicles; the conditions appear on the certificate of occupancy; DOB issue no permits for a period of 31 days from the date of the resolution; 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 the jurisdiction of the Department; and, substantial construction be completed in accordance with Z.R. § 72-23.

On November 18, 1997, under the subject calendar number, the Board granted an extension to the term of the variance, on condition that the term of the variance be limited to 20 years, to expire on June 30, 2017; the Premises be maintained in substantial compliance with the existing drawings submitted with the application; other than as

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amended the resolution be complied with in all respects; and, a new certificate of occupancy be obtained within one year, by November 18, 1998.

The term of the variance having expired, the applicant now seeks an extension. Because this application was filed less than two years since the expiration of the time to complete construction, the applicant requests a waiver, pursuant to § 1-14.2 of the Board's Rules of Practice and Procedures (the Board's Rules), of § 1-07.3(b)(2), of the Board's Rules to permit the filing of this application. In accordance with the Board's Rules, the applicant submitted evidence of continuous operation including utility bills, photographs, Department of Finance Account History Statements and Department of Buildings permits, and represents that the applicant would suffer prejudice absent a waiver of the Board's Rules.

The applicant also seeks an amendment to the variance to legalize alterations performed in 2019 including: 1) the conversion of a 1,104 square-foot second floor dwelling unit to a bridal suite/private room; 2) the addition of a new 820 square-foot mezzanine bridal suite/private room; and 3) the addition of a new 538 square-foot mezzanine kitchen storage space; the alterations represent an increase the total amount of non-conforming floor area by approximately 2,462 square feet, which the applicant represents is an increase of less than 8% of the existing 31,084 sf of nonconforming floor area. The applicant also seeks to modify the condition of the prior variance to reduce the required number of attended accessory off-site parking spaces from 75 to 65.

The applicant represents that the Premises continued to meet the findings under Z.R. § 72-21. Specifically, the applicant states that the second-floor dwelling unit has been vacant since 2001 and unmarketable, and insufficient space for bridal suite/private rooms and a kitchen storage area present hardships. Further, the applicant represents that the Premises was limited in its rental income and marketability due to insufficient party room capacity and lack of adequate bridal suite/private room and kitchen storage areas. The Premises desires to remain competitive with other banquet hall uses and, while the variance provided for a larger property and generated a reasonable return on investment for many years, an improved physical configuration and need for client accommodations and storage became critical for the banquet hall operation.

The applicant states that the Premises continue to conform to the character of the surrounding area, in that the same conditions present at the time of the Board's previous grant continues to exist. Further, the conversion of the former second-floor apartment unit and creation of new mezzanines on the first floor do not increase the intensity of the existing commercial use because they are intended for non-simultaneous use by guests attending events in the existing commercial spaces and for storage. Additionally, the proposed legalization of the extension of commercial use on the second floor and mezzanines does not increase the building envelope. The applicant submitted economic analyses to demonstrate that the additional space within the

converted second floor and on the new mezzanines is the least amount of relief necessary for the banquet hall to maintain its viability in a competitive market and the capitalized value of the rental income from the proposed conditions is equivalent to the overall cost and therefore can be considered to be the minimum variance necessary.

The applicant states that the restriction on occupancy to 850 occupants is understood to refer to the maximum occupancy of assembly rooms consistent with the Board's approved plans, and not to the total occupancy of the building. The applicant seeks to maintain the occupancy at 850 for the assembly spaces, but reflect updated occupancy for the legalized spaces as follows: the second floor bridal room (10 occupants – non-simultaneous occupancy); the mezzanine bridal suite (10 occupants – non-simultaneous occupancy); first floor kitchen and mezzanine kitchen storage/office/coatroom (31 occupants); basement laundry (7 occupants).

The applicant also seeks to modify the condition of the prior variance that required 75 accessory parking spaces so that the applicant can legalize the 65 accessory parking spaces in the on-grade attended accessory parking lot at 1718 Bronxdale Avenue, Block 4094, Lot 31, (the "Parking Lot") located across the street from the Premises. The applicant states that there is no space in the Parking Lot to accommodate additional on-grade parking spaces; the application record does not give the reason for conditioning the variance on the provision of 75 accessory parking spaces; the Parking Lot's 65 parking spaces have adequately served the banquet hall for 37 years; the proposed conversion and enlargement will not be accompanied by an increase in guests and therefore will not change existing parking demand; and, the applicant's parking demand study demonstrates that parking needs are being met by the Parking Lot.

The applicant submitted a restrictive declaration, recorded on March 18, 2022, under CRFN 2022000118528, stating that:

NOW, THEREFORE, in consideration of the issuance by the BSA of a grant in connection with BSA Calendar No. 825-86-BZ, the Declarant hereby declares as follows:

1. The Declarant hereby covenants and agrees for itself, heirs, legal representatives, successors and assigns that 65 parking spaces shall be reserved in the Parking Lot as accessory parking spaces to the Building;
2. The off-site parking area covered by this declaration shall at all times be maintained and kept clear and unobstructed to allow utilization of the required parking spaces;
3. This declaration shall not be modified, amended or terminated without the prior written consent of the BSA and the Department of Buildings;
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

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- 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; and
 6. This declaration shall be recorded at the City Register's Office against all affected parcels of land 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 thereof.

The applicant has satisfactorily demonstrated compliance with the conditions of the previous grant, and the Board finds that the circumstances warranting the original grant still obtain. 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 *waive* its Rules of Practice and Procedures and *amends* the resolution, dated June 30, 1987, as amended through November 18, 1997, so that as amended this portion of the resolution shall read: "to extend the term of the variance for 20 years, to June 30, 2037, and to legalize alterations to the Premises and a reduction in the number of required accessory off-site parking spaces, *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked 'Received February 4, 2021—Thirteen (13) sheets'; and *on further condition*:

THAT the term of the variance shall be for 20 years, to expire on June 30, 2037;

THAT there shall be no increase in the maximum permitted occupancy of 850 occupants;

THAT the bridal suite and bridal room shall not be used for bridal showers or any event that can be used independent of the banquet hall;

THAT signs shall conform to C1 zoning district regulations;

THAT adequate acoustical and vibration dampening shall be provided to insulate abutting residential uses from possible adverse noise impacts;

THAT the facility shall meet the requirements for an N-2 ambient noise quality zone at abutting residential areas;

THAT a smoke detector shall be installed in the residential portion of the second floor of the existing establishment;

THAT there shall be sanitation pickup on Sundays, Mondays, Wednesdays, Fridays, and Saturdays no earlier than 8:00 a.m.;

THAT there shall be no double parking or any other obstruction of vehicular traffic;

THAT there shall be off-site valet parking for no less than 65 vehicles;

THAT the certificate of occupancy for the attended

accessory parking lot at 1718 Bronxdale Avenue, Block 4094, Lot 31 shall indicate this approval, conditions, and calendar number ("BSA Cal. No. 825-86-BZ");

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. 825-86-BZ"), shall be obtained within one year, in light of the current state of emergency declared to exist within the City of New York resulting from an outbreak of novel coronavirus disease, by March 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, February 22, 2021.

25-09-BZ

PPLICANT – Pryor Cashman LLP, for AJJ Canal, LLC, owner; UFC Gym, lessee.

SUBJECT – Application April 15, 2019 – Extension of Term of a previously approved Special Permit (§73-36) which permit the operation of a physical culture establishment on the third floor of a three-story commercial building which expired on November 23, 2018; Amendment to permit a change in operator from Champion Fitness to UFC Gym; Waiver of the Board's Rules. M1-5B SoHo Iron Historic District.

PREMISES AFFECTED – 277 Canal Street, Block 209, Lot 1, Borough of Manhattan.

COMMUNITY BOARD #2M

ACTION OF THE BOARD – Application granted.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta5
Negative:.....0

THE RESOLUTION –

This is an application for a waiver of the Board's Rules of Practice and Procedures, an extension of term of a special permit, previously granted by the Board pursuant to Z.R. § 73-36, which permitted the operation of a physical culture establishment ("PCE") and expired on November 23, 2018, and an amendment to permit a change in PCE operator.

A public hearing was held on this application on November 9, 2020, after due notice by publication in *The*

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City Record, with a continued hearing on January 11, 2021, and then to decision on February 22, 2021. Community Board 2, Manhattan, recommends approval of this application.

The Premises are located on the northeast corner of Canal Street and Broadway, within an M1-5 zoning district, in Manhattan. The PCE is located on a portion of the third floor (9,960 square feet of floor area) of the existing three-story commercial building.

The Board has exercised jurisdiction over the Premises since June 23, 2009, when, under the subject calendar number, the Board granted a special permit, under Z.R. § 73-36, to legalize the operation of a PCE on a portion of the third floor of the Premises, operated as “Champion Fitness,” for a term of ten years, to expire on November 23, 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; all massages be performed by New York State licensed massage therapists; the 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); 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 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.

The term of the special permit having expired, the applicant now seeks an extension. Because this application was filed less than two years since the expiration of the term, the applicant requests a waiver, pursuant to § 1-14.2 of the Board’s Rules of Practice and Procedures (the Board’s Rules), of § 1-07.3(b)(2), of the Board’s Rules to permit the filing of this application. The applicant also seeks an amendment to permit a change in the PCE operator, to “UFC SoHo Gym.” 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.

The applicant represents that the PCE continues to occupy 9,960 square feet of floor area on the third floor, no longer offers massage services, and the hours of operation are 6:00 a.m. to 11:00 p.m., seven days a week.

The Fire Department states, by letter dated November 5, 2020, that the Premises are protected by a sprinkler system which was last tested on May 2, 2019, to the satisfaction of the Fire Department. A fire alarm system has also been installed and tested to the department’s satisfaction. The Fire Department reviewed the plans submitted to the Board and has two objections: 1) provide total number of persons and egress calculations with travel distance; 2) label doors at Stair “A.” Based on the foregoing

the Fire Department objects to the application, and once revised plans are submitted, the Fire Department will review same. The Fire Department added, by letter dated November 9, 2020, that the Bureau’s Licensed Public Place of Assembly (LPPA) unit last inspected these premises on January 17, 2020, and issued an FDNY permit. Based upon the foregoing the Fire Department has no objection to the above referenced application.

The applicant represented that PCE banners were removed from the Premises and the Board noted that they may be replaced by application to the Board for a letter of substantial compliance or letter of no objection.

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 *amend* the resolution, dated June 23, 2009, so that as amended this portion of the resolution shall read: “to extend the term of the special permit for ten years, to expire on November 23, 2028, and to permit a change in PCE operator; *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked ‘Received February 16, 2021—Ten (10) sheets’; and *on further condition*:

THAT the term of the special permit shall expire on November 23, 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 fire safety measures shall be maintained in accordance with BSA-approved plans;

THAT minimum three-foot-wide exit pathways shall be maintained leading to the required exits and that pathways shall be maintained unobstructed, including from any equipment;

THAT accessibility shall be provided pursuant to the standards set forth in applicable accessibility laws, including but not limited to Chapter 11 of the NYC Building Code, the 2009 American National Standards Institute (ANSI) A117.1 and Title III of the Americans with Disabilities Act, as reviewed and approved by DOB;

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. 25-09-BZ”), shall be obtained within one year and an additional six months, in light of the current state of emergency declared to exist within the City of New York resulting from an outbreak of novel coronavirus disease, by September 1, 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;

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the

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Zoning Resolution, the Administrative Code and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.”

Adopted by the Board of Standards and Appeals, February 22, 2021.

281-09-BZ

APPLICANT – Kramer Levin Naftalis & Frankel LLP by Gary R. Tamoff for CIM Group LP, owner.

SUBJECT – Application February 11, 2020 – Extension of Term of a previously approved Special Permit (§73-36) which permitted the operation of a physical cultural establishment (Planet Fitness) on the fifth and sixth floors of a 42-story building which expired on February 23, 2020. M1-6 Special Hudson Square District.

PREMISES AFFECTED – 246 Spring Street, Block 491, Lot(s) 1201-1594; 1101-113, Borough of Manhattan.

COMMUNITY BOARD #2M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

This is an application for an extension of term of a special permit, previously granted by the Board pursuant to Z.R. § 73-36, which expired on February 23, 2020.

A public hearing was held on this application on November 30, 2020, after due notice by publication in *The City Record*, and then to decision on February 22, 2021. Vice-Chair Chanda, Commissioner Ottley-Brown, and Commissioner Scibetta performed an inspection of the Premises and surrounding neighborhood. Community Board 2, Manhattan, waived its recommendation of this application.

The Premises are bounded by Spring Street to the north, Varick Street to the west, and Dominick Street to the south, within a M1-6 zoning district and in the Special Hudson Square District, in Manhattan. The subject physical culture establishment (“PCE”) is located on portions of the fifth floor (4,984 square feet of floor area) and sixth floor (4,172 square feet of floor area) of the existing 43-story mixed-use hotel/commercial building.

The Board has exercised jurisdiction over the Premises since February 23, 2010, when, under the subject calendar number, the Board granted a special permit, pursuant to Z.R. § 73-36, to permit the operation of a PCE, operated as “WTS International,” on condition that all work substantially conform to drawings filed with the application; the term of the grant expire on February 23, 2020; there be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board; all massages be performed by New York State-licensed massage therapists; the conditions appear on the certificate of occupancy; Local Law 58/87

compliance be 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); the approved plans be considered approved only for the portions related to the specific relief granted; substantial construction be completed in accordance with Z.R. § 73-70; 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.

The term of the special permit having expired, the applicant now seeks an extension.

The applicant represents that the PCE continues to operate as “WTS International,” and there have been no changes to the operation or the PCE facility.

The Fire Department states, by correspondence dated November 30, 2020, that the Premises are protected by a fire suppression system (standpipe and sprinkler) that has been signed-off at the Department of Buildings. The Fire Suppression Unit has been notified to conduct an inspection of the suppression system. A fire alarm system is also installed, inspected and tested satisfactory as per the Fire Department’s rules and regulations. A swimming pool located at the Premises has been inspected by the Bureau of Fire Prevention Labs Unit for storage of chloride, and such inspection was found to be satisfactory and permits have been issued. Based on the foregoing, the Fire Department has no objection to the application.

At hearing, the Board questioned whether outdoor lounge and spa space at the fifth floor was permitted at the Premises, given that Z.R. § 73-36(b) is inapplicable in an M1-6 zoning district. In response, the applicant revised the plans to remove the outdoor space, which is only permitted to be accessed from the hotel area, from the PCE area and submitted a sealed letter from the architect confirming that the outdoor spaces are not included in PCE floor area calculations.

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. 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 *amend* the resolution, dated February 23, 2010, so that as amended this portion of the resolution shall read: “to extend the term of the special permit for ten years, expiring February 23, 2030, *on condition* that all work shall substantially conform to drawings as filed with this application, marked “Received February 4, 2021,” – six (6) sheets; and *on further condition*:

THAT the term of the PCE shall be for ten years, expiring on February 23, 2030;

THAT the outdoor areas of the Premises shall not be used in connection with PCE use;

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THAT accessibility shall be provided pursuant to the standards set forth in applicable accessibility laws, including but not limited to Chapter 11 of the NYC Building Code, the 2009 American National Standards Institute (ANSI) A117.1 and Title III of the Americans with Disabilities Act;

THAT all massages be performed by New York State-licensed massage therapists;

THAT all signage shall comply with the Zoning Resolution;

THAT fire safety measures be maintained as shown on the Board-approved plans;

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. 281-09-BZ”), shall be obtained within one year and an additional six months, in light of the current state of emergency declared to exist within the City of New York resulting from an outbreak of novel coronavirus disease, by September 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, February 22, 2021.

343-12-BZ

APPLICANT – Slater & Beckerman, P.C., for Kolé Beis Yakov LLC, owner; Ocean Avenue Education Support, Inc., lessee.

SUBJECT – Application July 23, 2019 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) to permit the construction of a Use Group 3 school (Brooklyn School for Medically Frail Children) with dormitory facilities which expires on July 28, 2019. R1-2/R7A zoning district.

PREMISES AFFECTED – 570 East 21st Street, Block 5184, Lot(s) 39, 62, 66, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

This is an application for an extension of time to complete construction of a variance previously granted by the Board pursuant to Z.R. § 72-21, which permitted the construction of a Use Group (“UG”) 3 school with dormitory facilities and expired on July 28, 2019.

A public hearing was held on this application on October 29, 2020, after due notice by publication in *The City Record*, with continued hearings on November 30, 2020 and January 25, 2021 and then to decision on February 22, 2021. Vice-Chair Chanda and Commissioner Ottley-Brown performed inspections of the Premises and surrounding neighborhood. Community Board 14, Brooklyn, recommends approval of this application with the following conditions:

“Recommend approval for two years following BSA’s approval (should BSA so approve). This recommendation is also contingent on there being no changes in the application, including identity of the applicant; primary use of and determination that the facility is a school; and architectural plans presented to CB14 originally (except as otherwise directed by BSA). Should any of these changes occur, CB14 rescinds its recommendation for approval.”

The Board received two letters supporting this application from a parent of a medically frail student and a medical doctor, who expressed that the proposed project would fulfill a need for an underserved population. The applicant also faced organized opposition from community members, including a civic organization whose members submitted testimony collectively and individually, and homeowners, who submitted testimony via their counsel. The civic association submitted a petition with over 100 names, and the Board received over 40 letters from its members in opposition to the requested extension of time to complete construction from the members of these opposition groups. The primary concerns stated in these letters and testimony are: (1) The applicant has had ample time to construct a school and has not made progress in doing so, and the lack of progress towards finalizing the project described in the original variance should warrant a denial of the extension of time; (2) the applicant is not constructing a school but a full time medical rehabilitation facility with a 40 space parking lot as evidenced by the millions of dollars in mortgages taken out by the owner, who is also the owner of a medical facility across the street from the Premises; (3) the proposed project is against the neighborhood’s residential character and must not be permitted; and (4) the applicant’s use of the property to dump medical waste is a risk to health, safety, and welfare of the residents.

The Premises have an area of 16,000 sq. ft. and are partially located within an R1-2 zoning district and partially within an R7A zoning district. The Premises consist of three tax lots (lots 39, 62, and 66) located on Block 5814 in Brooklyn. Block 5814, lot 39 is a 5,000 sq. ft. lot with 50 feet of frontage along East 21st Street, between Dorchester Road and Ditmas Avenue, located within an R7A zoning district. Block 5814, lots 62 and 66 are adjacent 5,500 sq. ft.

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lots each with 50 feet of frontage along Ocean Avenue, between Dorchester Road and Ditmas Avenue, located within an R1-2 zoning district.

The Board has exercised jurisdiction over the Premises since July 28, 2015, when, under the subject calendar number, the Board granted a variance to permit the construction of a UG 3 school on condition that the following be the bulk parameters of the building: a maximum floor area of 22,897 sq. ft. (1.46 FAR) and the total height of the building be limited to 35'-0", exclusive of permitted obstructions, as illustrated on the BSA-approved plans, a northern side yard of 5'-0" and a southern 8'-7 1/2", maximum lot coverage of 67 percent in the R1-2 zoning district (lots 62 and 66) and 100 percent in the R7A zoning district (lot 39), an obstruction in the rear yard which is not permitted under Z.R. § 24-33, a 10'-0" rear yard equivalent, and 13 UG 3 dormitory rooms (containing a total of 21 nursing home beds); any change in use, occupancy, or operator of the School require the Board's approval; all DOB and related agency application(s) filed in connection with the authorized use and/or bulk will be signed off by DOB and all other relevant agencies by July 28, 2019; the approval is 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; 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.

The time to complete construction having expired, the applicant now seeks an extension of time to complete construction and amendment of the previously granted variance.

The applicant represents that the variance as amended still reflects the minimum necessary, as per Z.R. § 72-21(e). Because the applicant is a not-for-profit entity, the applicant is not required to submit financial information about the proposed project. The applicant provided a description of the progress to develop the proposed building since the initial grant, in which it represents that the school has been working with New York State Education Department on the preparation and refining of its offered programs and curricula. Additionally, the applicant will have to get the New York State Education Department's Rate Setting Unit to approve proposed tuition rates, then must obtain construction financing before it can break ground on the proposed project. The applicant noted that it anticipates the project will be completed in three years.

At hearing, the Board expressed concerns about how the applicant planned to maintain the site clean and free of waste, how the applicant proposed to bind the subject property's future owners to those requirements, and why the applicant submitted the NYC Department of Education ("DOE") webpage for regional need for preschool special education programs as part of its application. In response, the applicant provided a contract with a property

management company which would regularly clean and maintain the Premises; a restrictive declaration which would bind future owners to certain maintenance and upkeep commitments; and an explanation that the DOE map was submitted to demonstrate the great need for the proposed type of program in the school district at the Premises.

Additionally, the applicant submitted an operational plan rider agreement to steady maintenance service which states, in part, that a third party will be responsible for:

- a) Removing from the Premises any accumulated litter/other debris, including both natural debris (leaves, branches, etc.) and trash (whether inadvertently placed on the Premises or illegally dumped) including bulk trash.
- b) Removing/cleaning from the Premises any graffiti or other acts of vandalism.
- c) Maintaining in good repair, the minimum six-foot-high metal picket or chain link fences (having minimum 50% opacity) on both the East 21st Street and Ocean Avenue frontages and a maintaining any access points locked.
- d) Landscaping work, including mowing, pruning, weed control, and other procedures consistent with good horticulture practice necessary to ensure normal, vigorous, and healthy growth of turf and landscape planting. Ground covers are to be trimmed so they meet, but not grow over, walkways or sidewalks. Biodegradable landscape debris shall be removed and disposed of at appropriate yard refuse and/or recycling sites.
- e) Integrated pest management consistent with good practices and, where capable, without the use of poison.
- f) Other necessary efforts to ensure the Premises and any sidewalks adjacent to the Premises are kept in neat appearance.

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 *waive* its Rules of Practice and Procedures *amends* the resolution, dated July 28, 2015, so that as amended this portion of the resolution shall read: "to *extend* the time to complete construction by four years and six months, to expire on September 5, 2025; *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked 'Received June 2, 2015 - Sixteen (16) sheets'; and *on further condition*:

THAT the following shall be the bulk parameters of the building: a maximum floor area of 22,897 sq. ft. (1.46 FAR) and the total height of the building be limited to 35'-0", exclusive of permitted obstructions, as illustrated on the BSA-approved plans, a northern side yard of 5'-0" and a

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southern 8'-7 1/2", maximum lot coverage of 67 percent in the R1-2 zoning district (lots 62 and 66) and 100 percent in the R7A zoning district (lot 39), an obstruction in the rear yard which is not permitted under Z.R. § 24-33, a 10'-0" rear yard equivalent, and 13 UG 3 dormitory rooms (containing a total of 21 nursing home beds);

THAT any change in ownership, operator, or control of the building shall require the prior approval of the Board;

THAT the project to be built must be the one that was approved by the Board with the same high design quality, material quality, massing, and detail;

THAT the extension of the variance shall run only to the Brooklyn school;

THAT the Brooklyn school shall only be used as a school for children with severe disabilities requiring onsite rehabilitative support, both for day students and live in dormitory residents;

THAT any deviation from this program, which is the basis upon which the Board granted the original waivers in 2015, shall result in a void of the variance;

THAT any modifications to this project, short of minor changes, shall require a new variance application;

THAT any minor changes in the program must come before the Board to determine if they are, indeed, minor;

THAT during the period when the interim school operates and pending the ability of the school to begin construction, the site must be kept free and clear of debris;

THAT the site must not be left as a staging area for construction material or any kind of material storage not related to the active construction of the school;

THAT a restrictive declaration substantially conforming to the form and substance of the following shall be recorded against the property:

DECLARATION ("Declaration"), made this ____ day of _____, 2021, by KOLEL BEIS YAKOV LLC, a New York limited liability company, having an address at 2107 Ditmas Avenue, Brooklyn, New York 11226 (the "Declarant").

WHEREAS, the Declarant is the fee owner of certain land located in the City and State of New York, Borough of Brooklyn, designated as Tax Lots 39, 66 and 62 in Block 5184 on the Tax Map of the City of New York, more particularly described in a metes and bounds description set forth in Schedule A annexed hereto and by this reference made a part hereof (the "Subject Premises");

WHEREAS, the Declarant acknowledges that a portion of the Subject Premises has been used, from time to time, to store and stage construction materials and construction equipment in furtherance of construction activities at 2107 Ditmas Avenue (Block 5185, Lot 42), City and State of New York, Borough of Brooklyn (the "Adjacent Premises"), which activities were approved by the New York City Department of Buildings ("DOB") under DOB Job No.

320913268; however no permission from DOB for the storage and staging of construction materials and equipment at the Subject Premises was obtained, hence such activity is therefore unpermitted;

WHEREAS, the Declarant has requested the New York City Board of Standards and Appeals (the "BSA") act upon BSA Cal. No. 343-12-BZ to extend time to complete construction of a Use Group 3 school and dormitory building (the "Approved Building") for occupancy by the Brooklyn School for Medically Frail Children (the "School"), which was previously approved by BSA variance (the "Extension Application"); and

WHEREAS, as a condition of its approval of the Extension Application, the BSA has requested that Declarant execute and file this Declaration with the Office of the City Register against the parcels constituting the Subject Premises.

NOW, THEREFORE, in consideration of BSA's approval to extend time to complete construction of the Approved Building, Declarant does hereby declare that:

1. As constructed, the Approved Building shall substantially conform to the BSA-approved drawings with the same high quality of design, materials, massing and detail as illustrated on the BSA-approved drawings; modifications to any of the above-described elements, as well as to interior layouts, building footprint, setbacks and height, shall be subject to Board review, and no application for DOB approval or permits for construction shall be sought until such modifications have received written Board approval.
2. The Extension Application shall only be considered approved as to construction of the School for its educational program as a school for children with severe disabilities requiring on-site rehabilitative support for day students and for dormitory residents (occupying a total of 21 on site nursing home beds), and deviation from this program shall void the variance granted under BSA Cal. No. 343-12-BZ.
3. Any modifications to the Approved Building or the School's program—beyond those deemed minor by the Board—shall require filing as a new variance application.
4. No building permit or Certificate of Occupancy for the Approved Building shall be sought from DOB unless the Approved Building is designed in substantial conformance (as described in paragraphs 1 through 3 above) with the BSA-approved drawings for the Approved Building.

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5. The Subject Premises shall not be used for the storage or staging of construction or other materials or equipment of any kind until such time as the School has obtained a permit for construction of the School building, at which point only materials related to the construction of said School building may be stored or staged on the Subject Premises, and any such materials shall be subject to all applicable laws related thereto.
6. The Subject Premises shall not be used for parking of any vehicles of any kind without BSA and DOB written authorization.
7. Declarant shall ensure that a property manager, at least two times per week, conducts a walk-through inspection of the entirety of the Subject Premises to assess existing conditions and to ensure that the Subject Premises are maintained in accordance with this Declaration, and said walk-through inspection shall review existing conditions, including but not limited to: any accumulated debris/litter, graffiti or other vandalism, snow or pooling of rain water and runoff, the presence of any pests (insects, vermin, or otherwise), accumulated leaves and other natural vegetation, the health and growth of grasses and other landscape features, and any other notable change in conditions.
8. Declarant shall maintain the Subject Premises in good repair and in neat appearance and accordingly shall immediately:
 - a. remove any accumulated litter/other debris, including both natural debris (leaves, branches, etc.) and trash (whether inadvertently placed on the Subject Premises or illegally dumped) including bulk trash;
 - b. remove/clean from the Subject Premises any graffiti or other acts of vandalism;
 - c. install and maintain in good repair a minimum 6 foot high metal picket or chain link fence with minimum 50% opacity on both the East 21st Street and Ocean Avenue frontages (plywood in lieu of suitable metal picket or chain link is unacceptable and must be removed), and maintain any access points locked;
 - d. maintain the landscape features of the Subject Premises, including mowing, pruning, and weed control;
 - e. undertake pest management control consistent with good practices and, where capable, without the use of poisons; and
 - f. make other necessary efforts to ensure the Subject Premises is kept in neat appearance.
9. To reduce impacts on neighbors, Declarant

shall direct any commercial property maintenance company under its employ to make best efforts to access the Subject Premises primarily from its East 21st Street frontage.

10. Declarant shall maintain the sidewalk outside the Subject Premises in good repair and in clean condition.
11. This Declaration may not be modified, amended or terminated without the prior written consent of BSA, provided, however, that in the event Declarant elects to abandon the variance granted under BSA Cal. No. 343-12-BZ, and receives written acknowledgment of such election from BSA, this Declaration may be cancelled by the recordation of a Notice of Cancellation at the City Register's Office against the Subject 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.
12. The covenants set forth herein shall run with the land and be binding upon and inure to the benefit of the Declarant and their respective heirs, legal representatives, successors, and assigns.
13. 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.
14. This Declaration shall be recorded at the Office of the City Register against the Subject Premises and title of the Declaration shall be recorded on each temporary and permanent Certificate of Occupancy hereafter issued to the Approved Building.

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. 343-12-BZ'), shall be obtained within four years and an additional six months, in light of the current state of emergency declared to exist within the City of New York resulting from an outbreak of novel coronavirus disease, by September 5, 2025;

THAT substantial construction be completed in accordance with Z.R. § 72-23;

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

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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, February 22, 2021.

2016-1185-A

APPLICANT – Pryor Cashman LLP, for MBAR Realty, LLC and MBAR Realty #2 LLC, owner; Treasure Island of Asbury Park Self Storage LLC, lessee.

SUBJECT – Application October 9, 2020 – Amendment to extend the time to obtain "all DOB related agency application(s) filed in connection with the authorized use and/ bulk will be signed off by DOB and all other relevant agencies by November 1, 2020.

PREMISES AFFECTED – 45-14 and 45-40 51st Street, Block 2283, Lot(s) 53,54, Borough of Queens.

COMMUNITY BOARD #2Q

ACTION OF THE BOARD – Application granted.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta5

Negative:0

THE RESOLUTION –

This is an application for an extension of time to complete construction and obtain a certificate of occupancy, pursuant to a waiver of General City Law Section 35, which expired on November 1, 2020.

A public hearing was held on this application on January 25, 2021, after due notice by publication in *The City Record*, and then to decision on February 22, 2021. Community Board 2, Queens, recommends approval of this application.

The Premises are located on the west side of 51st Street, between Queens Boulevard and 47th Avenue, in an M1-1 zoning district, in Queens. With approximately 349 feet of frontage along 51st Street and 41,507 square feet of lot area, the Premises are currently occupied by two, two-story manufacturing buildings that will be demolished to allow for the construction of a proposed a three-story with cellar, 34,320 square foot, Use Group 16 self-storage facility.

The Board has exercised jurisdiction over the Premises since November 1, 2016, when, under the subject calendar number, the Board waived requirements under General City Law Section 35 and bulk regulations associated with the presence of the mapped but unbuilt street pursuant to Section 72-01(g) of the Zoning Resolution to permit the development of a three-story, plus cellar, Use Group 16 self-storage facility partially within the bed of a mapped street, contrary to General City Law Section 35, and that encroaches into the sky exposure plane, contrary to Z.R. § 43-43, on condition that construction substantially conform to the drawings filed with the application marked “Received October 12, 2016”–One (1) sheet; no parking be permitted in front of the Premises; 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 November 1, 2020; 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; to the extent required by DOB and/or DOT, a Builder’s Pavement Plan be filed and approved prior to the issuance of 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); 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.

The time for all DOB and related agency application(s) filed in connection with the authorized use and/or bulk will to be signed off by DOB and all other relevant agencies having expired, the applicant now seeks an extension.

The applicant submitted evidence that construction of the Premises pursuant to the waiver has been delayed due to an ongoing legal dispute but anticipates imminent resolution which will allow construction to proceed. As such, the applicant seeks a four-year extension of time to complete construction and obtain a certificate of occupancy.

The applicant has satisfactorily demonstrated compliance with the conditions of the previous grant and the Board finds that the circumstances warranting the original grant still obtain. Based upon its review of the record, the Board has determined that the requested extension of time is appropriate with certain conditions as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *amend* the resolution, dated November 1, 2016, so that as amended this portion of the resolution shall read: “to extend the time to complete the work and obtain a certificate of occupancy for four years, by November 1, 2024, *on condition*:

THAT all DOB and related agency application(s) filed in connection with the authorized use and/or bulk will be signed off by DOB and all other relevant agencies by November 1, 2024;

THAT no parking shall be permitted in front of the site;

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

THAT to the extent required by DOB and/or DOT, a Builder’s Pavement Plan shall be filed and approved prior to the issuance of the certificate of occupancy;

THAT 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. 2016-1185-A”), shall be obtained within four years, by November 1, 2024;

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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, February 22, 2021.

378-45-BZ

APPLICANT – Davidoff Hutcher & Citron, LLP, for Leemilts Petroleum, Inc., owner; Atlantis GRC Realty LLC, lessee.

SUBJECT – Application December 28, 2018 – Amendment (§11-412) of a previously approved variance permitting the operation of an Automotive Service Station (UG 16B) seeking to permit a change in the configuration of existing gasoline pumps, the addition of a canopy and the conversion of an accessory lubricatorium to an accessory convenience store with a drive-through. C2-3/R5D zoning district.

PREMISES AFFECTED – 116-60 Sutphin Boulevard, Block 12008, Lot(s) 0034, Borough of Queens.

COMMUNITY BOARD #12Q

ACTION OF THE BOARD – Laid over to May 24-25, 2021, at 10 A.M., for continued hearing.

677-53-BZ

APPLICANT – Akerman LLP, for James Marchetti, owner.

SUBJECT – Application September 4, 2020 – Extension of time to obtain a Certificate of Occupancy 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 30, 2019; Waiver of the Board’s Rules of Practice and Procedures. C2-2/R4 zoning district.

PREMISES AFFECTED – 61-28 Fresh Meadow Lane, Block 6901, Lot 48, Borough of Queens.

COMMUNITY BOARD #8Q

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Shelta, and Commissioner Scibetta5
Negative:0

ACTION OF THE BOARD – Laid over to April 12-13, 2021, at 10 A.M., for decision, hearing closed.

590-76-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Cinfiors Ltd., owner.

SUBJECT – Application August 10, 2020 – Extension of Term of a previously granted Variance (§72-21) for an existing illuminated sign that exceeds the permitted height above curb level. C2-8 zoning district.

REMISES AFFECTED – 243 East 59th Street, Block 1414, Lot 120, Borough of Manhattan.

COMMUNITY BOARD #8M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Shelta, and Commissioner Scibetta5
Negative:0

ACTION OF THE BOARD – Laid over to March 8-9, 2021, at 10 A.M., for decision, hearing closed.

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 May 24-25, 2021, at 10 A.M., for continued hearing.

245-03-BZ

APPLICANT – Seyfarth Shaw LLP, for Allied Enterprises NY LLC c/o Muss Development 118-35 Queens Boulevard, owner; McDonald’s Real Estate Company, lessee.

SUBJECT – Application January 8, 2019 – Extension of Term of a previously granted special permit (§72-243) for an accessory drive-thru to an existing eating and drinking establishment (McDonald’s), which expired on December 9, 2018. C1-2/R3-2 zoning district.

PREMISES AFFECTED – 160-11 Willets Point Boulevard, Block 4758, Lot 100, Borough of Queens.

COMMUNITY BOARD #7Q

THE VOTE TO REOPEN HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Shelta, and Commissioner Scibetta5
Negative:0

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Shelta, and Commissioner Scibetta5
Negative:0

ACTION OF THE BOARD – Laid over to April 12, 2021, at 10 A.M., for decision, hearing closed.

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6-04-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Glenmore Associates, owner; TSI Third Ave, LLC dba New York Sports Club, lessee.

SUBJECT – Application November 16, 2017 – Extension of Term of a variance granted pursuant to §72-21 allow the operation of a physical culture establishment located in a C1-3/R6B, Special Bay Ridge zoning district.

PREMISES AFFECTED – 7118-7124 Third Avenue, Block 5890, Lot(s) 43, Borough of Brooklyn.

COMMUNITY BOARD #1BK

ACTION OF THE BOARD – Laid over to August 2-3, 2021, at 10 A.M., for continued hearing.

114-07-BZ

APPLICANT – Eric Palatnik, P.C., for Sullivan Mountain Real Estate, LLC, owner.

SUBJECT – Application March 18, 2019 – Amendment of a previously approved Special Permit (§73-19) which permitted the operation of a day-care center (Kiddie Academy) (UG3). The amendment seeks an enlargement to the existing day care facility, a modification in the approved floor area, a change in the number of parking spaces, as well as request to permit a proposed outdoor play area on the roof. M1-1/R2A zoning district.

PREMISES AFFECTED – 7-05 152nd Street, Block 4531, Lot 35, Borough of Queens.

COMMUNITY BOARD #7Q

ACTION OF THE BOARD – Laid over to May 24-25, 2021, at 10 A.M., for continued hearing.

21-10-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Aquilla Realty Company, Inc., owner; Burger Brother Hutch Restaurant Associates LP dba Burger King, lessee.

SUBJECT – Application September 14, 2020 – Extension of Term of a previously approved Special Permit (§73-243) which permitted the operation of an accessory drive-through to an eating and drinking establishment which expired on September 14, 2020; Extension of Time to Obtain a Certificate of Occupancy which expired on February 13, 2020; Waiver of the Board’s Rules of Practice and Procedures. C1-2/R4A zoning district.

PREMISES AFFECTED – 2801 Roebbling Avenue, Block 5386, Lot 0001, Borough of Bronx.

COMMUNITY BOARD #10BX

ACTION OF THE BOARD – Laid over to May 10-11, 2021, at 10 A.M., for continued hearing.

86-10-BZ

APPLICANT – Sheldon Lobel, P.C., for STM Development, LLC, owner.

SUBJECT – Application July 23, 2020 – Extension of Term (§11-411) of a previously-granted variance permitting a Use Group (“UG”) 16 custom woodworking shop which expires on September 14, 2020. R5/C1-3 zoning district.

PREMISES AFFECTED – 93-08 95th Avenue, Block 9036, Lot 0003, Borough of Queens.

COMMUNITY BOARD #8Q

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Shelta, and Commissioner Scibetta.....5

Negative:.....0

ACTION OF THE BOARD – Laid over to March 8-9, 2021, at 10 A.M., for decision, hearing closed.

120-13-BZ

APPLICANT - Pryor Cashman, LLP, for Doris Kurlender and Samuel Jacobson, Owner; Spillane Parkside Corp., lessee.

SUBJECT – August 13, 2019 – Extension of Term of a previously approved Special Permit (§73-243) which permitted an accessory drive-thru to an eating and drinking establishment (UG 6) (McDonald’s) which expired on January 14, 2019; Waiver of the Board’s Rules. C1-1/R3-2 zoning district.

PREMISES AFFECTED – 1815 Forest Avenue, Block 1180, Lots 6, 49, Borough of Staten Island.

COMMUNITY BOARD #1SI

ACTION OF THE BOARD – Laid over to April 26-27, 2021, at 10 A.M., for continued hearing.

2016-4340-BZ

APPLICANT – Law Office of Vincent L. Petraro, PLLC, for Flushing Holding, LLC, owner.

SUBJECT – Application November 25, 2020 – Amendment of a previously approved Special Permit (§73-66) to permit the construction of a new building in excess of the height limits established under ZR §61-21. The amendment seeks to increase the height of the building contrary to the previous approval. C4-2 zoning district.

PREMISES AFFECTED – 131-02 40th Road, Block 5066, Lot 150, Borough of Queens.

COMMUNITY BOARD #7Q

ACTION OF THE BOARD – Laid over to March 22-23, 2021, at 10 A.M., for continued hearing.

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APPEALS CALENDAR

2019-182-A

APPLICANT – Dominic V. DeSantis – McLaren Engineering Group, for Therese Braddick, New York City department of Parks and Recreation.

SUBJECT – Application June 27, 2019 – Variance pursuant to G107 of Appendix G Flood Resistant Construction Regulations of the 2014 NYC Building Code for construction in a V-Zone, waiver of Sections G304.2, Item 6 (no new construction to be located seaward of the Mean High Tide in the V-Zone) and G304.2 Item 2 (The lowest portion of the lowest horizontal structural member of the lowest floor shall be at or above design flood elevation).

PREMISES AFFECTED – 1 Marina Road, Block 1789, Lot 65, Borough of Queens.

COMMUNITY BOARD #3Q

ACTION OF THE BOARD – Application withdrawn.

THE VOTE TO WITHDRAW –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Shelta, and Commissioner Scibetta5

Negative:0

THE RESOLUTION –

The determination of the Department of Small Business Services (“SBS”), dated May 7, 2020, acting on SBS Job Application Number 20193730, reads in pertinent part:

Appendix G 304.2: The proposed construction is located within V15 Zone and does not comply with NYC BC 304.2 Item 6, ASCE 24 Section 4.3 and 44 CFR § 60.3, which do not permit new construction to be located seaward of the reach of mean high tide in V Zone and Coastal A Zone. Additionally, as per ASCE 1.5.2 and G304.2 V-Zone, for all construction landward of the reach of mean high tide, the following standards shall apply to post-firm construction:

1. Foundation. The lowest floor shall be elevated on adequately anchored pilings or columns and securely anchored to such piles or columns to prevent floatation, collapse and lateral movement resulting from wind and flood loads acting simultaneously on all building components, and other load requirements of Chapter 15 and this appendix.
2. Lowest Horizontal Member. The lowest portion of the lowest horizontal structural member of the lowest floor (excluding the pilings or columns) shall be at or above the design flood elevation specified in ASCE 24, Table 4-1.
3. Below the Lowest Horizontal Member: Spaces below the lowest horizontal member shall be either:
 - 3.1. Free of obstructions; or
 - 3.2. Enclosed with breakaway walls

providing unconditioned space useable solely for parking of vehicles, building access, storage or crawl space. Such breakaway walls shall:

3.2.1. Be of an open lattice type construction only;

3.2.2. Meet the load requirements of Section 5.3.3 of ASCE 7; and

3.2.3. Meet the additional requirements of ASCE.

4. Materials. Only flood-damage-resistant materials and finishes shall be utilized below the design flood elevation specified in ASCE 24, Table 5-1,

5. Utilities and Equipment. Utilities and attendant equipment shall be located at or above the design flood elevation specified in ASCE 24, Table 7-1, or shall be constructed so as to both resist the wave action and prevent water from entering or accumulating within the components during conditions of flooding in accordance with ASCE 24.

This is an application for a variance, pursuant to G107 of Appendix G Flood Resistant Construction Regulations of the 2014 NYC Building Code for construction in a V-Zone, of Sections G304.2, Item 6 and G304.2 Item 2, to permit reconstruction of an existing concession structure to be located on the new Pier 1 of the World’s Fair Marina waterfront facilities.

A public hearing was held on this application on July 27, 2020, after due notice by publication in *The City Record*, with a continued hearing on October 6, 2020, and then to decision on February 22, 2021. Vice-Chair Chanda, Commissioner Ottley-Brown, and Commissioner Sheta performed inspections of the Premises and surrounding area. Community Board 3, Queens, recommends approval of this application on condition that the proposal be expanded to include the area of the promenade located between 27th Avenue and 31st Avenue.

The Premises are the World’s Fair Marina, located north of Whitestone Expressway, in a Park zoning district, in Queens. With approximately 3,500 linear feet of the southern shoreline of Flushing Bay located in Flushing Meadows Corona Park, the Premises are comprised of three main components: Pier 1, Pier 3, and the Esplanade. Pier 1 and Pier 3 are both located within a VE Zone, which FEMA defines as a coastal high hazard area subject to high velocity water and waves.

The applicant requests a variance, pursuant to G107 of Appendix G Flood Resistant Construction Regulations of the 2014 NYC Building Code for construction in a V-Zone, of Sections G304.2, Item 6 and G304.2 Item 2, to permit reconstruction of an existing concession structure to be located on the new Pier 1 of the World’s Fair Marina waterfront facilities.

Pursuant to G107.2.4, the Board is authorized to issue a variance for the construction or substantial improvement of a functionally dependent facility provided that: 1) the

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criteria for Sections G107.2.1 through G107.2.3 are met; and, 2) all methods and materials utilized minimize flood damage during the base flood and create no additional threats to public safety.

The applicant states that the World's Fair Marina is a "Functionally Dependent Facility" that, as defined in Appendix G of the NYC BC, cannot be used for its intended purpose unless it is located or carried out in close proximity to water.

The applicant represents that Pier 1 will be demolished and removed due to its severely deteriorated condition. A new Pier 1 structure will replace the existing but will be relocated closer to the current location of Pier 3. The floating docks associated with Pier 1 will also be replaced with new timber and concrete floating docks. The new Pier 1 will consist of timber decking supported by a reinforced precast concrete beams and pile caps and approximately 60 concrete filled steel pipe piles, which will replace the 630 existing timber piles.

The applicant further states that all methods and materials to be used will be designed to resist wave action during extreme weather and flood events and will create no additional threat to public safety. The concession structure's reinforced concrete structural elements will be adequately designed to prevent floatation, collapse and lateral movement resulting from wind and flood loads. The proposed pier's reinforced concrete deck, reinforced concrete pile caps, and reinforced concrete filled steel pipe piles will be designed and constructed to resist uplift, lateral, and axial forces due to wave action and hydrostatic pressures during extreme weather and flood events. Additionally, all materials for the proposed reconstruction will be flood-damage-resistant in accordance with Section G304.2, Paragraph 4 of the Building Code.

At hearing, the Board raised concerns regarding the pier and concession structure design, specifically with regard to ADA access and the design of the structure as two stories. The Board questioned the backup materials for the applicant's seabed elevation and wave height calculations in relation to the safety of the proposed structure, and whether the design of the pier would be safe and accurate based on existing conditions.

By letter dated February 16, 2021, the applicant requested to withdraw this application without prejudice.

Therefore, it is Resolved, that this application is hereby *withdrawn*.

Adopted by the Board of Standards and Appeals, February 22, 2021.

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 May 24-25, 2021, at 10 A.M., for deferred decision.

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 04699, Lot 22, Borough of Queens.

COMMUNITY BOARD #7Q

ACTION OF THE BOARD – Laid over to May 24-25, 2021, at 10 A.M., for deferred decision.

2019-190-A

APPLICANT – Sheldon Lobel, P.C., for 40-17 28th Avenue LLC, owner.

SUBJECT – Application July 15, 2019 – Appeal of a New York City Department of Buildings determination dated June 14, 2019, that parking garage with 150 parking spaces or less do not require reservoir spaces at this location and that ZR 36-521 does not require commissioner approval for parking garage layouts between 200 and 300 square feet per space if the applicant certifies and states on the Certificate of Occupancy that the garage will be fully attended. C2-2/R5 zoning district.

PREMISES AFFECTED – 40-17 28th Avenue a/k/a 25-92 41st Street, Block 684, Lot 1, Borough of Queens.

COMMUNITY BOARD #1Q

ACTION OF THE BOARD – Laid over to May 10-11, 2021, at 10 A.M., for continued hearing.

2019-276-A

APPLICANT – Pryor Cashman LLP, for Bill Lecomplex, owner.

SUBJECT – Application October 16, 2019 – Proposed enlargement of an existing two-story with cellar single-family home located on the bed of a mapped street contrary to General City Law §35. R1-2 zoning district.

PREMISES AFFECTED – 15 Stuart Lane, Block 8103, Lot 62, Borough of Queens.

COMMUNITY BOARD #11Q

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ACTION OF THE BOARD – Laid over to May 10-11, 2021, at 10 A.M., for continued hearing.

2020-24-A

APPLICANT – Law Offices of Marvin B. Mitzner LLC, for Sela 27th Street LLC, owner.

SUBJECT – Application March 20, 2020 – Appeal seeking a determination that the owner has acquired a common law vested right to obtain a Certificate of Occupancy for a development commenced under the prior zoning district regulations.

PREMISES AFFECTED – 39-35 27th Street, Block 397, Lot 2, Borough of Queens.

COMMUNITY BOARD #1Q

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Shelta, and Commissioner Scibetta5
Negative:0

ACTION OF THE BOARD – Laid over to April 12, 2021, at 10 A.M., for decision, hearing closed.

ZONING CALENDAR

2019-27-BZ

CEQR #19-BSA-085K

APPLICANT – Klein Slowik, PLLC, for Congregation P’Nei Menachem, owner.

SUBJECT – Application February 5, 2019 – Variance (72-21) to permit the development of a house of worship (UG 4) (*Congregation P’nei Menachem*) contrary to ZR 24-35 (minimum required side yards) and ZR 25-31 (parking). R5 zoning district.

PREMISES AFFECTED – 4533 18th Avenue, Block 5439, Lot 20, Borough of Brooklyn.

COMMUNITY BOARD #12BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta5
Negative:0

THE RESOLUTION –

The decision of the Department of Buildings, dated July 13, 2020, acting on Alteration Application No. 321620830, reads in pertinent part: “The proposed plans are contrary to ZR Section 24-11 in that the proposed lot coverage is greater than permitted. The proposed plans are contrary to ZR 24-35 in that the proposed side yard is less than the minimum required.”

This is an application for a variance under Z.R. § 72-21 to legalize—in an R5 zoning district—the conversion and enlargement of an existing building from a two-story, two-family residence into a house of worship that does not

comply with zoning regulations for lot coverage (Z.R. § 24-11) and side yards (Z.R. § 24-35).

This application is brought by Congregation Pnei Menachem (the “House of Worship”), a non-profit religious corporation.

A public hearing was held on this application on November 26, 2019, after due notice by publication in *The City Record*, with continued hearings on March 3, 2020, September 15, 2020, January 12, 2021, and then to decision on February 22, 2021.

Vice-Chair Chanda and Commissioner Ottley-Brown performed inspections of the Premises and surrounding neighborhood.

Community Board 12, Brooklyn, recommends approval, a City Council member submitted testimony supporting this application, and a local resident submitted testimony in support of this application.

I.

The Premises are located on the southeastern side of 18th Avenue, at the intersection with 46th Street, in an R5 zoning district, in Brooklyn. With approximately 22 feet of frontage along 18th Avenue, a depth of 115 feet, and 2,568 square feet of lot area, the Premises are improved with a two-story, with cellar, building that has been converted and enlarged from a two-family residence to a house of worship.

II.

The applicant proposes to legalize the conversion and enlargement of the existing building for use as a house of worship with 2,993 square feet of floor area (1.16 FAR), 76% lot coverage, and no side yards at the rear of the Premises (the “Proposed Building”). The Proposed Building could not be constructed as of right because lot coverage may not exceed 55% in R5 zoning districts, *see* Z.R. § 24-11, and two side yards with 8 feet of width would be required, *see* Z.R. § 24-35. Accordingly, the applicant requests the relief set forth herein.

III.

The Zoning Resolution vests the Board with wide discretion to “vary or modify [its] provision[s] so that the spirit of the law shall be observed, public safety secured and substantial justice done,” Z.R. § 72-21, and 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 in support of this application. Specifically, as held in *Cornell University v. Bagnardi*, 68 N.Y.2d 583 (1986), a zoning board is to 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. General concerns about traffic and disruption of the residential character of the neighborhood are insufficient grounds for the denial of such applications.

A.

Consistent with Z.R. § 72-21, the applicant submits that there are 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 that the Proposed Building is

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necessary to accommodate the House of Worship's programmatic needs.

In support of this contention, the applicant furnished a detailed report on the House of Worship's programmatic needs (the "Programmatic Needs Report") that outlines the House of Worship's religious program, sets forth how an as-of-right building would not accommodate the House of Worship's religious program, and details how the Proposed Building would alleviate these deficiencies.

As to the House of Worship's program, the House of Worship requires sufficient space to accommodate its growing congregation. In particular, the House of Worship's program includes three daily services—with a morning service at 7:00 a.m., an afternoon service at 2:00 p.m., and an evening service at 9:15 p.m.—in two separate worship spaces. The House of Worship's program also needs to provide daily study sessions, with both one-on-one sessions and small group sessions; a multipurpose room for childcare and youth groups; and a modest warming kitchen for occasional events accessory to the House of Worship.

The Programmatic Needs report shows that the House of Worship's program could not be met with an as-of-right development. In particular, because of the Premises' narrow width, developing the Premises in strict compliance with applicable zoning regulations would result in a building width of 6'-3" because of applicable side yard requirements and further reduction of 20% because of lot coverage requirements, resulting in an unusable building that could not meet any of the House of Worship's program.

The Programmatic Needs Report further shows that the Proposed Building would accommodate all the House of Worship's religious program. To this end, at the cellar level, the Proposed Building would contain a multipurpose room sized for 50 people, where childcare could be provided during worship services along with youth-group programming to accommodate approximately 50 children, ranging in age from 7 to 15. This multipurpose space would also be used for study sessions. The proposed warming kitchen, bathroom facilities, and refrigerated trash storage would further support these accessory uses, and no commercial catering or cooking at the Premises is proposed. At the first-floor level, the Proposed Building would contain the main sanctuary, sized for an occupancy of 66 people during worship services with a double-height ceiling and equipped with movable partitions to allow for small accessory functions and study sessions. The first floor further contains a lobby, an accessible restroom, and the main entrance to a wheelchair lift. At the second-floor level, the Proposed Building would be partially open to the main sanctuary below, along with space for one-on-one sessions and group study sessions, sized for a total occupancy of 32 people. In total, the Proposed Building would allow the House of Worship to accommodate its daily operations, including services and study sessions.

Accordingly, the Board finds that there are 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

that the Proposed Building is necessary to accommodate the House of Worship's programmatic needs.

B.

Because the House of Worship is a non-profit organization, the applicant need not demonstrate that there is no reasonable possibility that developing the Premises in strict conformity with the Zoning Resolution would result in a reasonable return.

C.

The applicant submits that the Proposed Building would not alter neighborhood character, impair adjacent properties, or be detrimental to the public welfare. In support of this contention, the applicant studied the surrounding area, finding a mixture of residential and community-facility land uses.

With respect to the built environment, the record reflects that the Proposed Building's height is consistent with the surrounding area, especially given that the proposed height complies with applicable zoning regulations and that the buildings immediately adjacent to the Premises are taller than proposed. Additionally, the Proposed Building employs a residential vernacular to harmonize with the architecture of the block's streetscape. As to the rear yard, the applicant submits that other yards on the block are obstructed with structures in similar way to the proposed rear-yard incursion.

After conducting an inspection of the Premises at the Board's request, the Department of Buildings furnished a detailed inspection report indicating there were possible structural or stability issues at the building: "On the cellar floor, there was a horizontal crack approximately 1 foot away from base of the exposure 4 wall. The crack ran parallel to the exposure 4 wall. The floor between the crack and the wall sloped down towards the wall. The sloped condition was verified with use of a spirit level. . . . There was a metal deck slab beneath a portion of the front yard that was supported by steel framing as well as a brick wall. The deck covered over what appeared to be a previous areaway. The end of the deck that was bearing on the brick wall was corroding. . . . There were localized areas of water-damage to interior finishes throughout the structure and the cellar had a damp and musty odor, which indicated that there may be a water infiltration issue." The Department of Buildings then noted additional items of concern relating to the existing building's structure but that did not directly indicate an inherent stability issue: "In the cellar, the ceiling of the boiler room was not fireproofed and the wood joists of the 1st floor were exposed. The rib beam at the 1st floor framing level was supported by exposed steel columns. The fireproofing requirements for steel columns, as they pertain to existing and/or proposed site conditions, should be verified. . . . Steel elements throughout the building, including lintels over openings in the exterior wall had rust at their exposed surfaces and some suffered loss of section. The rusting exposed steel was ungalvanized, unpainted, or otherwise unprotected from the elements. . . . The entirety of the building is clad in veneer brick. The tie-back condition of the veneer to the backup wall should be verified."

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Based on its observations and review of materials supplied by the applicant, the Department of Buildings concludes: “[T]he building was not without structural issues. The rear extension appeared to have suffered from differential settlement, which indicated that there may be an issue or inadequacy related to the foundations and/or the subsurface beneath the foundations. The foundations and the soils beneath them should be investigated and tested as required by the Building Code. Soil improvement or foundation repairs may be necessary if either the foundation or subsurface are found to be inadequate. There was also evidence of water infiltration at various locations throughout the structure, which if not addressed, could lead to accelerated deterioration of the structural and nonstructural elements of the building. The sources of the water infiltration should be investigated and repaired, and any affected structural elements checked and repaired as necessary as well. Being that this appeared to be a relatively recent alteration and enlargement project, it is reasonable to assume that the evidence of water infiltration may be due to an issue with workmanship rather than aging of the weatherproofing system. . . . FEU does not believe that [the applicant’s] investigation was comprehensive enough to confirm the stability or compliance of the building. [The applicant’s] report verified the construction of the 1st and 2nd floors of both the main portion and rear extension of the building, however, it did not investigate or confirm the adequacy of other critical structural elements, such as the roof, bearing walls, and foundations. Additionally, there are other non-loadbearing elements that are crucial to the safety of the building and the public, such as the tie-back condition of the veneer brick of the exterior walls and the integrity of the weatherproofing system, that [the applicant] did not discuss in their report but that should be verified in order to ensure that the building’s construction is safe. FEU’s overall recommendation is that the owner should be ordered to retain a licensed professional engineer to evaluate the entire building and structure, develop as-built plans of the structure of the building, provide as part of those plans details for the repairs necessary to bring the building into compliance with the Building Code, file those plans with the Department for approval, perform the necessary repairs and alterations under permit, and confirm, by signing off the application, that all of the work has been satisfactorily completed. However, since the owner has proposed both an enlargement and a change of use of the building, FEU suggests that the application for structural repairs be kept separate from that for the enlargement and change of use so that the necessary repair work may not be held up by any delays or denials with respect to the proposed enlargement and change of use.”

In response to questions from the Board at hearing and concerns presented by the Department of Buildings and Fire Department, the applicant revised this application to reflect a second means of egress through a corridor in the cellar to obviate any need for an easement over neighboring properties; to add a lift for accessibility to the cellar and first floor; to relocate the HVAC unit away from neighboring

properties; to provide a 6’-0” wrought iron fence with two rows of planting between the Proposed Building and properties to the rear.

The applicant notes that all site investigations must be undertaken by a professional engineer and further provides a proposed testing protocol (the “Testing Protocol”) and associated sketches to document the existing building’s structural configuration and determine its adequacy for the Proposed Building’s occupancy. The Testing Protocol would determine and document the following: exterior bearing wall composition (materials and thickness, both in the older front portion and the newer rear portion) from the cellar to first floor, first floor to second floor, and second floor to roof by removing and penetrating wall sheetrock, exposing the structural wall, documenting material, sizes, composition and thickness; floor and roof assembly composition (materials and thickness, both in the older front portion and the newer rear portion) at the cellar, first floor, second floor, and roof by removing and penetrating ceiling sheetrock, exposing structural framing members, documenting materials, sizes, composition, and thickness (including timber framing by size, spacing, grade and condition, and span length and C-joint framing by size, spacing, thickness, and span length); foundation wall and footing materials, sizes, and configuration by removing and penetrating wall sheetrock, exposing structural walls, documenting materials, sizes, composition, and thickness and penetrating the cellar floor to expose structural footings, to document material composition, sizes, and thickness and to observe soil conditions; interface conditions at the bearing end of structural horizontal spanning elements and vertical supporting elements by documenting how structural elements are supported by bearing walls and the connection types.

The Testing Protocol further calls for, in addition to probes, material sampling to determine their strength: Windsor probes for concrete as well as cores, where required; compressive strength sampling and prism testing for masonry and mortar; non-destructive masonry testing; and visual identification of timber species and grade (given age and condition as well as historical usage for a conservative definition) with grade sampling and allowable values based on the age of construction as an additional recognized method in accordance with published grading rules for Brooklyn, which are recognized for their accuracy.

The Fire Department states, by letter dated January 19, 2021, that it has no objection to this application on the following conditions: that a fire alarm system must be installed; that the fire alarm system must be a manual and automatic fire alarm system and smoke and carbon monoxide detectors and a central office connection; that a 1½ Hour FPSC door must be installed towards the rear of the cellar for additional access to the egress passageway; and that emergency lighting must be installed in the cellar-level egress passageway.

Accordingly, the Board finds that the proposed variance will not alter the essential character of the neighborhood or district in which the Premises are located;

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will not substantially impair the appropriate use or development of adjacent property; and will not be detrimental to the public welfare.

D.

The applicant notes that the above practical difficulties or unnecessary hardship have not been created by the House of Worship or a predecessor in title and are instead inherent in meeting the House of Worship's programmatic needs. Accordingly, the Board finds that the above practical difficulties or unnecessary hardship have not been created by the applicant or by a predecessor in title.

E.

The applicant submits that the Proposed Building reflects the minimum variance necessary to afford relief within the intents and purposes of the Zoning Resolution. As reflected in the Programmatic Needs Report and discussed in detail above, an as-of-right development would not meet the House of Worship's programmatic needs because, among other things, it would not provide sufficient space to accommodate thrice daily services, study sessions, one-on-one and group meetings, and a multipurpose room for childcare services and small accessory functions. Any further reduction in the size of the Proposed Building would directly result in a loss of seats for the House of Worship's congregation.

Accordingly, the Board finds that the proposed variance is the minimum necessary to afford relief within the intent and purposes of the Zoning Resolution.

IV.

The Board has conducted an environmental review of the proposed action, which is classified as an Unlisted action pursuant to 6 NYCRR, Part 617.2, and has documented relevant information about the project in the Final Environmental Assessment Statement CEQR No. 19BSA085K (February 22, 2021).

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.

No other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable. Accordingly, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

V.

Based on the foregoing, the Board finds that the evidence in the record supports the findings required to be made under Z.R. § 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 Z.R. § 72-21 to *legalize*—in an R5 zoning district—the conversion and enlargement of an existing building from a two-story, two-family residence into a house of worship that does not comply with zoning regulations for lot coverage (Z.R. § 24-11) and side yards (Z.R. § 24-35); *on condition* that all work, operations, and site conditions shall conform to drawings filed with this application marked “Received February 4, 2021”—sixteen (16) sheets; and *on further condition*:

THAT the maximum bulk parameters of the building shall be as follows: a maximum of 76% lot coverage and no side yards at the rear, as illustrated on the Board-approved drawings;

THAT that the fire alarm system shall be a manual and automatic fire alarm system and smoke and carbon monoxide detectors and a central office connection;

THAT a 1½ Hour FPSC door shall be installed towards the rear of the cellar for additional access to the egress passageway;

THAT emergency lighting shall be installed in the cellar-level egress passageway;

THAT the applicant shall return to the Board in 18 months for a compliance hearing to demonstrate compliance with all the Board's conditions, and failure to do so may result in revocation of the variance or other appropriate enforcement action;

THAT copies of materials submitted to the Department of Buildings (including protocols and testing results) shall be forwarded to the Board's compliance officer on an ongoing basis;

THAT the structural stability of the building shall be evaluated and certified to the satisfaction of the Department of Buildings, including the Forensic Engineering Unit, and any failure to comply may result in an earlier compliance hearing and revocation of the variance or other appropriate enforcement action;

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. 2019-27-BZ”), shall be obtained within one year and an additional six months, in light of the current state of emergency declared to exist within the City of New York resulting from an outbreak of novel coronavirus disease, by October 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

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configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals,
February 22, 2021.

2019-280-BZ

CEQR #20-BSA-041M

APPLICANT – Law Office of Jay Goldstein, PLLC, for Chelsea Park Corporation, owner; Strengthen Lengthen Tone LLC, lessee.

SUBJECT – Application November 1, 2019 – Special Permit (§73-36) to legalize the operation of a Physical Cultural Establishment (SLT) located on the second floor of an existing building contrary to ZR §32-10. C6-4M Ladies’ Mile Historic District.

PREMISES AFFECTED – 137 Fifth Avenue, Block 00849, Lot 0002, Borough of Manhattan.

COMMUNITY BOARD #5M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated October 3, 2019, acting on DOB Application No. 123775316, reads in pertinent part:

“Proposed physical culture establishment in C6-4M zoning district is not permitted pursuant to ZR 32-10 & ZR 32-31 and is referred to the Board of Standards & Appeal for Special permit under ZR 73-36.”

This is an application under Z.R. §§ 73-36 and 73-03 to permit, within a C6-4M zoning district in the Ladies’ Mile Historic District, the legalization of a physical culture establishment (“PCE”) on a portion of the second floor of an existing 12-story commercial building, contrary to Z.R. § 32-10.

A public hearing was held on this application on August 25, 2020, after due notice by publication in *The City Record*, with continued hearings on November 10, 2020 and December 15, 2020 and then to decision on February 22, 2021. Vice Chair Chanda performed an inspection of the site and surrounding neighborhood. Community Board 5, Manhattan, waived its recommendation of this application. The Board received one letter of objection citing concerns over noises from emanating from the PCE through the alleyway into the adjacent residential properties.

The Premises are located on the east side of Fifth Avenue between East 20th Street and East 21st Street, within a C6-4M in the Ladies’ Mile Historic District zoning district, in Manhattan. The lot has approximately 29 feet of frontage along Fifth Avenue, a depth of 113 feet, and 3,265 square feet of lot area. The Premises are occupied by an existing 12-story commercial building.

The Board notes that its determination is subject to

and guided by Z.R. § 73-03. The Board notes that pursuant to Z.R. § 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. As a threshold matter, the Board notes that the Premises are within the boundaries of a designated area in which the subject special permit is available.

The applicant represents that the PCE occupies 2,851 square feet of floor area on a portion of the second floor with a reception area, studio, two bathrooms, and a changing room. The PCE has operated since November 2014 as “SLT,” with the following hours of operation: 5:00 a.m. to 10:00 p.m., Monday through Friday; 8:00 a.m. to 8:00 p.m., Saturday and Sunday.

The applicant represents that PCE use will neither impair the essential character nor the future use or development of the surrounding area because the PCE will be entirely contained within the cellar and a portion of the first floor of an existing mixed-use residential and commercial building, and, as such, visibility from the street will be limited. The applicant further states that the surrounding area is primarily comprised of residential, commercial, manufacturing, and community facilities uses, and the PCE will not attract significant additional traffic to the area.

The applicant submits that sound attenuation measures will be maintained to ensure the PCE operation does not negatively impact nearby occupied spaces. These measures include: a vestibule surrounds the elevator and stair core to reduce vertical sound transition. The studio is enclosed off from the reception area to contain sound within the studio. All penetrations at studio ceilings and walls are sealed with mineral fiber insulation and caulked. Acoustic Panels (24" x 48") are mounted to the ceiling above each speaker using mounting brackets. Audio system has maximum caps set in place to prevent other tenants from hearing music. Existing floor and ceiling construction has an STC rating of 63.

The applicant states that the Premises are not equipped with a fire alarm, as one is not required, but do have a sprinkler system. By correspondence dated August 19, 2020, the Fire Department, Bureau of Fire Prevention states that the Premise have a fire suppression system (standpipe and sprinkler) that has been tested and FDNY permits are current. A fire alarm system is also installed but has not been approved. A “Letter of Defect” and a violation order has been issued to make repairs to the system. The Bureau has reviewed the plans submitted to the Board and has two objections. 1) The door in the vestibule swings against the direction of egress and 2) the applicant should provide first floor plans showing the path of egress to east 20th Street.

MINUTES

Based on the foregoing, the Fire Department objections to the application.

On August 25, 2020, the Fire Department, Bureau of Fire Prevention states that it is in receipt of new plans filed with the Board which show the egress passageway to East 20th Street at the first floor and is satisfied that it complies with their objection. As per the Architect of Record, the door in the PCE space need not swing in the direction of egress based on the following:

“The occupancy is only 37, thus less than 75 persons, and is allowed to swing in as per 1968 Building Code, § 27-371(g). The room is only required to have one door under section 27-365 and thus does not have to swing in the direction of exit travel. They also said that this swing direction also complies with 2014 Building Code since it is less than 50 persons it can still swing a per BC 1008.1.2.2 #2.”

Based upon the foregoing, the Fire Department has no objection to the application.

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.

The applicant submits that the PCE contains facilities for classes, instruction and programs for physical improvement, body building, weight reduction, and aerobics. 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.

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.

Based on the foregoing, 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. In addition, the Board finds that the operation of the PCE will not interfere with any public improvement project.

The project is classified as a Type II action pursuant to 6 NYCRR Part 617.5, as noted in CEQR Checklist No. 20BSA041M.

Accordingly, the Board has determined that the evidence in the record supports the requisite findings for the special permit pursuant to Z.R. §§ 73-36 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion. The term of the special permit has been reduced to reflect the period the PCE operated without approval from the Board.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby make each and every one of the findings required under Z.R. §§ 73-36 and 73-03 to *permit*, within a C6-4M in the Ladies’ Mile Historic District zoning district, the legalization of a physical culture establishment on a portion of the second floor of an existing 12-story commercial building, contrary to Z.R. § 32-10, *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked “Received

February 22, 2021”– Five (5) sheets; and *on further condition*:

THAT this grant shall be limited to a term of ten years, expiring November 1, 2024;

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-foot-wide exit pathways shall be maintained leading to the required exits and that pathways shall be maintained unobstructed, including from any equipment;

THAT an approved fire alarm and sprinkler system shall be maintained in the entire PCE space, as indicated on the Board-approved plans;

That sound testing must be completed in the alleyway when the PCE is operational;

THAT accessibility shall be provided pursuant to the standards set forth in applicable accessibility laws, including but not limited to Chapter 11 of the NYC Building Code, the 2009 American National Standards Institute (ANSI) A117.1 and Title III of the Americans with Disabilities Act, as reviewed and approved by DOB;

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. 2018-280-BZ”), shall be obtained within one year and an additional six months, in light of the current state of emergency declared to exist within the City of New York resulting from an outbreak of novel coronavirus disease, by September 4, 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;

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 22, 2021.

2017-21-BZ

APPLICANT – Mitchell S. Ross, Esq., for Astoria Ice, Inc., owner; Astoria Sports Complex, lessee.

SUBJECT – Application January 24, 2017 – Variance (§72-21) to permit the enlargement of an existing building contrary to ZR §43-28 (Rear Yard Equivalent) and a Special Permit (§73-36 to permit the operation of a Physical Cultural Establishment (Astoria Sports Complex) which is contrary to ZR §42-10. M1-5 zoning district.

PREMISES AFFECTED – 34-38 38th Street, Block 645, Lot 10, Borough of Queens.

COMMUNITY BOARD #1Q

MINUTES

ACTION OF THE BOARD – Laid over to June 14-15, 2021, at 10 A.M., for adjourned hearing.

2020-72-BZ

APPLICANT – Kramer Levin Naftalis & Frankel, for LTF Club Operations, owner.

SUBJECT – Application September 11, 2020 – Special Permit (§73-36) to permit the operation of a physical cultural establishment (Life Time) located in the cellar, ground and mezzanine floors of an existing building contrary to ZR §42-10. M1-2/R8 (MX-2) zoning district.

PREMISES AFFECTED – 85 Jay Street, Block 54, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #2BK

ACTION OF THE BOARD – Laid over to March 22-23, 2021, at 10 A.M., for deferred decision.

**PUBLIC HEARINGS
MONDAY-TUESDAY AFTERNOON
FEBRUARY 22-23, 2021, 2:00 P.M.**

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

ZONING CALENDAR

2017-262-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Delson Developments, LLC, owner.

SUBJECT – Application September 7, 2017 – Variance (§72-21) to permit the construction of three-story plus cellar residential building contrary to ZR §42-00. M1-1 zoning district.

PREMISES AFFECTED – 18 Stanwix Street, Block 03162, Lot 0007, Borough of Brooklyn.

COMMUNITY BOARD #4BK

ACTION OF THE BOARD – Laid over to June 14-15, 2021, at 10 A.M., for continued hearing.

2018-173-BZ

APPLICANT – Law Office of Jay Goldstein, for Beachfront Developers LLC, owner.

SUBJECT – Application November 2, 2018 – 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.

PREMISES AFFECTED – 128 Beach 9th Street, Block 15612, Lot 0026, Borough of Queens.

COMMUNITY BOARD #14Q

ACTION OF THE BOARD – Laid over to July 22-23, 2021, at 10 A.M., for continued hearing.

2019-38-BZ

APPLICANT – Sheldon Lobel, P.C., for Peabody Real Estate Co., Inc., owner; CoreBalFit, Inc., lessee.

SUBJECT – Application February 28, 2019 – Special Permit (§73-36) to permit the operation of a Physical Culture Establishment (*CoreBalFit*) to be located on the 1st floor of an existing building contrary to ZR §42-10. M1-1 zoning districts.

PREMISES AFFECTED – 222-34 96th Avenue, Block 10812, Lot 0091, Borough of Queens.

COMMUNITY BOARD #13Q

ACTION OF THE BOARD – Laid over to April 26-27, 2021, at 10 A.M., for continued hearing.

2019-91-BZ

APPLICANT – Michio Sanga, for Umer I. Chaudhry, owner.

SUBJECT – Application May 13, 2019 – Variance (§72-21) to permit the development of a two-family residence contrary to ZR §23-142 (floor area ratio); ZR §23-22 (density); ZR §23-45 (front yard); ZR §23-461 (side yard); and ZR §25-22 (parking). R3X zoning district.

PREMISES AFFECTED – 97-09 24th Avenue, Block 1091, Lot 0041, Borough of Queens.

COMMUNITY BOARD #3Q

ACTION OF THE BOARD – Laid over to May 10-11, 2021, at 10 A.M., for continued hearing.

2019-92-BZ

APPLICANT – Michio Sanga, for Summer. Chaudhry, owner.

SUBJECT – Application May 13, 2019 – Variance (§72-21) to permit the development of a two-family residence contrary to ZR 22-12 (Use); ZR §23-142 (floor area ratio); ZR §23-22 (density); ZR §23-461 (side yard); ZR 23-47 (rear yard); and ZR §§25-22 & 25-621 (parking). R3X zoning district.

PREMISES AFFECTED – 23-39 98th Street, Block 1092, Lot 0062, Borough of Queens.

COMMUNITY BOARD #3Q

ACTION OF THE BOARD – Laid over to May 10-11, 2021, at 10 A.M., for continued hearing.

2020-8-BZ

APPLICANT – Francis R. Angelino, Esq., for Lerad Company, owner; Bode NYC, lessee.

SUBJECT – Application January 14, 2020 – Special Permit (§73-36) to permit the operation of a physical cultural establishment (Bode) to be located on a portion of the second floor of an existing building contrary to ZR §32-10.

MINUTES

C1-9 zoning district.

PREMISES AFFECTED – 173 East 83rd Street, Block 1512, Lot 0033, Borough of Manhattan.

COMMUNITY BOARD #8M

ACTION OF THE BOARD – Laid over to April 12-13, 2021, at 10 A.M., for continued hearing.

2020-62-BZ

APPLICANT – Akerman LLP, for PFNY, LLC, lessee.

SUBJECT – Application July 30, 2020 – Special Permit (§73-36) to permit the legalization of the operation of a physical culture establishment (Planet Fitness) on portions of the first and second floors of an existing building contrary to 32-10. C8-3 zoning district.

PREMISES AFFECTED – 90 West 225th Street, Block 2215, Lot 7502, Borough of Manhattan.

COMMUNITY BOARD #7M

ACTION OF THE BOARD – Laid over to April 12-13, 2021, at 10 A.M., for continued hearing.

Carlo Costanza, Executive Director

BULLETIN

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March 19, 2021

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HEARINGS HELD -	TELECONFERENCE PUBLIC HEARINGS
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- 2017-145-BZ 241 East 59th Street, Manhattan
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2021-16-BZ

302 W. 128th Street, Block 1954, Lot(s) 0136, Borough of **Manhattan, Community Board: 10**. Variance (§72-21) to permit the development of a building to contrary to ZR §23-692(d)(2), a/k/a the “sliver law,” to allow the proposed building to exceed the maximum allowable building height by 6.07 feet, and (b) ZR §23-62(g)(3)(i) to allow the elevator and stair bulkheads to exceed the maximum allowable area for permitted obstructions by 148.64 square feet. R8A/C2-4 zoning district. R8A/C2-4 district.ddr44s

2021-17-BZ

87-19 Rockaway Boulevard, Block 9060, Lot(s) 0025, Borough of **Queens, Community Board: 4**. Special Permit (§73-211) to permit the operation of an Automotive Service Station contrary to ZR §32-10. C2-3/R6B zoning district. C2-3 in R6B district.

2021-18-BZ

118 Flatbush Avenue, Block 00180, Lot(s) 7501, Borough of **Brooklyn, Community Board: 2**. Special Permit (§73-36) to permit the operation of a physical cultural establishment (CKO Kickboxing) contrary to ZR 32-10. C2-4/R7A Special Downtown Brooklyn zoning district. R7A/C2-4 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

TELECONFERENCE PUBLIC HEARINGS APRIL 26-27, 2021, MONDAY-TUESDAY 10:00 A.M. and 2:00 P.M.

NOTICE IS HEREBY GIVEN of teleconference public hearings, Monday, April 26, 2021, at 10:00 A.M. and 2:00 P.M., and Tuesday April 27, 2021, at 10:00 A.M. and 2:00 P.M., to be streamed live through the Board's website (www.nyc.gov/bsa), with remote public participation, on the following matters:

SPECIAL ORDER CALENDAR

7-95-BZIII

APPLICANT – Law Office of Fredrick A. Becker, for Redmont Realty Company, LLC, owner; TSI Whitestone, LLC dba New York Sports Club, lessee.

SUBJECT – Application November 2, 2020 – Amendment of a previously approved Variance (§72-21) which permitted the operation of a physical cultural establishment (*New York Sports Club*). The amendment seeks to relocate the facility to another portion of the zoning lot; Extension of Time to Obtain a Certificate of Occupancy which expired on February 14, 2018; Waiver of the Board's Rules of Practice and Procedures. C1-2/R3-2 zoning district.

PREMISES AFFECTED – 153-37 Cross Island Parkway, Block 4717, Lot 16, Borough of Queens.

COMMUNITY BOARD #7Q

238-07-BZ

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for Graduate Center Foundation Housing Corporation, LIC, owner.

SUBJECT – Application September 22, 2020 – Extension of Time to Complete Construction of a previously approved variance (§72-21) which allowed the construction of a 12-story mixed-use residential/commercial building and a 6-story graduate student housing building which expired on September 23, 2020. M1-4 and M1-4/R6A Special Long Island City Purpose District.

PREMISES AFFECTED – 5-17 47th Avenue, Block 00028, Lot(s) 12,15,17,18,121, Borough of Queens.

COMMUNITY BOARD #2Q

APPEALS CALENDAR

2019-207-A

APPLICANT – Eric Palatnik, P.C., for Fongtar Realty Inc., owner.

SUBJECT – Application August 27, 2019 – Appeal of a New York City Department of Buildings determination.

PREMISES AFFECTED – 32-35 Queens Boulevard, Block 244, Lot 50, Borough of Queens.

COMMUNITY BOARD # 2Q

2020-16-A

APPLICANT – Eric Palatnik, P.C., for Fongtar Realty Inc., owner.

SUBJECT – Application January 31, 2020 – Appeal seeking a determination that the owner has acquired a common law vested right to obtain a Certificate of Occupancy for a development commenced under the prior zoning district regulations.

PREMISES AFFECTED – 32-35 Queens Boulevard, Block 244, Lot 50, Borough of Queens.

COMMUNITY BOARD #2Q

ZONING CALENDAR

2019-32-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 801 Co-Op City Boulevard Realty LLC, owner; Co-Op Medical Realty LLC, lessee.

SUBJECT – Application February 11, 2019 – Project: Special Permit (§73-44) to permit the reduction of required accessory off-street parking spaces for an ambulatory diagnostic or treatment facility (UG 4) (PRC-B1 parking category) contrary to ZR §36-21. C4-1 zoning district.

PREMISES AFFECTED – 801 Co-Op City Boulevard, Block 5141, Lot 0280, Borough of Bronx.

COMMUNITY BOARD #10BX

2019-38-BZ

APPLICANT – Sheldon Lobel, P.C., for Peabody Real Estate Co., Inc., owner; CoreBalFit, Inc., lessee.

SUBJECT – Application February 28, 2019 – Special Permit (§73-36) to permit the operation of a Physical Culture Establishment (*CoreBalFit*) to be located on the 1st floor of an existing building contrary to ZR §42-10. M1-1 zoning districts.

PREMISES AFFECTED – 222-34 96th Avenue, Block 10812, Lot 0091, Borough of Queens.

COMMUNITY BOARD #13Q

CALENDAR

2019-294-BZ

APPLICANT – The Law Offices of Marvin B. Mitzner LLC, for GM7 Realty LLC, owner.

SUBJECT – Application November 15, 2019 – Variance (§72-21) to permit the construction of a mixed-use residential building (UG 2) with ground floor commercial (UG 6) contrary to underlying bulk requirements. C2-4/R7D zoning district.

PREMISES AFFECTED – 241-243 Throop Avenue, Block 1756, Lot 6, Borough of Brooklyn.

COMMUNITY BOARD #3BK

2020-1-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 31 West 27th Street Property Investors IV, LLC, owner; Equinox West 27th Street, Inc., lessee.

SUBJECT – Application January 3, 2020 – Special Permit (§73-36) to permit the operation of a physical culture establishment (Equinox) within an existing commercial building §42-10. M1-6 zoning district. Madison Square North Historic District.

PREMISES AFFECTED – 31 West 27th Street, Block 829, Lot 16, Borough of Manhattan.

COMMUNITY BOARD #5M

2020-18-BZ

APPLICANT – Eric Palatnik, P.C, for Albert Hasson, owner.

SUBJECT – Application December 16, 2020 – Request for Re-Hearing of an application requesting a Special Permit (§73-622) to permit the enlargement of an existing single-family home contrary to ZR §23-142 (floor area) which was denied on October 19, 2020. R3-1 zoning district

PREMISES AFFECTED – 920 Shore Boulevard, Block 8746, Lot 107, Borough of Brooklyn.

COMMUNITY BOARD #15BK

2020-73-BZ

APPLICANT – Sheldon Lobel, P.C., for Lampros Mournouris, as Trustee, South Bronx Charter School for International Cultures and the Arts, lessee.

SUBJECT – Application September 14, 2020 – Special Permit (73-19) to permit the construction of a new school (UG 3) (South Bronx Charter School for International Cultures and the Arts) contrary to ZR 42-10. M1-4 zoning district.

PREMISES AFFECTED – 2500 Park Avenue, Block 2322, Lot 5, Borough of the Bronx.

COMMUNITY BOARD #2BX

Margery Perlmutter, Chair/Commissioner

MINUTES

**PUBLIC HEARINGS
MONDAY-TUESDAY MORNING
MARCH 8-9, 2021, 10:00 A.M.**

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

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

ACTION OF THE BOARD – Application granted on condition.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta5

Negative:.....0

THE RESOLUTION –

This is an application for an extension of term of a variance, under Z.R. § 11-411, which permitted a change in use from Use Group (“UG”) 16B automobile repairs to UG 16B automobile sales and expired on July 24, 2019.

A public hearing was held on this application on May 4, 2020, after due notice by publication in *The City Record*, with continued hearings on July 13, 2020, October 5, 2020, November 30, 2020, and February 8, 2021, and then to decision on March 8, 2021. Vice-Chair Chanda performed an inspection of the Premises and surrounding area. Community Board 11, Queens, recommends approval of this application.

The Premises are located on the south side of Northern Boulevard, between the Alley Creek Shoreline and 234th Street, in an R1-2 zoning district, in Queens. With approximately 104 feet of frontage along Northern Boulevard and 9,492 square feet of lot area, the Premises are occupied by an existing one-story UG 16 automobile repair shop building (1,477 square feet of floor area).

The Board has exercised jurisdiction over the Premises 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 years, expiring April 12, 1943, on condition that the plot be leveled substantially to the grade of Northern Boulevard; the accessory building not exceed one story in height or 12 by 16 feet in area; the Premises for a depth of at least 50 feet southerly from Northern Boulevard be surfaced with cracked bluestone, properly bound and rolled; the gasoline pumps not be

erected closer to any street building line than 20 feet; no automobile repair be carried on or any parking or storage of cars on the Premises other than those being serviced; entrances to the Premises not exceed two from Northern Boulevard or entrance exceed 25 feet in width; and, all required permits be obtained and all work involved completed within one year.

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, on condition 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; the gasoline pumps not be closer than 15 feet to the building line of Northern Boulevard; no portion of the curb cut nor splay for the same be located closer than three feet to the side lot line, as extended at right angles to the street building line of Northern Boulevard; 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 feet; and, all permits required be obtained and all work involved completed by April 12, 1939.

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 fiberboard and stucco on metal lath on the exterior and 16 gauge metal on the interior on condition that the roof may be constructed of steel plates covered with fiber board and metal and approved roof surfacing; 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.

On March 2, 1943, under the subject calendar number, the Board granted an extension of the term of the variance for an additional five years, expiring March 2, 1948, on condition that all permits required be obtained and all work involved completed within three months.

On April 6, 1948, under the subject calendar number, the Board granted a further extension of the term of the variance for five years, expiring April 6, 1953.

On November 25, 1952, under the subject calendar number, the Board granted an additional ten-year extension of the term of the variance, expiring November 25, 1962.

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

MINUTES

(non-automatic), minor motor vehicle repairs with hand tools only and parking of more than five motor vehicles for a term of 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; there be no windows in the south wall of the accessory building; the 5'-6" brick wall be extended from the easterly lot line to the building on the adjoining property; all debris be removed from the Premises and that the sidewalks and curbs be put in condition satisfactory to the Borough President.

On November 13, 1963, under the subject calendar number, the Board granted a one-year extension of time to obtain permits and complete work, expiring November 13, 1964.

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.

On July 20, 1965, under the subject calendar number, the Board granted a one-year extension of time to obtain permits and complete work, expiring July 20, 1966.

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.

On March 2, 1982, under the subject calendar number, the Board amended the resolution to extend the term of the variance for ten 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; the Premises be maintained clean and free of debris at all times; 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, a new certificate of occupancy be obtained within one year.

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.

On June 12, 1992, under the subject calendar number, the Board granted a five-year extension of the term of the variance, expiring October 31, 1996, on condition that there be no parking on the sidewalk; there be no mobile signs on the sidewalk; the fences be properly maintained and repaired when needed; the property be maintained in substantial compliance with existing and proposed conditions and that a new certificate of occupancy be obtained within one year.

On January 10, 1995, under the subject calendar number, the Board waived its Rules of Practice and Procedures and granted a 31-month extension of time to obtain a certificate of occupancy.

On July 29, 1997, under the subject calendar number, the Board granted an additional extension of the term of the variance limited to five years from July 15, 1997, expiring July 15, 2002, on condition that there be no sale or storage of vehicles, except cars awaiting service; the Premises be maintained in substantial compliance with the drawings and that a new certificate of occupancy be obtained within one year.

On May 6, 2003, under the subject calendar number, the Board waived its Rules of Practice and Procedures and amended the variance to extend the term for additional ten 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; any graffiti located on the Premises be removed within 48 hours; conditions appear on the certificate of occupancy; and, fencing be repaired within 30 days and photographic evidence of the repair provided to the Board's Executive Director within that period.

On June 4, 2013, under the subject calendar number, the Board waived its Rules of Practice and Procedures and granted a ten-year extension of term of the variance, expiring July 15, 2022, on condition that all use and operations substantially conform to the Board-approved drawings; the Premises be maintained free of debris and graffiti; signage comply with C1 district regulations; 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.

On July 24, 2018, under the subject calendar number, the Board granted a one-year extension of term, to expire on July 24, 2019, and approved a change in use from UG 16B automobile repairs to UG 16B automobile sales, on condition that all work and site conditions comply with drawings filed with the application; fencing be replaced as specified on the Board-approved plans and maintained so as to remain in a first-class condition; asphalt be resurfaced throughout the lot and all parking spaces be restriped, as specified on the Board-approved plans; the building be repaired, painted, and maintained so as to remain in a first-class condition; the refuse enclosure be installed in the location indicated on the Board-approved plans; landscaping 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; all debris be removed from the

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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Premises and the sidewalks and curbs be installed in a condition satisfactory to the Borough President; the Premises be maintained clean and free of debris and graffiti at all times; there be no parking on the sidewalk adjacent to the Premises; there be no mobile signs on the sidewalk adjacent to the Premises; any graffiti located on the Premises be removed within 48 hours; all signage at the Premises comply with C1 district regulations; the conditions appear on the certificate of occupancy; all conditions from prior resolution 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, 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.

The term of the variance having expired, the applicant now seeks an extension.

Over the course of hearings, the Board questioned whether the Premises was appropriately operating independently from adjacent locations, namely, 233-20 Northern Boulevard, under separate jurisdiction by the Board under BSA Cal. No. 334-78-BZ. Specifically, the Board raised concern that the two locations were not operated independently. In response, the applicant submitted an operational plan, stating that two businesses operate on the Premises in accordance with the previously approved plan: one as a Use Group 9 car dealership/showroom and the other as a Use Group 16 automotive repair; the car dealership/showroom will operate from 10 a.m. to 7 p.m. Monday through Saturday; there will only be 18 parking spaces—12 spaces allotted for the showroom and 6 spaces for auto repair; the auto repair shop will operate from 9 a.m. to 6 p.m. seven days per week; the Premises is proposed to maintain the “Automotive Repair” use, limiting the repair to minor repairs with hand tools only; the day to day operations will include standard car repairs and maintenance, such as changing oil, repairing transmissions, changing brakes, and sales of automobiles, and, on average, during peak hours, there will not be more than two customers at a time.

Further, the applicant recorded a restrictive declaration against the Premises, under City Register File No. 2021000132738, stating in pertinent part:

NOW, THEREFORE, in consideration of BSA approval to allow the extension of term of a variance [...] Declarant does hereby declare the following:

1. THAT the Premises be used separately and apart from its adjacent neighbor at 233-20 Northern Boulevard, restricting access by a fence.
2. THAT parking stalls on the site will be for both auto sales and auto repair use.
3. THAT parking stalls on the site will be limited to not more than 18 stalls of which (12) stalls are designated for auto sales and

- (6) spaces are designated for auto repair.
4. THAT the customers of the auto repair use will be received by the technician and the designated drop off area for vehicles for repair will at the entrance of the auto repair shop.
5. THAT there will be no parking on the sidewalk at any time.
6. THAT this Declaration may not be modified, amended or terminated without the prior written consent of the BSA.
7. THAT 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 assignees.
8. THAT failure to comply with the terms of this declaration may result in the revocation of a building permit or Certificate of Occupancy as well as any other authorization or waiver granted by the BSA; and
9. THAT this Declaration shall be recorded at the City Register 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.

The Board also raised concerns regarding the maintenance of the Premises and the applicant submitted photographs and plans demonstrating the installation of bollards to control parking at the Premises, the removal of razor wire on the Premises fencing, effective circulation about the Premises, and proper drainage.

The Fire Department states, by correspondence dated April 29, 2020, that the Premises require a permit from the Fire Department for “Motor Vehicle Repair Shop” as described in Section FC 2211 of the 2014 Fire Code, which if the Board of Standards and Appeals grants this application, will be inspected by the Bureau of Fire Prevention after an amended certificate of occupancy has been issued by the Department of Buildings. Based on the foregoing, the Fire Department has no objection to the application. The Bureau of Fire Prevention will inspect the Premises and enforce all applicable rules and regulations.

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; the Board of Standards and Appeals does hereby *amend* the resolution, dated April 12, 1938, as amended through July 24, 2018, so that as amended this portion of the resolution shall read: “to extend the term of the variance for ten years, to expire on March 8, 2031; *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked ‘Received February 26, 2021–Ten (10) sheets’; and *on further condition:*

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THAT the term of this grant shall be limited to ten years, to expire March 8, 2031;

THAT the Premises shall be used separately and apart from its adjacent neighbor at 233-20 Northern Boulevard, restricting access by a fence;

THAT parking stalls on the Premises shall be for both auto sales and auto repair use;

THAT parking stalls on the Premises shall be limited to not more than 18 stalls of which 12 stalls are designated for auto sales and 6 stalls are designated for auto repair;

THAT the customers of the auto repair use shall be received by the technician and the designated drop off area for vehicles for repair will at the entrance of the auto repair shop;

THAT there shall be no parking on the sidewalk at any time;

THAT failure to comply with the terms of the restrictive 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;

THAT fencing shall be maintained so as to remain in a first-class condition;

THAT the building shall be maintained so as to remain in a first-class condition;

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 the Premises shall be maintained clean and free of debris and graffiti at all times;

THAT all signage at the Premises shall comply with C1 district regulations;

THAT the restrictive declaration recorded under City Register File No. 2021000132738 shall remain recorded against the property;

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. 551-37-BZ’) and the restrictive declaration recorded against the Premises under City Register File No. 2021000132738—shall be obtained within one year and an additional six months, in light of the current state of emergency declared to exist within the City of New York resulting from an outbreak of novel corona virus disease, by November 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;

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 8, 2021.

590-76-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Cinfiors Ltd., owner.

SUBJECT – Application August 10, 2020 – Extension of Term of a previously granted Variance (§72-21) for an existing illuminated sign that exceeds the permitted height above curb level. C2-8 zoning district.

REMISES AFFECTED – 243 East 59th Street, Block 1414, Lot 120, Borough of Manhattan.

COMMUNITY BOARD #8M

ACTION OF THE BOARD – Application granted.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

This is an application for an extension of term of a variance, previously granted by the Board pursuant to Z.R. § 72-21, which permitted the use of an illuminated advertising sign that exceeds the permitted height above curb level, and expired on July 19, 2020.

A public hearing was held on this application on February 22, 2021, after due notice by publication in *The City Record*, and then to decision on March 8, 2021. Community Board 8, Manhattan, recommends approval of this application.

The Premises are located on the northwest corner of East 58th Street and Second Avenue, within a C2-8 zoning district and in the Special Transit Land Use District, in Manhattan.

The Board has exercised jurisdiction over the Premises since July 19, 1977, when, under the subject calendar number, the Board granted a variance, under Z.R. § 72-21, to permit the reconstruction of an existing advertising sign that exceeds the permitted height above curb level and to install illumination on condition that all work substantially conform to drawings as they apply to the objection, filed with the application; the variance be for a term of three years; all laws, rules, and regulations applicable be complied with; and, substantial construction be completed within one year.

On April 15, 1980, and May 7, 1985, under the subject calendar number, the Board amended the variance to extend the term for periods of five years, the latter of which to expire July 19, 1990, on condition that other than as amended the resolution be complied with in all respects.

On June 12, 1990, and March 28, 2000, under the subject calendar number, the Board further amended the variance to extend the term for periods of ten years, the latter of which to expire on July 19, 2010, on condition that the Premises be maintained in substantial compliance with the existing and proposed drawings, other than as amended the resolution be complied with in all respects, and a new certificate of occupancy be obtained within one year, by March 28, 2001.

On October 20, 2009, under the subject calendar number, the Board further amended the variance to extend

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the term for ten years, to expire on July 19, 2020, on condition that all conditions from prior resolutions not specifically waived by the Board remain in effect, and the Department of Buildings ensure compliance with all 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.

The term of the special permit having expired, the applicant now seeks an extension.

The applicant represents that no changes to the location or design of the sign have occurred or are proposed. The applicant further states that no complaints have been issued with respect to the sign that has been in place for more than 40 years, and seeks a 10 year extension of the term.

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 *amends* the resolution, dated July 19, 1977, as amended through October 20, 2009, so that as amended this portion of the resolution shall read: “to extend the term of the variance for ten years, to expire on July 19, 2030; *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked ‘Received March 11, 2020–Three (3) sheets’; and *on further condition*:

THAT the term of the variance shall expire on July 19, 2030;

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, also indicating this approval and calendar number (“BSA Cal. No. 590-76-BZ”), shall be obtained within one year and an additional six months, in light of the current state of emergency declared to exist within the City of New York resulting from an outbreak of novel coronavirus disease, by September 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;

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 8, 2021.

334-78-BZ

APPLICANT – Eric Palatnik, P.C., for 9123 LLC, owner.
SUBJECT – Application August 23, 2019 – Extension of Term of a previously approved Variance (§72-21) which permitted the operation of an Automotive Repair Facility (UG 16B) which expired on July 24, 2019. 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 –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

This is an application for an extension of term of a variance, previously granted by the Board under Z.R. § 72-21, which permitted the use of the Premises as a Use Group (“UG”) 9 car dealership/showroom and UG 16 automotive repair and expired on July 24, 2019.

A public hearing was held on this application on May 4, 2020, after due notice by publication in *The City Record*, with continued hearings on July 13, 2020, October 5, 2020, November 30, 2020, and February 8, 2021, and then to decision on March 8, 2021. Vice-Chair Chanda performed an inspection of the Premises and surrounding area. Community Board 11, Queens, recommends approval of this application.

The Premises are located on the southwestern corner of Northern Boulevard and 234th Street, in an R1-2 zoning district, in Queens. With approximately 62 feet of frontage along Northern Boulevard, 117 feet of frontage along 234th Street, and 16,606 square feet of lot area, the Premises are occupied by an existing one-story commercial building with UG 9 car dealership/showroom and UG 16 automotive repair uses.

The Board has exercised jurisdiction over the Premises since September 28, 1948, when, under BSA Cal. No. 447-48-BZ, the Board granted a variance permitting the use of the Premises for the sale and display of more than five used cars for a term of five years, expiring September 28, 1953, on condition that during the term of the variance, the Premises be occupied for no other use; the plot be leveled substantially to the grade of surrounding streets and be surfaced with steam cinders or crushed bluestone; a continuous woven wire type fence with anchored steel posts not less than five feet in height be installed on the interior lot lines; 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 one foot in height except for openings to Northern Boulevard and Alley Pond Parkway; lighting for general illumination be on post standards with metal reflectors; no nonconforming signs be installed; during the variance term, no building be installed on the Premises unless approved by

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the Board; and, all permits be obtained and all work completed within one year.

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.

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 years, expiring November 25, 1957, on condition that all work be completed and a certificate of occupancy be obtained within six months.

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 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 tailpipes, that such construction and use may be permitted for a term of ten 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 five used cars for an additional ten years.

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 15 years from the date of the amended resolution, expiring September 30, 1973.

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 oxyacetylene torch subject to a proper permit issued by the Fire Commissioner."

On October 4, 1978, under the subject calendar number, the Board permitted, pursuant to Z.R. §§ 11-413 and 72-21, 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; the surface area of the signs be limited to 481 square feet maximum; the term of the variance be limited to ten years, expiring October 4, 1988; and, substantial construction be completed within one year.

On June 26, 1979, under the subject calendar number and subsequent to the receipt of a conditional 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 (oxyacetylene 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."

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.

On July 18, 1990, under the subject calendar number, the Board waived its Rules of Practice and Procedures, extended the term of the variance for ten 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.; the sidewalks be maintained and repaired where required; striping be painted in the parking area; steel barriers be installed at the building lines where appropriate; the west side wall of the building be repainted to match the east side wall; the rear fence be maintained and repaired where required; the gate be kept locked during nonbusiness hours; there be no storage of parts or materials in the open area at any time; and, a new certificate of occupancy be obtained within one year.

On March 2, 1993, under the subject calendar number, the Board waived its Rules of Practice and Procedures and amended the resolution to extend the time in which to obtain a new certificate of occupancy for 34 months from July 18, 1991.

On July 25, 2000, under the subject calendar number, the Board waived its Rules of Practice and Procedure and granted an extension of the term of the variance for a term of ten years, expiring October 4, 2008, on condition that the Premises be maintained free of debris and graffiti; the use portable identification signs be kept indoors at night; all signs be maintained in accordance with BSA-approved plans; all conditions appear on the certificate of occupancy and that a new certificate of occupancy be obtained within two years.

On July 24, 2018, under the subject calendar number, the Board waived its Rules of Practice and Procedure and further amended the variance to extend the term for one year, 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 comply with drawings filed with the application; fencing be replaced as specified on the Board-approved plans and maintained so as to be remain in a first-class condition; asphalt be resurfaced throughout the lot and all parking spaces be restriped, as specified on the Board-approved plans; the building be repaired, painted and maintained so as to remain in a first-class condition; the refuse enclosure be installed in the location indicated on the

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Board-approved plans; the Premises be maintained free of debris and graffiti; any illuminated signs at the Premises be off at 9 p.m.; the sidewalks be maintained and repaired where required; there be no storage of parts or materials in the open area at any time; all signs be maintained in accordance with the Board-approved plans; the conditions appear on the certificate of occupancy; 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, 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.

The term of the variance having expired, the applicant now seeks an extension.

Over the course of hearings, the Board questioned whether the Premises was appropriately operating independently from adjacent locations, namely, 233-02 Northern Boulevard, under separate jurisdiction by the Board under BSA Cal. No. 551-37-BZ. Specifically, the Board raised concern that the two locations were not operated independently. In response, the applicant submitted an operational plan, stating that two businesses operate on the Premises in accordance with the previously approved plan: a UG 9 car dealership/showroom and a UG 16 automotive repair; the auto sales use operates from Monday to Saturday, 10 a.m. to 7 p.m. with peak hours between 12 p.m. and 2 p.m.; the auto repair shop operates seven days per week from 9 a.m. to 6 p.m. with peak hours between 9 a.m. to 10 a.m.; customers enter in the front of the garage and exit in the front of the garage after the vehicle is repaired; it is anticipated to not have more than one or two customers for each business at once; there are a total of 38 spaces at the Premises—25 spaces designated for the auto showroom use and 13 spaces designated for the auto repair use.

Further, the applicant recorded a restrictive declaration against the Premises, under City Register File No. 2021000126710, stating in pertinent part:

NOW, THEREFORE, in consideration of BSA approval to allow the extension of term of a variance [. . .] Declarant does hereby declare the following:

1. THAT the Premises be used separately and apart from its adjacent neighbor at 233-02 Northern Boulevard, restricting access by a fence.
2. THAT parking stalls for vehicles on the site will be for both auto sales and auto repair use.
3. THAT parking stalls on the site will be limited to not more than 38 stalls of which 25 stalls are designated for auto sales; 13 stalls are designated for auto repair.
4. THAT the customers of the auto repair use will be received by the technician and the

designated drop off area for vehicles for repair will at the entrance of the auto repair shop.

5. THAT there will be no parking of vehicles on the sidewalk at any time.
6. THAT this Declaration may not be modified, amended, or terminated without the prior written consent of the BSA.
7. THAT 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 assignees.
8. THAT failure to comply with the terms of this declaration may result in the revocation of a building permit or certificate of occupancy as well as any other authorization or waiver granted by the BSA; and
9. THAT 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.

The applicant further submitted photographs of the completed sidewalk installation in compliance with the conditions of the prior grants.

The Fire Department states, by correspondence dated April 29, 2020, that the Premises require a permit from the Fire Department for "Motor Vehicle Repair Shop" as described in Section FC 2211 of the 2014 Fire Code, which if the Board of Standards and Appeals grants this application, will be inspected by the Bureau of Fire Prevention after an amended certificate of occupancy has been issued by the Department of Buildings. Based on the foregoing, the Fire Department has no objection to the application. The Bureau of Fire Prevention will inspect the Premises and enforce all applicable rules and regulations.

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; the Board of Standards and Appeals does hereby *amend* the resolution, dated October 4, 1978, as amended through July 24, 2018, so that as amended this portion of the resolution shall read: "to extend the term of the variance for ten years, to expire on March 8, 2031; *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked 'Received February 26, 2021—Twelve (12) sheets'; and *on further condition:*

THAT the term of this grant shall be limited to ten years, to expire March 8, 2031;

THAT the Premises shall be used separately and apart from its adjacent neighbor at 233-02 Northern Boulevard, restricting access by a fence;

THAT parking stalls for vehicles on the site shall be

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for both auto sales and auto repair use, limited to not more than 38 stalls of which 25 stalls are designated for auto sales and 13 stalls are designated for auto repair;

THAT the customers of the auto repair use shall be received by the technician and the designated drop off area for vehicles for repair will at the entrance of the auto repair shop;

THAT there shall be no parking of vehicles on the sidewalk at any time;

THAT failure to comply with the terms of the restrictive 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;

THAT fencing shall be maintained so as to remain in a first-class condition;

THAT the building shall be maintained so as to remain in a first-class condition;

THAT the Premises shall be maintained clean and free of debris and graffiti at all times;

THAT any illuminated signs at the Premises shall be off at 9 p.m.;

THAT the sidewalks shall be maintained and repaired where required;

THAT there shall 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 restrictive declaration recorded under City Register File No. 2021000126710 shall remain recorded against the property;

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. 334-78-BZ”) and the restrictive declaration recorded against the Premises under City Register File No. 2021000126710—shall be obtained within one year and an additional six months, in light of the current state of emergency declared to exist within the City of New York resulting from an outbreak of novel coronavirus disease, by November 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;

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 8, 2021.

86-10-BZ

APPLICANT – Sheldon Lobel, P.C., for STM Development, LLC, owner.

SUBJECT – Application July 23, 2020 – Extension of Term (§ 11-411) of a previously-granted variance permitting a Use Group (“UG”) 16 custom woodworking shop which expires on September 14, 2020. R5/C1-3 zoning district.

PREMISES AFFECTED – 93-08 95th Avenue, Block 9036, Lot 0003, Borough of Queens.

COMMUNITY BOARD #8Q

ACTION OF THE BOARD – Application granted.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

This is an application for an extension of term of a variance, under Z.R. § 11-411, previously granted by the Board, which permitted the use of the Premises as a Use Group 16 manufacturing use (woodworking shop), and expired on September 14, 2020.

A public hearing was held on this application on February 22, 2021, after due notice by publication in *The City Record*, and then to decision on March 8, 2021. Community Board 9, Queens, recommends approval of this application.

The Premises are located on the south side of 95th Avenue, between 93rd Street and 94th Street, within a C1-3 (R5) zoning district, in Queens. With approximately 27 feet of frontage along 95th Avenue, 100 feet of depth, and 2,706 square feet of lot area, the Premises are occupied by an existing 1,985-square foot, one-story plus cellar, Use Group 16 custom woodworking shop, with accessory storage, bathrooms and mechanical space in the cellar, and woodworking shop and office space on the ground floor.

The Board has exercised jurisdiction over the Premises since November 18, 1985, when, under BSA Cal. No. 282-58-BZ, the Board granted a variance, under Section 7(e) of the Zoning Resolution, for a term of five years, to permit the occupancy of the building for business purposes on condition that before any such occupancy be permitted same be submitted to the Board for further consideration; the building not be increased in height or area; all permits required be obtained and all work completed within the requirements of Section 22A of the Zoning Resolution.

On November 24, 1959, under BSA Cal. No. 282-58-BZ, the Board amended the variance to extend the time to obtain permits, complete the work, and obtain a certificate of occupancy for one year, by November 24, 1960.

On January 7, 1964, under BSA Cal. No. 282-58-BZ, the Board further amended the variance to extend the term for five years, to expire on January 7, 1969, on condition that the same occupancy and the same use be maintained during the term; other than as amended the resolution be complied with in all respects; and, a certificate of occupancy be obtained.

On March 24, 1970, under BSA Cal. No. 282-58-BZ,

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the Board further amended the variance to extend the time to complete the work for one year, by March 26, 1971, on condition that no further extension of time be considered by the Board.

On June 10, 1975, under BSA Cal. No. 282-58-BZ, the Board further amended the variance to extend the term for five years, to expire on June 10, 1980, on condition that other than as amended the resolution be complied with in all respects and a new certificate of occupancy be obtained.

On September 14, 2010, under the subject calendar number, the Board, under Z.R. §§ 11-411 and 11-412, granted a reinstatement of the prior Board approval of a manufacturing use at the Premises, now occupied by a custom woodworking shop (Use Group 16), and for an amendment to legalize a 180 square foot enlargement at the rear of the Premises, within an R5 zoning district, on condition that any and all work substantially conform to drawings as they apply to the objection, filed with the application; the term be for ten years, to expire on September 14, 2020; the site be kept free of graffiti, dirt, and debris; the conditions be listed on the certificate of occupancy; 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.

The term of the special permit having expired, the applicant now seeks an extension.

The applicant represents that, since the Board's approval, minor changes have been made to partitions in the cellar level: the prior plans show three bathrooms in the cellar and there is now only one bathroom. The woodworking shop and office space remain on the ground floor. The hours of operation are Monday through Friday, 8:00 a.m. to 4:00 p.m., and refuse is picked up twice a week, overnight, on Tuesdays and Fridays.

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 *amends* the resolution, dated September 14, 2010, so that as amended this portion of the resolution shall read: "to extend the term of the variance for ten years, to expire on September 14, 2030; *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked 'Received July 23, 2020—Six (6) sheets'; and *on further condition*:

THAT the term of the variance shall expire on September 14, 2030;

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, also indicating this approval and calendar number ("BSA Cal. No. 86-10-BZ"), shall be obtained within one year and an additional six months, in light of the current state of emergency declared to exist within the City of New York resulting from an outbreak of novel coronavirus disease, by September 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;

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 8, 2021.

189-12-BZ

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for 98 Montague LLC, owner.

SUBJECT – Application August 25, 2020 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) to permit the conversion of an existing building into a transient hotel (UG 5), contrary to use regulations (§22-00) which expired on July 23, 2020. C1-3/R7-1 and R6 (LH-1) zoning districts. Property is located within the Brooklyn Heights Historic District.

PREMISES AFFECTED – 98 Montague Street, Block 248, Lot 15, Borough of Brooklyn.

ACTION OF THE BOARD – Application granted.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

This is an application for an extension of term of a variance, under Z.R. § 11-411, previously granted by the Board, which permitted the use of the Premises as a Use Group 16 manufacturing use (woodworking shop), and expired on September 14, 2020.

A public hearing was held on this application on February 22, 2021, after due notice by publication in *The City Record*, and then to decision on March 8, 2021. Community Board 9, Queens, recommends approval of this application.

The Premises are located on the south side of 95th Avenue, between 93rd Street and 94th Street, within a C1-3 (R5) zoning district, in Queens. With approximately 27 feet of frontage along 95th Avenue, 100 feet of depth, and 2,706 square feet of lot area, the Premises are occupied by an existing 1,985-square foot, one-story plus cellar, Use Group

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16 custom woodworking shop, with accessory storage, bathrooms and mechanical space in the cellar, and woodworking shop and office space on the ground floor.

The Board has exercised jurisdiction over the Premises since November 18, 1985, when, under BSA Cal. No. 282-58-BZ, the Board granted a variance, under Section 7(e) of the Zoning Resolution, for a term of five years, to permit the occupancy of the building for business purposes on condition that before any such occupancy be permitted same be submitted to the Board for further consideration; the building not be increased in height or area; all permits required be obtained and all work completed within the requirements of Section 22A of the Zoning Resolution.

On November 24, 1959, under BSA Cal. No. 282-58-BZ, the Board amended the variance to extend the time to obtain permits, complete the work, and obtain a certificate of occupancy for one year, by November 24, 1960.

On January 7, 1964, under BSA Cal. No. 282-58-BZ, the Board further amended the variance to extend the term for five years, to expire on January 7, 1969, on condition that the same occupancy and the same use be maintained during the term; other than as amended the resolution be complied with in all respects; and, a certificate of occupancy be obtained.

On March 24, 1970, under BSA Cal. No. 282-58-BZ, the Board further amended the variance to extend the time to complete the work for one year, by March 26, 1971, on condition that no further extension of time be considered by the Board.

On June 10, 1975, under BSA Cal. No. 282-58-BZ, the Board further amended the variance to extend the term for five years, to expire on June 10, 1980, on condition that other than as amended the resolution be complied with in all respects and a new certificate of occupancy be obtained.

On September 14, 2010, under the subject calendar number, the Board, under Z.R. §§ 11-411 and 11-412, granted a reinstatement of the prior Board approval of a manufacturing use at the Premises, now occupied by a custom woodworking shop (Use Group 16), and for an amendment to legalize a 180 square foot enlargement at the rear of the Premises, within an R5 zoning district, on condition that any and all work substantially conform to drawings as they apply to the objection, filed with the application; the term be for ten years, to expire on September 14, 2020; the site be kept free of graffiti, dirt, and debris; the conditions be listed on the certificate of occupancy; 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.

The term of the special permit having expired, the

applicant now seeks an extension.

The applicant represents that, since the Board's approval, minor changes have been made to partitions in the cellar level: the prior plans show three bathrooms in the cellar and there is now only one bathroom. The woodworking shop and office space remain on the ground floor. The hours of operation are Monday through Friday, 8:00 a.m. to 4:00 p.m., and refuse is picked up twice a week, overnight, on Tuesdays and Fridays.

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 *amends* the resolution, dated September 14, 2010, so that as amended this portion of the resolution shall read: "to extend the term of the variance for ten years, to expire on September 14, 2030; *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked 'Received July 23, 2020—Six (6) sheets'; and *on further condition*:

THAT the term of the variance shall expire on September 14, 2030;

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, also indicating this approval and calendar number ("BSA Cal. No. 86-10-BZ"), shall be obtained within one year and an additional six months, in light of the current state of emergency declared to exist within the City of New York resulting from an outbreak of novel coronavirus disease, by September 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;

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 8, 2021.

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CORRECTION: This resolution adopted on March 8, 2021, under Calendar No. 2018-8-BZ, is hereby corrected to read as follows:

2018-8-BZ

APPLICANT – Eric Palatnik, P.C., for Victor Allegritti 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

ACTION OF THE BOARD – Application granted.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta5
Negative:.....0

THE RESOLUTION –

This is an application for an extension of time to obtain a certificate of occupancy, which expired on July 23, 2020, for a previously approved variance granted by the Board pursuant to Z.R. § 11-41 that permitted a garage for trucks, motor vehicle repair shop, body and fender work, and incidental painting and spraying (Use Group 16B).

A public hearing was held on this application on January 25, 2021, after due notice by publication in *The City Record*, and then to decision on March 8, 2021. Community Board 11, Brooklyn, recommends approval of this application.

The Premises are located on the southeast corner of Cropsy Avenue and Bay 19th Street, in an R5 (C1-2) zoning district, in Brooklyn. With approximately 127 feet of frontage along Cropsy Avenue, 151 feet of frontage along Bay 19th Street, and 18,874 square feet of lot area, the Premises are currently occupied by an existing one-story plus cellar and mezzanine garage with motor vehicle repair shop, offices and storage.

The Board has exercised jurisdiction over the Premises since July 27, 1922, when, under BSA Cal. No. 1051-21-BZ, the Board granted a variance to permit the erection of a public garage and repair shop on condition that the front elevations on Cropsy Avenue and Bay 19th Street be finished in face brick with stone trimmings; all permits necessary for the prosecution of the work be obtained within six months, by January 27, 1923, and the building completed within one year, by July 27, 1923.

On December 11, 1951, under BSA Cal. No. 1051-21-BZ, the Board permitted the extension of the use into the residence district, substantially as proposed on plans filed with the application, for a term of five years, on condition that a woven wire fence of the chain link type be constructed on the interior lot lines to the south and east, as

proposed and as indicated, and also along the line of Bay 19th Street from the adjoining lot line to the wall of the existing one-story building; there be no openings in such fence at any point; planting be maintained along such fence and along the street building line of Bay 19th Street, as indicated on such plan; planting be of the suitable type and be protected with concrete curbing at least 12 inches in height; the balance of the premises where not occupied by buildings be leveled and surfaced with bituminous paving, properly rolled; the existing curb cuts, if legally permitted, may be maintained but not extended except that the existing curb cut to Cropsy Avenue toward the west may be enlarged from 12 feet to 25 feet; in all other respects the existing building and occupancy and the occupancy for parking in the residence use area as herein permitted comply with all laws, rules and regulations applicable thereto; the portion of the parking area within the residence use district not be used for any other use and only for the parking of motor vehicles of the pleasure car type; all permits be obtained and all work completed within six months, by June 11, 1952.

On March 17, 1959, under BSA Cal. No. 1051-21-BZ, the Board granted an extension of the variance to permit the erection and maintenance of a one-story extension to an existing building and extend the use of garage for trucks and repair shop to include body and fender work, incidental painting and spraying, welding and storage of parts, for a term of ten years, substantially as proposed and as indicated on plans filed with the application, on condition that the building not be increased in height or area other than as proposed to be extended as shown on such plans; the use may be as proposed, namely, garage and motor vehicle repair shop; under Section 7i, for a similar term, there may be motor vehicle repairing, including body and fender work and incidental painting and spraying, excluding all welding; the existing curb cuts to Cropsy Avenue and Bay 19th Street may be retained as proposed; in all other respects the building and occupancy comply with all laws, rules and regulations applicable thereto; and, all permits required be obtained and all work completed within one year, by March 17, 1960.

On June 9, 1959, under BSA Cal. No. 1051-21-BZ, the Board amended the resolution to permit the installation of offices, toilet and locker room partitions in the new area at the southerly end of the building toward Cropsy Avenue, as shown on plans filed with the application, on condition that in all other respects the resolution be complied with; and, all permits be obtained, all work completed and a certificate of occupancy be obtained within one year, by June 9, 1960.

On February 24, 1960, under BSA Cal. No. 1051-21-BZ, the Board further amended the resolution to extend the time to obtain permits and complete the work for one year, by February 24, 1961, on condition that a certificate of occupancy be obtained. On October 11, 1960, under BSA Cal. No. 1051-21-BZ, the Board further amended the resolution such that in the event the owner desires to remove the mezzanine from the old portion of the building and to

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construct an office mezzanine, approximately 22 feet by 32 feet, over the office space in the new portion of the building, such change may be permitted substantially as shown on revised plans filed with the application, with the exception that minor auto repairs in the new portion of the building, and the two 550-gallon tanks and two pumps at the Cropsey Avenue entrance not be permitted, on condition that other than as amended the resolution be complied with in all respects.

On June 3, 1969, and February 13, 1979, under BSA Cal. No. 1051-21-BZ, the Board further amended the resolution to extend the term for periods of ten years, the latter of which to expire on March 17, 1989, on condition that other than as amended the resolution be complied with in all respects, and a new certificate of occupancy be obtained within one year.

On November 23, 1971, under BSA Cal. No. 335-71-BZ, the Board permitted the installation of a 4,000-gallon gasoline tank and pump on condition that all work substantially conform to plans filed with the application; all laws, rules and regulations applicable be complied with; and, substantial construction be completed within one year, by November 23, 1972.

On January 15, 1991, under BSA Cal. No. 189-89-BZ, the Board reinstated a variance for an addition of partial second floor to an existing one-story and mezzanine truck garage with accessory uses (UG 16) on condition that all work substantially conform to plans as they apply to the objections, filed with the application; the ventilation system on the premises comply with the Building Code and all other applicable laws; no vehicles park on the sidewalk; there be no parking of commercial vehicles on the residential streets and no vehicle washing on the streets; all signs comply with C1 district regulations; motor vehicle repairs be limited to vehicles owned by Bayside Fuel Oil Co.; the term be limited to two years, to expire on January 15, 1993; 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 years, by January 15, 1995.

On July 27, 1993, under BSA Cal. No. 189-89-BZ, the Board amended the January 1991 resolution to extend the term and permit the elimination of the second floor enlargement previously approved by the Board on condition that the term of the variance be for ten years, to expire on January 15, 2003, the premises be kept clean and free of graffiti and in substantial compliance with the proposed conditions 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 year, by July 27, 1994.

On July 29, 2019, under the subject calendar number, the Board waived its Rules of Practice and Procedures and reinstated and amended the previously granted variance

under BSA Cal. Nos. 1051-21-BZ and 189-89-BZ to permit the operation of a garage with motor vehicle repair shop, offices and storage and lawful uses accessory thereto on condition that all work and site conditions conform to drawings filed with the application; the grant be limited to a term of ten years, to expire on July 23, 2029; no repairs be made on any vehicles that do not belong to the dealership; repair of vehicles be limited only to those owned by the dealership, prior to their sale; no repair are permitted to be made on any purchased vehicles; there be n vehicles parked on the sidewalk at any time; signage be provided and maintained indicating the prohibition of sidewalk parking; the above conditions appear on the certificate of occupancy; all conditions from prior resolutions including those issued under BSA Cal. No. 189-89-BZ, not specifically waived by the Board remain in effect; and a certificate of occupancy, also indicating this approval and calendar number be obtained within one year, by July 23, 2020.

The time to obtain a certificate of occupancy having expired, the applicant now seeks an extension.

In response to questions from the Board at hearing, the applicant demonstrated that the doors have been re-painted, submitted evidence from the owner confirming compliance with each condition of the Board's grant, and provided a DOB form to show that the Board's conditions and calendar number will appear on the certificate of occupancy.

The applicant has satisfactorily demonstrated compliance with the conditions of the previous grant and the Board finds that the circumstances warranting the original grant still obtain. Based upon its review of the record, the Board has determined that the requested extension of time is appropriate with certain conditions as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *amend* the resolution, dated July 23, 2019, so that as amended this portion of the resolution shall read: "to extend the time to obtain a certificate of occupancy for one year, by March 8, 2022, *on condition*:

THAT the variance shall be limited to a term of ten years, expiring June 23, 2029;

THAT no repairs shall be made on any vehicles that do not belong to the dealership;

THAT the repair of vehicles shall be limited only to those owned by the dealership, prior to their sale;

THAT no repairs are permitted to be made on any purchased vehicles;

THAT there shall be no vehicles parked on the sidewalk at any time;

THAT signage shall be provided and maintained indicating the prohibition of sidewalk parking;

THAT the premises shall be kept clean and free of graffiti and in substantial compliance with the Board-approved drawings;

THAT all conditions from prior resolutions, including those issued under BSA Cal. No. 189-89-BZ, 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, also indicating this

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approval and calendar number (“BSA Cal. No. 2018-8-BZ”), shall be obtained within one year, by March 8, 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 8, 2021.

523-58-BZ

APPLICANT – Glen V. Cutrona, AIA, for Yehuda LLC, owner; Farmers Mini Mart Inc., lessee.

SUBJECT – Application August 26, 2019 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of an automotive service station (UG 16B) which expired on May 7, 2014; Waiver of the Board’s Rules. C1-3/R5D zoning district.

PREMISES AFFECTED – 117-30 Farmers Boulevard, Block 12448, Lot 0031, Borough of Queens.

COMMUNITY BOARD #12Q

ACTION OF THE BOARD – Laid over to April 26-27, 2021, at 10 A.M. for continued hearing.

1070-84-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Epsom Downs Inc., owner.

SUBJECT – Application July 8, 2020 – Extension of Term of a previously approved variance permitting the operation of an eating and drinking establishment which expired on July 7, 2020, Extension of Time to Obtain a Certificate of Occupancy which expired on March 25, 2015; Waiver of the Board’s Rules of Practice and Procedures. R8B zoning district.

PREMISES AFFECTED – 234 East 58th Street, Block 1331, Lot 32, Borough of Manhattan.

COMMUNITY BOARD #6M

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 March 22-23, 2021, at 10 A.M. for decision, hearing closed.

648-88-BZ

APPLICANT – Rampulla Associates Architects, for Fratello Corp., owner.

SUBJECT – Application November 25, 2020 – Amendment of a previously approved Variance (§72-21) which permitted the development of a UG 6 Pharmacy. The amendment seeks to permit the change in use to a UG 6 food store, addition of refrigeration space, the removal of a curb cut and relocation of 2 parking spaces. R1-2 zoning district.

PREMISES AFFECTED – 2107 Richmond Road, Block 00899, Lot 0018, Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Laid over to April 12-13, 2021, at 10 A.M. for continued hearing.

21-91-BZ

APPLICANT – Sheldon Lobel, P.C., for Hardath Latchminarain, owner.

SUBJECT – Application July 19, 2017 – Extension of Term of a previously approved Variance (§72-21) which permitted the operation of an automotive glass and mirror repair establishment (UG 7D) and used car sales (UG 16B) which expired on March 16, 2015; Amendment to permit the legalize the conversion of the existing building to Use Car Sales (UG 16B) and relinquishing the automotive glass and mirror repair establishment (UG 7D); Waiver of the Board’s Rules. R5 zoning district.

PREMISES AFFECTED – 2407-2417 Linden Boulevard, Block 4478, Lot 24, Borough of Brooklyn.

COMMUNITY BOARD #5BK

ACTION OF THE BOARD – Laid over to April 12-13, 2021, at 10 A.M. for continued hearing.

5-98-BZ

APPLICANT – Heywood Blaubeux, for Priority Landscaping Inc., owner.

SUBJECT – Application December 12, 2020 – Extension of Term of a previously approved variance (§72-21) which permitted a garden supply sales and nursery establishment (UG 17) with accessory parking and storage which expired on February 23, 2019; Waiver of the Board’s Rules. R5 zoning district.

PREMISES AFFECTED – 1861 McDonald Avenue, Block 6633, Lot 55, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to June 28-28, 2021, at 10 A.M. for continued hearing.

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72-04-BZ

APPLICANT – Eric Palatnik, P.C, for BWAY-129th Street, Gasoline Corp., owner.

SUBJECT – Application October 18, 2019 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of an Automotive Service Station (UG 16B)(Getty) which expires on June 3, 2020. C1-2/R6 & R6 zoning district.

PREMISES AFFECTED – 141-54 Northern Boulevard, Block 5012, Lot 45, Borough of Queens.

COMMUNITY BOARD #7Q

ACTION OF THE BOARD – Laid over to June 14-15, 2021, at 10 A.M. for continued hearing.

6-09-BZ

APPLICANT – Rampulla Associates Architects for Joseph Romeo, owner.

SUBJECT – Application June 18, 2020 – Extension of Term of a previously approved Variance (§72-21) which permitted the use of Automotive Repair (UG 16B) which will expire on November 9, 2020. C4-1 Special South Richmond Development and Special Growth Management Districts.

PREMISES AFFECTED – 24 Nelson Avenue, Block 31, Lot 5429, Borough of Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Laid over to April 26-27, 2021, at 10 A.M. for continued hearing.

2019-299-BZ

APPLICANT – Nasir J. Khanzada, PE, for Adelmo Cioffi, owner.

SUBJECT – Application December 2, 2019 – Reinstatement (§11-411) of a previously approved variance which permitted the operation of an automotive service station (UG 16B) which expired on December 13, 1987; Amendment to permit the conversion of automotive repair bays to accessory convenience store; Waiver of the Board’s Rules. C2-3/R6 zoning district.

PREMISES AFFECTED – 82-01 to 82-13 Queens Boulevard, Block 1542, Lot 0001, Borough of Queens.

COMMUNITY BOARD #4Q

ACTION OF THE BOARD – Laid over to June 14-15, 2021, at 10 A.M. for continued hearing.

APPEALS CALENDAR

2020-78-A & 2020-79-A

APPLICANT – Terminus Group, LLC, for John Barbieri, owner.

SUBJECT – Application October 8, 2020 – Common Law Vesting to allow for the reinstatement of alteration permits to obtain a Certificate of Occupancy under the former R3-2 zoning regulations.

PREMISES AFFECTED – 90 & 92 Elm Street, Block 00158, Lot(s) 0081, 0082

Borough of Staten Island.

COMMUNITY BOARD #1SI

ACTION OF THE BOARD – Laid over to April 26-27, 2021, at 10 A.M. for continued hearing.

ZONING CALENDAR

2017-34-BZ

CEQR #17-BSA-079R

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

ACTION OF THE BOARD – Application granted on conditions.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated July 21, 2020 acting on New Building Application No. 520220350, reads in pertinent part:

1. The proposed front yard is contrary to ZR 23-45 in that the front yard is deficient than that required.
2. The proposed side yard is contrary to ZR 23-461(a) as required on corner lots...
4. The proposed planting is contrary to ZR 23-451 as required on corner lots.
5. The proposed design requirements are contrary to ZR 64-61 as required in flood hazard areas.

This is an application for a variance, pursuant to Z.R. § 72-21, to allow, within an R3-1 zoning district, the construction of a three-story, plus cellar, single-family detached residence that does not comply with the zoning

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requirements for front yards (Z.R. § 23-45), planting (Z.R. § 23-451), side yards (Z.R. § 23-461), and design requirements as required in a flood hazard areas (Z.R. § 64-61).

A public hearing was held on this application on January 15, 2019, after due notice by publication in *The City Record*, with continued hearings on February 11, 2020, August 11, 2020, December 15, 2020, and February 8, 2021 and then to decision on March 8, 2021.

Vice-Chair Chanda and Commissioner Ottley-Brown performed inspections of the Premises and surrounding neighborhood. Community Board 2, Staten Island, recommends denial of this application. The Board received one form letter of support and 15 letters of objection to this application, citing concerns over the originally proposed building design's lack of cohesion with neighborhood character and structure, traffic, noise pollution, and loss of open air and sunlight.

I.

The Premises are partially located within the bed of mapped Haven Avenue and Adams Avenue on the northwest corner, within an R3-1 zoning district, in Staten Island. With approximately 40 feet of frontage along Haven Avenue, 75 feet of depth, and 3,0000 square feet of lot area, the Premises are currently vacant.

II.

The applicant originally proposed to construct a detached, three-story, single-family residence with 0.38 FAR (566.78 sq. ft. at the first floor used for storage and parking and exempt from the total floor area, 566.78 sq. ft. at the second floor and 566.78 sq. ft. at the third floor), one 10'-0" front yard on Haven Avenue, one 0'-0" front yard on Adams Avenue, a northern side yard measuring 0'-0", a southern side yard measuring 20'-0", two accessory parking lots in the front yard on Haven Avenue, and a 17'-0" curb cut on Haven Avenue. The proposed accessory parking in the front yard on Haven Avenue would limit the required planting along the street. In response to questions from the Board at hearing, the applicant revised the design to provide the required accessory parking spaces at the first floor and covered beneath the upper floors of the proposed building and permit more planting along both frontages. Additionally, the applicant reduced the proposed width of the curb cut on Haven Avenue from 17'-0" to the 10'-0", as permitted by the Zoning Resolution.

Now, the applicant proposes a three-story, single-family residence that would have 0.38 FAR (approximately 573 square feet of floor area on the first floor that is exempt from the total floor area, 573 square feet of floor area on the second floor, and 573 square feet of floor area on the third floor), a front yard on Adams Avenue with 0'-0" of depth, a front yard on Haven Avenue with a depth of 10'-0", a southern side yard with a width of 20'-0", a northern side yard with a width of 0'-0", and would not have a porch, stair direction change, a raised front yard, or trees or shrubs at least three feet high.

In the subject R3-1 zoning district, the Zoning Resolution requires a two front yards with minimum depths of 10 feet and 15 feet, *see* Z.R. § 23-45, and two side yards

with minimum widths of 5 feet and 20 feet, *see* Z.R. § 23-461(a), and at least two of the following: porch, stair direction change, raised front yard, or trees or shrubs at least three feet high, *see* Z.R. § 64-62. Accordingly, the applicant seeks the relief requested herein.

III.

The Zoning Resolution vests the Board with wide discretion to "vary or modify [its] provision[s] so that the spirit of the law shall be observed, public safety secured and substantial justice done," Z.R. § 72-21.

A.

First, the applicant submits that there are unique physical conditions inherent in the Premises—namely, their narrowness encumbered by mapped streets with no history of use or development—that 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. More particularly, the applicant notes that the presence of the mapped streets has created a uniquely narrow lot, measuring 18.27 feet by 64.63 feet, which would result in an uninhabitable building only a few feet in width at its widest point if developed in accordance with the Zoning Resolution.

In support of this contention, the applicant surveyed vacant corner lots within 400 feet of the Premises (the "Study Area") finding four comparable properties to the subject Premises. Of those four properties, 1) the first is the lot immediately adjacent to the south which is owned by the City of New York and is being used as a public street, and, therefore is not likely to be developed; 2) the second is another City owned lot which, if developed, would yield a building with a maximum width of eight feet; 3) the third site does not have a buildable area as it is located entirely within mapped Hull Avenue and would require a GCL § 35 waiver from the Board; and 4) the fourth lot is held in common ownership with the adjacent lot and was recently enlarged via a tax lot merger.

The applicant also submitted as-of-right drawings demonstrating that strict conformance with Z.R. §§ 23-45, 23-451, 23-461, and 64-62 would result in an irregularly shaped building with its width varying from 2'-7" at the southern side lot line to 1'-0" at the northern side lot line with 30 feet of depth, and a triangular floor plate, which would not be viable to construct, would not comply with building code minimum space requirements for dwelling units or room size, circulation space, and, after the wall widths are accounted for, the remaining space is not habitable due to size. The applicant represents that compliance with underlying zoning regulations would not permit the habitable development of the Premises unless a variance were granted.

Accordingly, 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.

B.

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Next, the applicant submits and the Board concurs that, because this application proposes a single-family residence, no showing need be made with respect to realizing a reasonable return.

C.

The applicant further represents that the requested variance would not alter the essential character of the neighborhood, impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare. Specifically, the applicant states that the predominant use of the land in the vicinity of the Premises is almost exclusively residential, with each parcel containing one or two-family dwellings ranging from one to three stories in height. The proposed FAR of 0.38 is significantly less than the permitted 0.60 FAR, and the applicant seeks to maintain a front yard on Haven Avenue, consistent with the adjacent home to the north. Additionally, the proposed project would have planting along both frontages but, due to the unique lot size, is not able to fully satisfy the requirements under Z.R. § 23-451.

Accordingly, the Board finds that the proposed variance will not alter the essential character of the neighborhood or district in which the Premises are located; will not substantially impair the appropriate use or development of adjacent property; and will not be detrimental to the public welfare.

D.

The applicant represents that the above practical difficulties or unnecessary hardship have not been created by the applicant or by a predecessor in title. Specifically, the applicant submits that the practical difficulties and unnecessary hardship affecting the Premises are due to the unique physical conditions of the subject lot, which has severely limited building area due to encumbrances by mapped streets.

Accordingly, the Board finds that the above practical difficulties or unnecessary hardship have not been created by the applicant or by a predecessor in title.

E.

The applicant notes that the variance request is the minimum necessary to develop a residence at the Premises. The applicant submits that all other bulk requirements will be in full compliance with the Zoning Resolution.

Accordingly, the Board finds that the proposed variance is the minimum necessary to afford relief within the intent and purposes of the Zoning Resolution.

IV.

The project is classified as a Type II action pursuant to 6 NYCRR Part 617.5 and the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 17BSA079R.

V.

Based on the foregoing, the Board finds that the evidence in the record supports the findings required to be made under Z.R. § 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 make each and every one of the

required findings under Z.R. § 72-21 to *permit*, the construction of a three-story, single-family, detached residence that does not comply with the zoning requirements for front yards (Z.R. § 23-45), proposed planting (Z.R. 23-451), side yards (Z.R. § 23-461), and design requirements (Z.R. § 64-62); *on condition* that all work and site conditions shall conform to drawings filed with this application marked “Received February 17, 2021”—Twelve (12) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: a front yard on Adams Avenue with a depth of 0'-0", a side yard along the northern lot line with a width of 0'-0"; without a porch, stair direction change, raised front yard, or trees or shrubs at least three feet high; and planting on Haven Avenue and Adams Avenue constituting less than 30 percent of the total street frontage;

THAT there shall be three-foot high shrubbery planting along the Adams Avenue property line and on either side of the driveway along Haven Avenue;

THAT there shall be no Exterior Installation and Finish System (EIFS) and no vinyl siding;

THAT the project must provide Department of Transportation approved sidewalks along both Haven Avenue and Adams Avenue frontages;

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. 2017-34-BZ”), shall be obtained within four years and an additional six months, in light of the current state of emergency declared to exist within the City of New York resulting from an outbreak of novel coronavirus disease, by September 19, 2025;

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 8, 2021.

2019-205-BZ
CEQR #20-BSA-017K

APPLICANT – Goldman Harris LLC, for Jean’s Place Housing Development Fund Corporation, owner.

SUBJECT – Application August 16, 2019 – Variance (§72-21) to permit the development of a 9-story residential building with 129 units of affordable independent residences for seniors contrary to ZR §42-10. M1-1 zoning district.

PREMISES AFFECTED – 485 Van Sinderen Avenue, Block 3799, Lot 1, Borough of Brooklyn.

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COMMUNITY BOARD #1BK

ACTION OF THE BOARD – Application granted on conditions.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta5
Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings dated October 21, 2020, acting on New Building Application No. 321387263, reads in pertinent part: “ZR 42-10 The proposed residential use (UG2) is not permitted in the M1-1 zoning district. ZR 43-12 The proposed FAR exceeds the maximum permitted FAR in the M1-1 zoning district contrary to ZR 43-12. ZR 43-43 The proposed building exceeds the maximum permitted base height, maximum permitted building height, and penetrates the sky exposure plane of 1 to 1, contrary to ZR 43-43. ZR 43-302 The proposed rear yard is contrary to ZR 43-302.”

This is an application for a variance under Z.R. § 72-21 to permit—in an M1-1 zoning district—the development of a nine-story residential building with 129 units of affordable independent residences for seniors that would not comply with zoning regulations for use (Z.R. § 42-10), floor area (Z.R. § 43-12), height and setback (Z.R. § 43-43), and rear yards (Z.R. § 43-302).

This application is brought by Community Counseling & Mediation (the “applicant”), a behavioral health organization and housing operator that has provided programs ranging from mental health services, youth-and-education empowerment programs, and affordable supportive housing since 1982.

A public hearing was held on this application on April 7, 2020, after due notice by publication in *The City Record*, with a continued hearing on December 15, 2020, and then to decision on March 8, 2021.

Vice-Chair Chanda, Commissioner Ottley-Brown, and Commissioner Sheta performed inspections of the Premises and surrounding neighborhood.

Community Board 5, Brooklyn, recommends approval of this application, and a local resident submitted testimony expressing privacy concerns.

I.

The Premises are located on a block bounded by Dumont Avenue to the north, Snediker Avenue to the east, Livonia Avenue to the south, and Van Sinderen Avenue to the west, in an M1-1 zoning district, in Brooklyn. They have approximately 260 feet of frontage along Van Sinderen Avenue, 100 feet of depth, 25,790 square feet of lot area, and are vacant.

II.

The applicant proposes to develop a nine-story residential building for use as affordable independent residences for seniors (Use Group 2) with 103,012 square feet of floor area (3.99 FAR), a street-wall height of 84’-4” that penetrates a 1:1 sky exposure plane, and a rear yard of 20’-0” (the “Proposed Building”).

At the Premises, residential use is not allowed, *see* Z.R. § 42-10; floor area may not exceed 25,790 square feet (1.00 FAR), *see* Z.R. § 43-12; street wall height may not exceed 30’-0” with a setback of 20’-0” and a sky exposure plane of 1:1, *see* Z.R. § 43-43; and the rear yard must have a minimum depth of 30’-0”, *see* Z.R. § 43-302.

Accordingly, the applicant requests the relief set forth herein.

III.

The Zoning Resolution vests the Board with wide discretion to “vary or modify [its] provision[s] so that the spirit of the law shall be observed, public safety secured and substantial justice done,” Z.R. § 72-21, and the Board acknowledges that the applicant, as a not-for-profit developer and operator of affordable and supportive housing, 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 this application. As held in *Cornell University v. Bagnardi*, 68 N.Y.2d 583 (1986), a zoning board is to 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. General concerns about traffic and disruption of the residential character of the neighborhood are insufficient grounds for the denial of such applications.

Having previously examined *Cornell’s* origins, the Board has found that similar considerations apply to facilitate the development of projects that provide 100 percent affordable housing to low-income earners for the life of the building because there is a natural link between public policies aimed at protecting houses of worship and schools and those aimed at facilitating affordable-housing development. Specifically, the provision of affordable housing 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. Both the City and State of New York 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

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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. 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 in 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). 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. 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. 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. Despite these professed policy goals, 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. 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 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. Additionally, 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. In furtherance of the 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 Board 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. 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. When such housing is provided by mission-based not-for-profit institutions 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. Additional methods of facilitating the development of affordable housing for low-income residents, such as the extension of *Cornell* previously found by the Board, 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.

The Board notes instances in which New York State

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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). The Board additionally notes instances in which the Board, itself, has extended *Cornell* 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).

Based on the foregoing considerations, 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 policy initiatives have been aimed at housing the homeless and the underprivileged and encouraging affordable housing. The Board also 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. However, to prevent abuse—i.e. reliance on *Cornell* to facilitate projects that include any amount of market-rate housing 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. The Board notes that this expansion of *Cornell* is not 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. As with religious and educational institutions, not-for-profit entities that wish to avail themselves of this *Cornell* extension to not-for-profit 100 percent low-income housing developments must demonstrate that the waivers requested 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.

A.

Consistent with Z.R. § 72-21, the applicant submits that there are unique physical conditions inherent in the Premises—namely, the Premises’ location on a narrow street with adjacency to an elevated subway line—that 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.

First, the applicant notes that the Premises are beleaguered by their location on a narrow street adjacent to an elevated subway line as a further unique physical condition. Unlike other locations, Van Sinderen Avenue has one lane and a width of 15 feet along the Premises—a condition that only occurs for two blocks before widening. Along with the subway entrance and elevated tracks, this makes use of the Premises for modern manufacturing infeasible because of the inability to load and unload materials and products and the detrimental effects on vehicular and pedestrian traffic.

Next, the applicant states that this application is entitled to *Cornell* deference to accommodate the development of affordable housing. In support of this contention, the applicant submitted evidence that it is a not-for-profit entity with an extensive history of developing and managing 100 percent low-income affordable housing. Furthermore, the Proposed Building would be restricted to rents that are, in their entirety, targeted to extremely low-, very low-, and low-income earners and will remain so for the life of the building—as evidenced by a restrictive declaration to be recorded against the Premises.

Furthermore, the Proposed Building is necessary to accommodate the applicant’s programmatic needs. In support of this contention, the applicant furnished a report on its program (the “Programmatic Needs Report”) that outlines the applicant’s social services, youth and education empowerment programs, and supportive housing and details how the Proposed Building would alleviate deficiencies from pursuing an as-of-right development.

The applicant notes that the Proposed Building would

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provide 129 dwelling units to be used as affordable independent residences for seniors with one third set aside for homeless seniors and a superintendent's unit. The Proposed Building has been designed in such a way as to maximize efficiency with approximately 532 square feet and 561 square feet per one-bedroom apartment with full kitchens, bathrooms, and living and dining areas in accordance with Department of Housing Preservation and Development guidelines for the construction of affordable senior housing. The first floor would contain a community room, horticultural therapy room, supportive services for residents, a library, director's and staff offices with reception space, bike storage space, and two lobbies. On the ninth floor, there would also be a laundry facility, an outdoor seating and planting area, and a greenhouse.

The applicant represents that this application is necessary because strict compliance with applicable zoning regulations would not allow for any residential use, and the bulk waivers are necessary to accommodate enough units to make the Proposed Building economically feasible. The applicant submits that the proposed unit count is the minimum necessary and provided a memorandum noting that the project will participate in the Department of Housing Preservation and Development's Senior Affordable Rental Apartments program along with low-income housing tax credits, loans, and Section 8 vouchers—subsidies based on unit count and the amount of eligible expenses.

The Department of Housing Preservation states, by letter dated February 20, 2020, that it has thus far favorably reviewed the applicant's request for capital funding toward development of the Proposed Building and recommends that the applicant seek ways to further develop a financing package and cost containment for the proposal, pursue funding for supportive services, continue to develop design drawings, and other due diligence items. Because the development of housing for homeless and low-income seniors is a priority, the Department of Housing Preservation and Development intends to provide development financing, subject to availability, for the Proposed Building if the proposal meets the guidelines and requirements of the Senior Affordable Rental Apartments Program and is approved by the Commissioner with loan terms and conditions that are acceptable to the City.

The Department of Housing Preservation corroborates the applicant's assertions about the Proposed Building's design, by letter dated December 10, 2020, noting that, based upon an initial review, the Proposed Building generally meets applicable design guidelines but is still subject to standard in-depth plan review during which additional design and code issues may be raised.

Accordingly, the Board finds that the above unique physical conditions and the applicant'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.

B.

Because the applicant is a not-for-profit organization,

the applicant need not demonstrate that there is no reasonable possibility that developing the Premises in strict conformity with the Zoning Resolution would result in a reasonable return.

C.

The applicant submits that the Proposed Building would not alter neighborhood character, impair adjacent properties, or be detrimental to the public welfare. In support of this contention, the applicant studied the surrounding area, finding a mixture of community-facility and residential land uses—including another affordable housing development immediately adjacent to the Premises that the applicant administers. Although the Premises are located within the East New York Industrial Business Zone, the applicant notes that the Premises are located within a narrow portion of this industrial zone, while the vast majority of its acreage is in a larger swath to the north, and the Premises constitute a mere 0.563 percent of this industrial zone's 57 blocks. The applicant further submits that, based on its study, there are limited manufacturing uses located beyond the subject block but that there are four structures under construction as part of a Department of Housing Preservation and Development-sponsored project that will include affordable housing along with retail space and community facility space at the ground level.

With respect to the built environment, the record reflects the presence of an adjacent R6 zoning district, which would allow a building with massing and scale substantially similar to the Proposed Building, and that buildings in the surrounding area are also characterized by their medium density.

The Fire Department states, by correspondence dated May 15, 2020, that its Bureau of Operations and Bureau of Fire Prevention have reviewed the Proposed Building and that the Fire Code requires fire hydrants to be located within 250'-0" to the front entrance of a building but that, because of the Premises' midblock location, fire hydrants would be located approximately 290'-0" and 270'-0". Furthermore, access to the Proposed Building is hindered by the narrow roadway of Van Sinderen Avenue, which is 15'-0" and the elevated train platform which is 12'-8" above; however, the Fire Code requires that roads have an unobstructed width of at least 34'-0" and unobstructed vertical clearance of at least 14'-0". Access would further be impeded by nearby streets because of vertical obstructions from the elevated train structural framing. Because of the size and use of the Proposed Building, a multi-fire apparatus response would involve a total of fourteen fire apparatuses to respond to an emergency at the Premises, if required in the Incident Commander. However, these units would be unable to perform their operations. Lastly, because of the elevation to the top of the parapet, rooftop firefighter access would be impeded by the elevated train platform. Accordingly, the Fire Department objects to the original design for the Proposed Building.

In response to questions from the Board at hearing and the Fire Department's concerns, the applicant revised the drawings to reflect that the primary entrance and elevator

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core would be relocated further south with articulation in the massing of the Proposed Building, that the Proposed Building would be set back a minimum of 20'-0" from Van Sinderen Avenue, that there would be fencing with planting beds and hedge screening, and that this would be a 6'-0" open metal picket fence rather than a chain link fence.

The applicant further notes that, in order to meet the Fire Department's access plan for the Premises, the Proposed Building features a setback from Van Sinderen Avenue, resulting in a rear-yard depths of 20'-0" and 25'-0", where the Premises abut single-family homes along Snediker Avenue. The applicant, however, submitted a rear-yard study indicating that the distance from the Proposed Building to these existing homes will be 65'-0" to provide adequate distance and that fencing along the rear lot line along with planting with hedge screening will provide adequate buffering and address any potential privacy concerns.

Based on its review of modifications the applicant made to address these concerns, the Fire Department now states, by letter dated November 13, 2020, that it has no objection to this application on condition: that the new building be set back from the Van Sinderen Avenue street line as indicated on the proposed drawings; that a new dedicated Fire Department connection furnishing water for the standpipe system to 485 Van Sinderen Avenue (Jean's Place) building from Snediker Avenue with proper signage; that direct access 24/7 from Snediker Avenue building (Beverly's Place), by means of a two-hour rated corridor with two 1-1/2 hour doors, to access the Proposed Building at 485 Van Sinderen Avenue courtyard and rear of building; that a permanent easement for emergency service access from Snediker Avenue through "Beverly's Place" multipurpose room; that a Group R-2 fire alarm system with one-way voice communication be installed along with a fire alarm annunciator also installed at the Snediker Avenue emergency service access; that the fire alarm panel be monitored by a Certificate of Fitness (F-53) holder; that signage on Snediker Avenue side of door indicate emergency access to 485 Van Sinderen Avenue; that a new fire hydrant be installed at the corner of Van Sinderen Avenue and Dumont Avenue; and that new "no standing" signs be installed along the north side of Dumont Avenue and the entire block length of Van Sinderen.

Accordingly, the Board finds that the proposed variance will not alter the essential character of the neighborhood or district in which the Premises are located; will not substantially impair the appropriate use or development of adjacent property; and will not be detrimental to the public welfare.

D.

The applicant notes that the above unique physical conditions, including the location of the Premises adjacent to a narrow street with adjacency to an elevated subway line, present practical difficulties or unnecessary hardship and this application is necessary to accommodate the applicant's programmatic needs. This situation was not created by the applicant or a predecessor in title.

Accordingly, the Board finds that the above practical difficulties or unnecessary hardship have not been created by the applicant or by a predecessor in title.

E.

The applicant submits that the Proposed Building reflects the minimum variance necessary to afford relief within the intents and purposes of the Zoning Resolution. As reflected in the Programmatic Needs Report and discussed in detail above, an as-of-right development would not meet the applicant's programmatic needs because, among other things, no residential use would be allowed, and the building would not accommodate a sufficient number of affordable units to render a smaller development feasible.

Accordingly, the Board finds that the proposed variance is the minimum necessary to afford relief within the intent and purposes of the Zoning Resolution.

IV.

The Board has conducted an environmental review of the proposed action, which is classified as an Unlisted action pursuant to 6 NYCRR, Part 617.2, and has documented relevant information about the project in the Final Environmental Assessment Statement CEQR No. 20BSA017K.

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.

The Department of Environmental Protection, by letter dated January 7, 2020, states that, based on the results of mobile- and stationary-source Air Quality analysis performed pursuant to the City Environmental Quality Review Technical Manual, the proposed project would not result in any potential for significant adverse impacts with respect to air quality.

The Department of Environmental Protection, by letter dated February 5, 2020, states that the proposed project would not result in any potential for significant adverse impacts with respect to noise.

The Department of Parks and Recreation states, by correspondence dated March 10, 2020, that the proposed project would not result in any potential for significant adverse impacts with respect to shadows.

No other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable. Accordingly, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

V.

Based on the foregoing, the Board finds that the evidence in the record supports the findings required to be made under Z.R. § 72-21 and that the applicant has substantiated a basis to warrant exercise of discretion.

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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 Z.R. § 72-21 to *permit*—in an M1-1 zoning district—the development of a nine-story residential building with 129 units of affordable independent residences for seniors that would not comply with zoning regulations for use (Z.R. § 42-10), floor area (Z.R. § 43-12), height and setback (Z.R. § 43-43), and rear yards (Z.R. § 43-302); *on condition* that all work, operations, and site conditions shall conform to drawings filed with this application marked “Received March 8, 2021”—seventeen (17) sheets; and *on further condition*:

THAT the maximum bulk parameters of the building shall be as follows: a maximum of 103,012 square feet of floor area (3.99 FAR), a maximum street-wall height of 84'-4" that penetrates a 1:1 sky exposure plane, and a rear yard with a minimum depth of 20'-0", as illustrated on the Board-approved drawings;

THAT the subject building shall 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, Community Counseling & Mediation;

THAT this variance 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 a composite window-wall attenuation is required as follows: 31 dba is required for north facade (along Dumont Avenue); 31 dba is required for east facade (along Snediker Avenue); 38 dba is required for south facade (along Livonia Avenue); 40 dba is required for west facade (along Van Sinderen Avenue); an alternate means of ventilation is required for all residential or administrative/office uses;

THAT the property shall participate in the Brownfield Cleanup Program;

THAT issuance of building permits shall be conditioned on the issuance of a letter of acceptance into the NYSDEC Brownfield Cleanup Program and an executed Brownfield Cleanup Agreement;

THAT the remedial action work plan (RAWP) which would include a site-specific construction health & safety plan (CHASP) shall be prepared and shall be subject to NYSDEC review and approval;

THAT issuance of any certificate of occupancy shall be conditioned on the issuance of a certificate of completion from NYSDEC;

THAT if the project property does not complete the

approved Brownfield Cleanup Program remedy and receive a certificate of completion, the applicant shall be required to return to BSA for an application amendment and shall submit testing results and a Remedial Action Plan for review and approval by DEP;

THAT the new building shall be set back from the Van Sinderen Avenue street line as indicated on the Board-approved drawings;

THAT there shall be a new dedicated Fire Department connection furnishing water for the standpipe system to 485 Van Sinderen Avenue (Jean's Place) building from Snediker Avenue with proper signage;

THAT there shall be direct access 24/7 from Snediker Avenue building (Beverly's Place), by means of a two-hour rated corridor with two 1-½ hour doors, to access the Proposed Building at 485 Van Sinderen Avenue courtyard and rear of building;

THAT there shall be a permanent easement for emergency service access from Snediker Avenue through “Beverly's Place” multipurpose room;

THAT a Group R-2 fire alarm system with one-way voice communication shall be installed along with a fire alarm annunciator also installed at the Snediker Avenue emergency service access;

THAT the fire alarm panel shall be monitored by a Certificate of Fitness (F-53) holder;

THAT signage on Snediker Avenue side of door shall indicate emergency access to 485 Van Sinderen Avenue;

THAT a new fire hydrant shall be installed at the corner of Van Sinderen Avenue and Dumont Avenue;

THAT new “no standing” signs shall be installed along the north side of Dumont Avenue and the entire block length of Van Sinderen;

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. 2019-205-BZ) with references to the restrictive declarations recorded in the Office of the City Register, entitled “FDNY Emergency Services Access Agreement” (City Register File No. 2021000186198) and entitled “Declaration of Restrictive Covenants” (City Register File No. 2021000186197), shall be obtained within four years and an additional six months, in light of the current state of emergency declared to exist within the City of New York resulting from an outbreak of novel coronavirus disease, by December 3, 2025;

THAT a restrictive declaration, entitled “FDNY Emergency Services Access Agreement,” shall be recorded against the property in the Office of the City Register (City Register File No. 2021000186198) substantially conforming to the form and substance of the following:

THIS FDNY EMERGENCY SERVICES ACCESS AGREEMENT (this “Agreement”) is made as of the ___ day of _____, 2021 by and between BEVERLYS PLACE HOUSING DEVELOPMENT FUND CORPORATION a New York not-for-profit corporation having an office at 25 Elm Place, 2nd Floor, Brooklyn, NY

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11201 (“Grantor”), and JEANS PLACE HOUSING DEVELOPMENT FUND CORPORATION, a New York not-for-profit corporation having an office at 25 Elm Place, 2nd Floor, Brooklyn, NY 11201 (“Grantee”).

RECITALS

WHEREAS, Grantor is the owner in fee of certain land, with the improvements thereon, in the County of Kings, City and State of New York, generally known by the street address 404 Snediker Avenue, Brooklyn, New York, designated as Lot 26 in Block 3799 on the Tax Map of the City of New York, County of Kings (the “Tax Map”) and more particularly described on Exhibit A annexed hereto (said land being herein called “Parcel A;” said improvements, together with any future replacements thereof and/or new building(s) permitted on Parcel A, being herein collectively called the “Grantor Building”);

WHEREAS, Grantee is the owner in fee of certain land, with the building and improvements thereon, in the County of Kings, City and State of New York, generally known by the street address as 485-515 Van Sinderen Ave., Brooklyn, New York, designated as Lot 1 in Block 3799 on the Tax Map and more particularly described in Exhibit B annexed hereto (said land being herein called the “Parcel B;” said building and improvements, together with any future replacements thereof permitted in accordance with this Agreement, being herein collectively called the “Grantee Building”);

WHEREAS, Grantee has requested by application under BSA Calendar No. 2019- 205-BZ (the “Application”), that the New York City Board of Standards and Appeals (the “Board”) grant a variance under ZR § 72-21 (the “Variance”), to permit the development of a nine-story building at the Premises with 129 units of affordable housing (the “Affordable Units”), contrary to ZR §§ 42-10 (use), 43-12 (FAR), 43-43 (height and setback), and 43-302 (required rear yard along district boundary) within the subject M1-1 zoning district (the “Proposed Development”); and

WHEREAS, the Board has asked the New York City Fire Department (“FDNY”) to review Grantee’s plans for the Proposed Development, and FDNY has conditioned its recommendation that the Board approve the Proposed Development upon the establishment and recording of a permanent easement for the benefit of FDNY firefighting and emergency services personnel, allowing access from Snediker Avenue to the Grantor Building through a portion of the Grantee Building (“FDNY emergency services access”).

NOW, THEREFORE, for good and valuable

consideration the receipt and sufficiency of which is hereby acknowledged, Grantor hereby grants the following easement to Grantee:

1. Grantor hereby grants to Grantee, and its heirs, successors and assigns, a permanent and perpetual easement in, on, through and over the portion of the Grantor Building shown on Exhibit C hereto and described in Exhibit D hereto, solely for the purpose of providing FDNY emergency services access to the Grantee Building;
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. This Agreement may not be amended or terminated without the prior written consent of the FDNY;
4. Failure to comply with the terms of this Agreement may result in the revocation of a building permit or certificate of occupancy by the Department of Buildings, as well as any other authorization or waiver for the Grantee Building granted by the Board, including but not limited to, the Variance; and
5. FDNY, as the third-party beneficiary of this Agreement, shall have the authority to enforce the provisions of this Agreement in any manner authorized by law, rule, or regulation.
6. This Agreement shall be recorded by Grantee and Grantor at the city register’s (county clerk’s) office against Parcel A and Parcel B and the cross-reference number and title of this Agreement shall be recorded on each temporary and permanent certificate of occupancy hereafter issued to buildings located on Parcel A and Parcel B and in any deed for the conveyance thereof.

THAT a restrictive declaration, entitled “Declaration of Restrictive Covenants,” shall be recorded against the property in the Office of the City Register (City Register File No. 2021000186197) substantially conforming to the form and substance of the following:

THIS DECLARATION OF RESTRICTIVE COVENANTS (the “Declaration”), dated this ____ day of _____, 2020, is made by JEAN’S PLACE HOUSING DEVELOPMENT FUND CORPORATION (the “Declarant”), a New York not-for-profit corporation having an office at 25 Elm Place, 2nd Floor, Brooklyn, NY 11201.

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 3799, Lot 1 on the Tax

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Map of the City of New York for Kings County, as more particularly described in Exhibit A annexed hereto and made a part hereof (the "Premises"); and

WHEREAS, the Declarant has requested by application under BSA Calendar No. 2019-205-BZ (the "Application"), that the New York City Board of Standards and Appeals (the "Board") grant a variance under ZR § 72-21 (the "Variance"), to permit the development of a nine-story building at the Premises with 129 units of affordable housing (the "Affordable Units"), contrary to ZR §§ 42-10 (use), 43-12 (FAR), 43-43 (height and setback), and 43-302 (required rear yard along district boundary) within the subject M1-1 zoning district (the "Proposed Development"); and

WHEREAS, the Board has conditioned its issuance of the Variance on the Declarant declaring that the Affordable Units shall be income-restricted housing units as defined in ZR §12-10 and restricting the rent charged for the Affordable Units to a maximum of 60% the area median income for New York City ("AMI") for the life of the Proposed Development; and

WHEREAS, ZR §12-10 defines income-restricted housing units as dwelling units that comply with the definition of affordable housing unit set forth in ZR § 23-911 (General definitions), or any other dwelling unit with a legally binding restriction limiting rents to be affordable to households with incomes at or below 80 percent of the income index, as defined in ZR § 23-911 and as prescribed by a City, State or Federal agency, law, regulation or regulatory agreement, for a period of not less than 30 years; and

WHEREAS, pursuant to ZR § 23-911, an affordable housing unit includes a dwelling unit that is used for class A occupancy as defined in the Multiple Dwelling Law and that is or will be restricted, pursuant to a regulatory agreement, to occupancy by certain households; and

WHEREAS, 100 percent (100%) of the Affordable Units in the Proposed Development will qualify as affordable housing units under ZR § 23-911 and shall be rented to households with incomes at or below sixty percent (60%) of AMI; and

WHEREAS, the Board requires the Declarant to execute and record in the Office of the City Register of the City of New York this Declaration prior to obtaining building permits for the Premises.

NOW THEREFORE, in consideration of the Board's approval of the Application, Declarant does hereby declare that the Declarant and its successors and/or assigns shall be responsible for

compliance with the following restrictions:

1. All dwelling units in the Proposed Development will be low-income affordable housing units;
2. All dwelling units in the Proposed Development will be provided to tenants whose annual income is at or below sixty percent (60%) of AMI;
3. All dwelling units in the Proposed Development will remain as affordable housing units for the life of the building;
4. Except as otherwise set forth herein, this Declaration may not be modified, amended, or terminated without the prior written consent of the Board;
5. The covenants set forth herein shall run with the land and be binding upon and inure to the benefit of the Declarant and its heirs, legal representatives, successors and assigns;
6. Failure to comply with the terms of this Declaration, which remain uncured within thirty (30) days of Declarant's receipt of a written notice to comply 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 Application; and
7. In the event that (a) the Declarant elects to abandon the Application or (b) the underlying zoning district is changed such that the relief provided by the Application is no longer required, 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.

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 8, 2021.

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2019-301-BZ

CEQR #20-BSA-049K

APPLICANT – Eric Palatnik, P.C., for 26 ARISTA Realty LLC, owner.

SUBJECT – Application December 3, 2019 – Special Permit (§73-36) to permit the legalization of the operation of a physical cultural establishment (CrossFit 718) contrary to ZR §41-10. M1-2D zoning district.

PREMISES AFFECTED – 148 26th Street, Block 657, Lot 12, Borough of Brooklyn.

COMMUNITY BOARD #7BK

ACTION OF THE BOARD – Application granted.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta5
Negative:0

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated November 4, 2019, acting on DOB Application No. 321721188, reads in pertinent part:

“Proposed Physical Culture Establishment [as defined in section ZR 12-10] is not permitted as of right in M1-2D Zoning Districts and is contrary to ZR 73-10.

Uses as the Physical Culture Health Establishment in M1-2D zoning districts shall comply with regulation of ZR 73-36a (uses permitted by special permit by the Board of Standards and Appeal[s]).”

This is an application under Z.R. §§ 73-36 and 73-03 to legalize, on a site located within an M1-2D zoning district, the operation of a physical culture establishment (“PCE”) on a portion of the first floor of an existing two-story commercial building, contrary to Z.R. § 42-10.

A public hearing was held on this application on January 26, 2021, after due notice by publication in *The City Record*, and then to decision on March 8, 2021. Community Board 7, Brooklyn, recommends approval of this application. The Board received two form letters in support of this application, and one form letter in objection raising concerns regarding the impact of PCE use in the area.

The Premises are located on the southeast corner of 26th Street and Third Avenue, within an M1-2D zoning district, in Brooklyn. With approximately 60 feet of frontage along 26th Street, 101 feet of frontage along Third Avenue, and 6,066 square feet of lot area, the Premises are occupied by an existing two-story commercial building. The Board notes that its determination is subject to and guided by Z.R. § 73-03. The Board notes that pursuant to Z.R. § 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. 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.

The applicant represents that the PCE occupies 3,843 square feet of floor area on the first floor with an open exercise studio with exercise equipment, restroom, and changing room. The PCE began operation in May 2014, as “CrossFit 718,” with the following hours of operation: Monday to Thursday, 6:00 a.m. to 9:00 p.m.; Friday, 6:00 a.m. to 7:00 p.m.; Saturday, 8:00 a.m. to 1:00 p.m.; and, Sunday, 9:00 a.m. to 12:00 p.m.

The applicant represents that 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 bustling commercial and manufacturing area across from the Gowanus Expressway and is consistent with the character of the uses in the surrounding area. The applicant submits that the PCE contains facilities for classes, instruction and programs for physical improvement. 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. 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.

The applicant submits that noise and vibration issues are not anticipated, and sound attenuation measures will be maintained to ensure that sound and vibration from PCE use does not negatively impact nearby occupied spaces. These measures include rubber flooring covering the entire exercise studio space and foam padding installed over rubber mats in additional areas of the studio. The applicant represents that the PCE use will produce no adverse effect on the privacy, quiet, light and air in the neighborhood because the PCE offers small classes with a maximum of 14 participants and provides an asset to the surrounding area.

The Fire Department states, by letter dated January 19, 2021, that the Premises do not have a fire suppression system or a fire alarm system and are not required to have such. As per the NYC Construction Code, an application for a Place of Assembly shall be filed, approved, and permitted upon granting of a special permit by the Board. Inspections of the PCE by the Bureau’s Licensed Public Place of Assembly Unit will be conducted in the near future and enforcement of the Fire Department’s rules and regulations for Public Assembly spaces will be done. Based on the foregoing, the Fire Department has no objection to the application, as the Bureau of Fire Prevention will continue to inspect the Premises and enforce all applicable rules and regulations.

Accordingly, 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

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community. In addition, the Board finds that the operation of the PCE will not interfere with any public improvement project.

The project is classified as a Type II action pursuant to 6 NYCRR Part 617.5. The Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 20-BSA-049K, dated March 8, 2021.

Therefore, the Board has determined that the evidence in the record supports the requisite findings for the special permit pursuant to Z.R. §§ 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 Z.R. §§ 73-36 and 73-03 to *legalize*, on a site located within an M1-2D zoning district, the operation of a physical culture establishment on a portion of the first floor of an existing two-story commercial building, contrary to Z.R. § 42-10, *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked “Received February 18, 2021”—Six (6) sheets; and *on further condition*:

THAT this grant shall be limited to a term of ten years, expiring March 8, 2031;

THAT an application for a Place of Assembly shall be obtained forthright;

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-foot-wide exit pathways shall be maintained leading to the required exits and that pathways shall be maintained unobstructed, including from any equipment;

THAT accessibility shall be provided pursuant to the standards set forth in applicable accessibility laws, including but not limited to Chapter 11 of the NYC Building Code, the 2009 American National Standards Institute (ANSI) A117.1 and Title III of the Americans with Disabilities Act, as reviewed and approved by DOB;

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. 2019-301-BZ”), shall be obtained within one year and an additional six months, in light of the current state of emergency declared to exist within the City of New York resulting from an outbreak of novel coronavirus disease, by September 16, 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;

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 8, 2021.

2020-30-BZ

CEQR #20-BSA-078Q

APPLICANT – Eric Palatnik, P.C., for PFAS Realty Corp., owner; Fortified Holistic LLC, lessee.

SUBJECT – Application April 2, 2020 – Special Permit (§73-36) to permit the operation of a physical cultural establishment (CrossFit Dutch Kills) to be located on a portion of the first-floor and mezzanine of an existing building contrary to ZR §42-10. M1-2 Special Long Island City Mixed Use District.

PREMISES AFFECTED – 37-40 31st Street, Block 372, Lot 35, Borough of Queens

COMMUNITY BOARD #1Q

ACTION OF THE BOARD – Application granted.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta5
Negative:0

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated March 3, 2020, acting on DOB Alteration Type I Application No. 420666871, reads in pertinent part:

“The Physical cultural establishment in an M1-2/R6A zoning district in the Special Long island City Mixed use District is contrary to ZR Section 42-00 and requires a special permit from the NYC Board of Standards and Appeals pursuant to ZR Section 73-36.”

This is an application under Z.R. §§ 73-36 and 73-03 to legalize, on a site located within an M1-2/R6A zoning district and in the Special Long Island City Mixed Use District, the operation of a physical culture establishment (“PCE”) on a portion of the first floor and mezzanine floor of an existing one-story with mezzanine commercial building, contrary to Z.R. § 42-10.

A public hearing was held on this application on February 9, 2021, after due notice by publication in *The City Record*, and then to decision on March 8, 2021. Community Board 1, Queens, recommends approval of this application.

The Premises are located on the northwest corner of 31st Street and 38th Avenue, within an M1-2/R6A zoning district and in the Special Long Island City Mixed Use District, in Queens. With approximately 79 feet of frontage along 31st Street, 106 feet of frontage along 38th Avenue, and 8,299 square feet of lot area, the Premises are occupied by an existing one-story with mezzanine commercial building.

The Board notes that its determination is subject to and guided by Z.R. § 73-03. The Board notes that pursuant

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to Z.R. § 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. 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.

The applicant represents that the PCE occupies 4,464 square feet of floor area on the first floor with an open exercise studio, restrooms, and office and storage space; and 343 square feet of floor area on the mezzanine with an office and storage space. The PCE began operation on September 1, 2017, as "CrossFit Dutch Kills," with the following hours of operation: Monday to Thursday, 6:00 a.m. to 9:00 p.m.; Friday, 6:00 a.m. to 8:30 p.m.; Saturday, 9:00 a.m. to 2:00 p.m.; and, closed on Sunday.

The applicant represents that 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 bustling commercial and manufacturing area across from the Gowanus Expressway and is consistent with the character of the uses in the surrounding area. The applicant submits that the PCE contains facilities for classes, instruction and programs for physical improvement. 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. 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.

The applicant submits the PCE will not disturb the other tenants in the building or adjacent neighbors as the building is surrounded by manufacturing uses, the building has 12"-thick reinforced concrete structural slab on grade which dampens vibrations created by the workout equipment. The PCE has also installed 1.5"-thick rubber mats which prevent the equipment from hitting the concrete floors and further dampen the vibrations emitted by the equipment. The applicant represents that the PCE use will produce no adverse effect on the privacy, quiet, light and air in the neighborhood because the PCE is located in a building with no residential uses, and offers small classes with a maximum of 14 participants and provides an asset to the surrounding area.

The Fire Department states, by letter dated February 6, 2021, that the Premises are not required to be provided with a fire suppression system or a fire alarm system. Based on the foregoing, the Fire Department has no objection to the application, as the Bureau of Fire Prevention will continue to inspect the Premises and enforce all applicable rules and

regulations.

Accordingly, 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. In addition, the Board finds that the operation of the PCE will not interfere with any public improvement project.

The project is classified as a Type II action pursuant to 6 NYCRR Part 617.5. The Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 20-BSA-078Q, dated March 8, 2021.

Therefore, the Board has determined that the evidence in the record supports the requisite findings for the special permit pursuant to Z.R. §§ 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 Z.R. §§ 73-36 and 73-03 to *legalize*, on a site located within an M1-2/R6A zoning district and in the Special Long Island City Mixed Use District, the operation of a physical culture establishment on a portion of the first floor and mezzanine floor of an existing one-story with mezzanine commercial building, contrary to Z.R. § 42-10, *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked "Received February 18, 2021"—Three (3) sheets; and *on further condition*:

THAT this grant shall be limited to a term of ten years, expiring March 8, 2031;

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-foot-wide exit pathways shall be maintained leading to the required exits and that pathways shall be maintained unobstructed, including from any equipment;

THAT accessibility shall be provided pursuant to the standards set forth in applicable accessibility laws, including but not limited to Chapter 11 of the NYC Building Code, the 2009 American National Standards Institute (ANSI) A117.1 and Title III of the Americans with Disabilities Act, as reviewed and approved by DOB;

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. 2020-30-BZ"), shall be obtained within one year and an additional six months, in light of the current state of emergency declared to exist within the City of New York resulting from an outbreak of novel coronavirus disease, by September 16, 2022;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the

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Department of Buildings;

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

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 8, 2021.

2020-37-BZ

CEQR #20-BSA-084M

APPLICANT – Law Office of Jay Goldstein, for 7th and 23rd Associates, LP, owner; Mind Body Project, lessee.

SUBJECT – Application April 28, 2020 – Special Permit (§73-36) to permit the operation of Physical Cultural Establishment (Mind Body Project) located in a portion of the first floor of an existing building contrary to ZR §32-10. C6-3X, R8A.C2-5 and C6-3A zoning districts.

PREMISES AFFECTED – 217 Seventh Avenue, Block 00798, Lot 7502, Borough of Manhattan.

COMMUNITY BOARD #4M

ACTION OF THE BOARD – Application granted.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta5

Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated March 30, 2020, acting on DOB Alteration Type I Application No. 123760983, reads in pertinent part:

“Proposed “Physical Culture Establishment” in a C6-3X/C6-3A/C2-5 zoning districts is not “as of right” and requires a special permit from The New York City Board of Standards and Appeals (BSA) per ZR 32-10, ZR 32-31 and ZR 73-36.”

This is an application under Z.R. §§ 73-36 and 73-03 to permit, on a site located partially within a C6-3X zoning district, partially within a C2-5 (R8A) zoning district, and partially within a C6-3A zoning district, the operation of a physical culture establishment (“PCE”) on a portion of the first floor of an existing six-story with mixed-use residential and commercial building, contrary to Z.R. § 32-10.

A public hearing was held on this application on February 9, 2021, after due notice by publication in *The City Record*, and then to decision on March 8, 2021. Community Board 4, Manhattan, recommends approval of this application.

The Premises are an irregular lot located on the southeast corner of Seventh Avenue and West 23rd Street, also with frontage on West 22nd Street, partially within a C6-3X zoning district, partially within a C2-5 (R8A) zoning district, and partially within a C6-3A zoning district, in Manhattan. With approximately 148 feet of frontage along

Seventh Avenue, 175 feet of frontage along West 23rd Street, 84 feet of non-continuous frontage along West 22nd Street, and 25,973 square feet of lot area, the Premises are occupied by an existing six-story with mixed-use residential and commercial building. The PCE is proposed within the C6-3X zoning district and C2-5 (R8A) zoning district portion of the Premises.

The Board notes that its determination is subject to and guided by Z.R. § 73-03. The Board notes that pursuant to Z.R. § 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. 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.

The applicant represents that the PCE will occupy 3,360 square feet of floor area on the first floor with a yoga studio, changing room with showers, restrooms, reception, office, storage, and employee lounge. The PCE is proposed to operate as “Mind Body Project,” with the following hours of operation: Monday to Friday, 5:00 a.m. to 10:00 p.m.; and, Saturday and Sunday, 7:00 a.m. to 4:30 p.m.

The applicant represents that 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 portion of the first floor of an existing mixed-use commercial and residential building, the surrounding area is predominantly comprised of commercial, residential, and community facility uses, and the PCE will not attract significant additional traffic to the area, and therefore will not have a negative impact on the adjacent tenants or the neighborhood. The applicant submits that the PCE contains facilities for classes, instruction and programs for physical improvement. 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. 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.

The applicant submits that sound attenuation measures will be maintained to ensure that there are no adverse effects from the PCE at the Premises or within the surrounding neighborhood. These measures include: all typical partitions at the studio isolated 2" (filled with BATT insulation) from the adjacent structure by two layers of 5/8" sheetrock inside the studio and two layers outside the studio, with sound attenuating sealant, and 2.5" sound attenuated BATT insulation; all wood flooring at the studio, with the exception of the built-in exercise area mats, which consist of

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15.2mm-thick athletic mat with STC 51; all penetrations at the studio ceilings and partitions sealed with mineral fiber insulation and caulked; the studio door will have acoustic seals, and an STC rating of 35; the studio ceilings will be protected by two-layers of 5'-8" sheetrock hung on isolators; the walls will have an STC rating of 60, and the ceiling will have an STC rating of 69. Further, directly below the PCE space is a parking lot, storage and utility room. The applicant represents that the PCE use will produce no adverse effect on the privacy, quiet, light and air in the neighborhood because it will be located within an existing mixed-use commercial and residential building in an area predominantly comprised of commercial, residential, and community facility uses; the area is already heavily trafficked, and most of the patrons will walk or use mass transit to access the PCE, so the PCE will not increase traffic to the surrounding area. Accordingly, the PCE will have no negative impact on the neighborhood.

The Fire Department states, by letter dated February 6, 2021, the Premise are protected by a fire suppression system (sprinkler and standpipe) and a fire alarm system that monitors the sprinkler system. A fire alarm system for the PCE space is not required. Based on the foregoing, the Fire Department has no objection to the application, as the Bureau of Fire Prevention will continue to inspect the Premises and enforce all applicable rules and regulations.

Accordingly, 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. In addition, the Board finds that the operation of the PCE will not interfere with any public improvement project.

The project is classified as a Type II action pursuant to 6 NYCRR Part 617.5. The Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 20-BSA-084M, dated March 8, 2021.

Therefore, the Board has determined that the evidence in the record supports the requisite findings for the special permit pursuant to Z.R. §§ 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 Z.R. §§ 73-36 and 73-03 *to permit*, on a site located partially within a C6-3X zoning district, partially within a C2-5 (R6A) zoning district, and partially within a C6-3A zoning district, the operation of a physical culture establishment on a portion of the first floor of an existing six-story with mixed-use residential and commercial building, contrary to Z.R. § 32-10, *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked "Received October 13, 2020"—Four (4) sheets; and *on further condition*:

THAT this grant shall be limited to a term of ten years, expiring March 8, 2031;

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-foot-wide exit pathways shall be maintained leading to the required exits and that pathways shall be maintained unobstructed, including from any equipment;

THAT accessibility shall be provided pursuant to the standards set forth in applicable accessibility laws, including but not limited to Chapter 11 of the NYC Building Code, the 2009 American National Standards Institute (ANSI) A117.1 and Title III of the Americans with Disabilities Act, as reviewed and approved by DOB;

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. 2020-37-BZ"), shall be obtained within four years and an additional six months, in light of the current state of emergency declared to exist within the City of New York resulting from an outbreak of novel coronavirus disease, by September 16, 2025;

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.

Adopted by the Board of Standards and Appeals, March 8, 2021.

2020-41-BZ

CEQR #20-BSA-087Q

APPLICANT – Akerman LLP, for DE Boulevard LLC, owner; PFNY LLC, lessee.

SUBJECT – Application May 6, 2020 – Special Permit (§73-36) to permit the operation of a physical cultural establishment (Planet Fitness) to locate on a portion of the cellar and first floor of a new building contrary to ZR §32-10. C4-5X, C4-4A, Special Forest Hills District
PREMISES AFFECTED – 107-02 Queens Boulevard, Block 03238, Lot 44, Borough of Queens.

COMMUNITY BOARD #6Q

ACTION OF THE BOARD – Application granted.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta5
Negative:.....0

THE RESOLUTION –

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The decision of the Department of Buildings (“DOB”), dated April 30, 2020, acting on DOB New Building Application No. 421535057, reads in pertinent part:

“The Physical cultural establishment in C4-5X/C4-4A zoning district in the Special Forest Hills District is contrary to ZR Section 32-10 and requires a special permit from the NYC Board of Standards and Appeals pursuant to ZR Section 73-36.”

This is an application under Z.R. §§ 73-36 and 73-03 to permit, on a site located partially within a C4-5X zoning district and partially within a C4-4A zoning district, and in the Special Forest Hills District, the operation of a physical culture establishment (“PCE”) on portions of the first floor and cellar level of a proposed ten-story mixed-use commercial and residential building, contrary to Z.R. § 32-10.

A public hearing was held on this application on February 9, 2021, after due notice by publication in *The City Record*, and then to decision on March 8, 2021. Community Board 6, Queens, recommends approval of this application.

The Premises are located on the southeast corner of Queens Boulevard and 70th Avenue, partially within a C4-5X zoning district and partially within a C4-4A zoning district, and in the Special Forest Hills District 1, in Queens. With approximately 162 feet of frontage along Queens Boulevard, 92 feet of frontage along 70th Avenue, and 17,090 square feet of lot area, the Premises under construction of a proposed ten-story mixed-use commercial and residential building.

The Board notes that its determination is subject to and guided by Z.R. § 73-03. The Board notes that pursuant to Z.R. § 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. 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.

The applicant represents that the PCE will occupy 560 square feet of floor area on the first floor with the PCE reception, and 15,232 square feet of floor space on the cellar level with exercise areas with exercise machines, locker rooms with showers, changing areas, restrooms, and a private amenities area. The PCE proposes to operate as “Planet Fitness,” 24 hours per day, seven days per week.

The applicant represents that 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 an area where PCE use is consistent with the mixed-use character of the area. The applicant submits that the PCE will contain facilities for classes, instruction and programs for physical improvement. 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. 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.

The applicant submits the PCE will maintain fitness areas with 9-mm thick rubber flooring to attenuate sound and vibration and does not anticipate any adverse noise or vibration impacts due to the majority of the proposed PCE use located on the cellar level, which will be separated from commercial uses on the first floor by a concrete slab with a thickness of approximately 10 inches; additionally, the PCE will be separated by two intervening floors (first floor commercial with a ceiling height of approximately 16 feet, and second floor enclosed parking) from residential uses in the building.

The applicant represents that the PCE use will produce no adverse effect on the privacy, quiet, light and air in the neighborhood because the PCE will be located in a mixed-use area characterized by like uses such as retail stores, eating and drinking establishments, and other gyms.

The applicant represents that the PCE will be fully sprinklered and a fire alarm system with a connection to a central monitoring station will be installed and maintained. The Fire Department states, by letter dated February 6, 2021, that the Premises will be protected by a fire suppression system (sprinkler) and a fire alarm system. Such systems will be inspected upon completion of the required work by the Fire Department. Inspections of the PCE by the Bureau’s Licensed Public Place of Assembly Unit will be conducted in the near future and enforcement of the Fire Department’s rules and regulations for Public Assembly spaces will be done. Based on the foregoing, the Fire Department has no objection to the application, as the Bureau of Fire Prevention will continue to inspect the Premises and enforce all applicable rules and regulations.

Accordingly, 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. In addition, the Board finds that the operation of the PCE will not interfere with any public improvement project.

The project is classified as a Type II action pursuant to 6 NYCRR Part 617.5. The Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 20-BSA-087Q, dated March 8, 2021.

Therefore, the Board has determined that the evidence in the record supports the requisite findings for the special permit pursuant to Z.R. §§ 73-36 and 73-03 and that the applicant has substantiated a basis to warrant exercise of

1 Approximately 14,860 square feet of the Premises are located within a C4-5X zoning district and approximately 2,230 square feet are located within a C4-4A zoning district.

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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 Z.R. §§ 73-36 and 73-03 to *permit*, on a site located

partially within a C4-5X zoning district and partially within a C4-4A zoning district, and in the Special Forest Hills District, the operation of a physical culture establishment on portions of the first floor and cellar level of a proposed ten-story mixed-use commercial and residential building, contrary to Z.R. § 32-10, *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked “Received March 3, 2021”—Nine (9) sheets; and *on further condition*:

THAT this grant shall be limited to a term of ten years, expiring March 8, 2031;

THAT the PCE shall be operated and maintained so as to prevent noise and vibration disturbances to nearby occupied spaces;

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

THAT minimum three-foot-wide exit pathways shall be maintained leading to the required exits and that pathways shall be maintained unobstructed, including from any equipment;

THAT accessibility shall be provided pursuant to the standards set forth in applicable accessibility laws, including but not limited to Chapter 11 of the NYC Building Code, the 2009 American National Standards Institute (ANSI) A117.1 and Title III of the Americans with Disabilities Act, as reviewed and approved by DOB;

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. 2020-41-BZ”), shall be obtained within four years and an additional six months, in light of the current state of emergency declared to exist within the City of New York resulting from an outbreak of novel coronavirus disease, by September 16, 2025;

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.

Adopted by the Board of Standards and Appeals,

March 8, 2021.

2020-48-BZ

CEQR #20-BSA-093M

APPLICANT – Akerman LLP, for Barry’s Bootcamp (PCE Operator) owner.

SUBJECT – Application June 5, 2020 – Special Permit (§73-36) to permit the operation of a new Physical Culture Establishment (PCE), a Barry’s Bootcamp fitness center, on the cellar level and ground floor of an existing 18-story, mixed residential and commercial building contrary to ZR §32-10. C2-8A zoning district.

PREMISES AFFECTED – 237-241 East 86th Street, Block 1532, Lot(s) 0016, Borough of Manhattan.

COMMUNITY BOARD #8M

ACTION OF THE BOARD – Application granted.

THE VOTE –

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

Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated June 1, 2020, acting on DOB Alteration Type I Application No. 123912178, reads in pertinent part:

“Proposed “Physical Culture Establishment” in a C2-8A zoning district is not “as of right” and requires a special permit from The New York City Board of Standards and Appeals (BSA) per ZR 32-31 and ZR 73-36.”

This is an application under Z.R. §§ 73-36 and 73-03 to permit, on a site located within a C2-8A zoning district, the operation of a physical culture establishment (“PCE”) on portions of the first floor and cellar level of an existing 18-story with cellar mixed-use residential and commercial building, contrary to Z.R. § 32-10.

A public hearing was held on this application on February 9, 2021, after due notice by publication in *The City Record*, and then to decision on March 8, 2021. Community Board 8, Manhattan, recommends approval of this application. The Board also received a letter in support of this application from a New York City Councilmember.

The Premises are located on the north side of East 86th Street between Second Avenue and Third Avenue, within a C2-8A zoning district, in Manhattan. With approximately 94 feet of frontage along East 86th Street, 101 feet of depth, and 9,440 square feet of lot area, the Premises are occupied by an existing 18-story with cellar residential and commercial building.

The Board notes that its determination is subject to and guided by Z.R. § 73-03. The Board notes that pursuant to Z.R. § 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

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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. 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.

The applicant represents that the PCE will occupy 3,888 square feet of floor area on the first floor with a lobby, exercise studio, locker room, reception, “fuel bar,” and storage; and 3,385 square feet of floor space on the cellar level with an exercise studio, lockers, storage, restrooms, and showers. The PCE is proposed to operate as “Barry’s Bootcamp,” with the following hours of operation: Monday to Friday, 5:30 a.m. to 8:00 p.m.; and, Saturday and Sunday, 7:00 a.m. to 5:00 p.m.

The applicant represents that 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 commercial zoning district in a mixed-use building, and the location of the proposed PCE is consistent with mixed-use character of the surrounding area, which has compatible local commercial uses including retail stores, eating and drinking establishments, and other fitness centers, in addition to residential use. The applicant submits that the PCE contains facilities for classes, instruction and programs for physical improvement. 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. 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.

The applicant submits that operational and sound attenuation measures will be maintained to ensure that that there are no adverse effects from the PCE at the Premises or within the surrounding neighborhood. These measures include a suspended, spring isolated acoustic ceiling, insulated walls, columns, and conduits, and an isolated flooring system with acoustical rubber tile flooring. The applicant represents that the PCE use will produce no adverse effect on the privacy, quiet, light and air in the neighborhood, that the PCE will provide an advantage to the community because it provides access to the practice of physical fitness activities, which improve physical and mental health, and the operation and sound attenuation measures described above ensure that that there are no adverse effects from the PCE.

The applicant states that the PCE will be protected by a sprinkler system and fire alarm system with connection to a central monitoring station. The Fire Department states, by letter dated February 6, 2021, that the proposed occupant load as per plans submitted to the Board is 96 persons at the first floor and 63 persons at the cellar. As per the NYC Construction Code, an application for a Place of Assembly space at the first floor shall be filed, approved and permitted upon granting of a special permit by the Board. The

Premises are protected by a fire suppression system (sprinkler and standpipe). An application for the installation of a fire alarm system has been filed with the Fire Department and such system shall be installed prior to the occupancy of the PCE space. Inspections of the PCE by the Bureau’s Licensed Public Place of Assembly Unit will be conducted in the near future and enforcement of the Fire Department’s rules and regulations for Public Assembly spaces will be done. Based on the foregoing, the Fire Department has no objection to the application, as the Bureau of Fire Prevention will continue to inspect the Premises and enforce all applicable rules and regulations.

Accordingly, 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. In addition, the Board finds that the operation of the PCE will not interfere with any public improvement project.

The project is classified as a Type II action pursuant to 6 NYCRR Part 617.5. The Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 20-BSA-093M, dated March 8, 2021.

Therefore, the Board has determined that the evidence in the record supports the requisite findings for the special permit pursuant to Z.R. §§ 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 Z.R. §§ 73-36 and 73-03 to *permit*, on a site located within a C2-8A zoning district, the operation of a physical culture establishment on portions of the first floor and cellar level of an existing 18-story with cellar residential and commercial building, contrary to Z.R. § 32-10, *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked “Received February 16, 2021”—Six (6) sheets; and *on further condition*:

THAT this grant shall be limited to a term of ten years, expiring March 8, 2031;

THAT an application for a Place of Assembly shall be obtained forthright;

THAT a fire alarm system shall be installed prior to the occupancy of the PCE space;

THAT the sound system shall be controlled by a sound limiter to limit amplified music levels;

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

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-foot-wide exit pathways shall be maintained leading to the required exits and that pathways shall be maintained unobstructed, including from

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any equipment;

THAT accessibility shall be provided pursuant to the standards set forth in applicable accessibility laws, including but not limited to Chapter 11 of the NYC Building Code, the 2009 American National Standards Institute (ANSI) A117.1 and Title III of the Americans with Disabilities Act, as reviewed and approved by DOB;

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. 2020-48-BZ”), shall be obtained within four years and an additional six months, in light of the current state of emergency declared to exist within the City of New York resulting from an outbreak of novel coronavirus disease, by September 16, 2025;

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.

Adopted by the Board of Standards and Appeals, March 8, 2021.

2020-63-BZ

CEQR #21-BSA-006K

APPLICANT – Jay Goldstein, Esq., for Gennady Belenkiy, owner.

SUBJECT – Application August 7, 2020 – Special Permit (§73-622) to permit the enlargement of an existing one-family home contrary to underlying bulk requirements. R3-2 zoning district.

PREMISES AFFECTED – 1718 East 28th Street, Block 6810, Lot 12, Borough of Brooklyn.

COMMUNITY BOARD #12BK

ACTION OF THE BOARD – Application granted.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta5
Negative:0

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated July 6, 2020, acting on DOB Application No. 321595305, reads in pertinent part:

- “1. ZR 23-142: Proposed Maximum Floor Area Ratio (FAR) in Zoning District R3-2 exceeds that permitted by ZR 23-142.
2. ZR 23-142: Proposed Maximum Lot Coverage in Zoning District R3-2 exceeds that permitted by ZR 23-142.

3. ZR 23-142: Proposed Minimum Required Open Space in Zoning District R3-2 is deficient from that required by ZR 23-142
4. ZR 23-47: Proposed Minimum Required Rear Yard in ZD R3-2 is contrary to ZR 23-47
5. ZR 23-44: Proposed enlargement is not a Permitted Obstruction in Required Rear Yard contrary to ZR 23-44.”

This is an application under Z.R. §§ 73-622 and 73-03 to permit, in an R3-2 zoning district, the enlargement of an existing two-story, with cellar and attic, single-family detached residence that does not comply with zoning regulations for floor area ratio (“FAR”), lot coverage, open space (Z.R. § 23-142), and rear yard (Z.R. §§ 23-44, 23-47).

A public hearing was held on this application on January 26, 2021, after due notice by publication in *The City Record*, and then to decision on March 8, 2021. Community Board 15, Brooklyn, recommends approval of this application. The Board also received one form letter in support of the application, and one letter opposed to this application citing concerns over the impacts of construction and whether the proposed enlargement fits within the neighborhood character.

The Premises are located on the west side of East 28th Street, between Quentin Road and Avenue R, within an R3-2 zoning district, in Brooklyn. With approximately 32'-6" frontage along East 28th Street, 100 feet of depth, and 3,250 square feet of lot area, the Premises are occupied by an existing two-story, with cellar and attic, single-family detached residence.

The Board notes that its determination herein is subject to and guided by, inter alia, Z.R. §§ 73-01 through 73-04. As a threshold matter, the Board notes that the Premises are within the boundaries of a designated area in which the subject special permit is available. The Board notes further that this application seeks to enlarge an existing detached single-family residence, as contemplated in Z.R. § 73-622.

The existing building is a two-story, with cellar and attic, single-family detached residence with approximately 1,937 square feet of floor area, (0.60 FAR), 56% of open space (1,811 square feet), 44% of lot coverage (1,439 square feet), a rear yard with a depth of 30 feet, and two side yards with widths of 2'-9-1/2" and 11'-6-3/4". The applicant seeks to vertically and horizontally enlarge the existing building resulting in a three-story detached single family residence with 0.84 FAR (2,727 square feet of floor area), 62% of open space (2,026.6 square feet), 38% of lot coverage (1,223 square feet), a rear yard with a depth of 20 feet at the first and second floor, and 41'-11-7/8" at the third floor, and two side yards with widths of 2'-9-1/2" and 8'-0". The applicant proposes to increase the floor area at the first floor, from 992 square feet to 1,199 square feet, and second floor, from 944 square feet to 1,122 square feet, and add a third floor with 405 square feet of floor area.

At the Premises, pursuant to Z.R. § 23-142 and Z.R. § 23-47, a maximum of 0.50 FAR is permitted, a maximum of 35% of lot coverage is permitted, a minimum of 65% of

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open space is required, and a rear yard with a minimum depth of 30 feet is required. The applicant represents that the proposed single-family residence as enlarged is consistent with the built character of the neighborhood. In support of this contention, the applicant surveyed single- and two-family residences within 400 feet of the Premises and with the same relevant bulk regulations (the "Study Area"), finding that of the 125 qualifying, 92 residences (74 percent) have an FAR of 0.50 or more, ranging from 0.51 to 1.03, and 10 residences have an FAR of 0.84 or greater. With respect to lot coverage and open space, the applicant submitted a lot coverage study demonstrating that 60 residences (48 percent) have greater than 35% lot coverage. The applicant submitted a rear yard study of the subject block demonstrating that 30 residences (61 percent) have rear yards with less than 30 feet of depth. The proposed enlargement includes an extension of the existing non-complying 2'-9-1/2" wide side yard, and, pursuant to a 1950 Sanborn Map including the Premises provided by the applicant, the Premises were developed with a detached dwelling in approximately the same location and orientation as the Premises are occupied today and, thus, the non-complying side yard predated the 1961 Zoning Resolution and is a legal non-compliance.

Based upon its review of the record and inspections of the Premises 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.

In response to questions from the Board at hearing, to either remove or shift the proposed closet at the rear of the home, the applicant revised the proposal to eliminate the closet, resulting in a reduction of the enlargement from 0.85 FAR to 0.84 FAR.

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. The proposed modification of bulk regulations will not interfere with any pending public improvement project.

The project is classified as a Type II action pursuant to 6 NYCRR Part 617.5, as noted in CEQR Checklist No. 21BSA006K, dated March 8, 2021.

The Board finds that the evidence in the record supports the findings required to be made under Z.R. §§ 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 make each and every one of the required findings under Z.R. §§ 73-622 and 73-03 to permit the enlargement of an existing two-story, with cellar and attic, single-family detached residence that does not comply with zoning regulations for floor area ratio, open space, lot coverage, and rear yards, contrary to Z.R. §§ 23-142, 23-44, and 23-47; *on condition* that all work and site conditions

shall conform to drawings filed with this application marked "March 8, 2021"- Fourteen (14) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: a maximum of 0.84 FAR (2,727 square feet of floor area), a minimum of 62% of open space (2,026.6 square feet), a maximum of 38% of lot coverage (1,223 square feet), a rear yard with a minimum depth of 20 feet at the first and second floor, and a depth of 41'-11-7/8" at the third floor, and two side yards with minimum widths of 2'-9-1/2" and 8'-0", as illustrated on the Board-approved plans; and

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, also indicating this approval and calendar number ("BSA Cal. No. 2020-63-BZ"), shall be obtained within four years and an additional six months, in light of the current state of emergency declared to exist within the City of New York resulting from an outbreak of novel coronavirus disease, by September 16, 2025;

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 8, 2021.

ZONING CALENDAR

2019-24-BZ

APPLICANT – Eric Palatnik, P.C., for Crystal Bay Imports, LTD, owner.

SUBJECT – Application January 31, 2019 – Special Permit (§73-49) to permit accessory parking on the roof of an under-construction DOB-approved Use Group 9A automotive sales use establishment contrary to ZR §36-11. C2-2/R4 zoning district.

PREMISES AFFECTED – 2721 Nostrand Avenue, Block 7666, Lot 20, Borough of Brooklyn.

COMMUNITY BOARD #18BK

ACTION OF THE BOARD – Laid over to May 10-11, 2021, at 10 A.M., for continued hearing.

MINUTES

2019-66-BZ

APPLICANT – Law Office of Jay Goldstein, for 7-15 Terrace View Avenue LLC, owner.

SUBJECT – Application March 27, 2019 – Variance (§72-21) to permit the development of a seven (7) story building containing 59 rental apartments contrary to ZR §42-00. M1-1 zoning district.

PREMISES AFFECTED – 15 Terrace View Avenue, Block 2215, Lot 173, Borough of Manhattan.

COMMUNITY BOARD #8BX

ACTION OF THE BOARD – Laid over to June 28-29, 2021, at 10 A.M., for continued hearing.

2019-173-BZ

APPLICANT – Eric Palatnik, P.C., for PMG LI, LLC, owner.

SUBJECT – Application June 12, 2019 – 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. C2-4/R6A Special Downtown Jamaica District.

PREMISES AFFECTED – 187-01 Hillside Avenue, Block 9960, Lot 19, Borough of Queens.

COMMUNITY BOARD #8Q

ACTION OF THE BOARD – Laid over to June 14-15, 2021, at 10 A.M., for continued hearing.

2020-73-BZ

APPLICANT – Sheldon Lobel, P.C., for Lampros Moumouris, as Trustee, South Bronx Charter School for International Cultures and the Arts, lessee.

SUBJECT – Application September 14, 2020 – Special Permit (73-19) to permit the construction of a new school (UG 3) (South Bronx Charter School for International Cultures and the Arts) contrary to ZR 42-10. M1-4 zoning district.

PREMISES AFFECTED – 2500 Park Avenue, Block 2322, Lot 5, Borough of the Bronx.

COMMUNITY BOARD #2BX

ACTION OF THE BOARD – Laid over to April 12-13, 2021, at 10 A.M., for continued hearing.

PUBLIC HEARINGS MONDAY-TUESDAY AFTERNOON MARCH 8-9, 2021, 2:00 P.M.

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

2017-145-BZ

APPLICANT – Mango & Lacoviello, LLP, for 59th Street Associates, owner; Tracy Anderson Mind and Body, LLC, lessee.

SUBJECT – Application May 10, 2017 – Special Permit (§73-36) to permit a physical culture establishment (Tracy Anderson Method) in the cellar, ground floor and ground floor mezzanine of floor of an existing building. C2-8, C1-5 and R8B zoning district.

PREMISES AFFECTED – 241 East 59th Street, Block 01414, Lot 17, Borough of Manhattan.

COMMUNITY BOARD #8M

ACTION OF THE BOARD – Laid over to May 10-11, 2021, at 10 A.M., for continued hearing.

2019-179-BZ

APPLICANT – Eric Palatnik, P.C., for Lee Yuen Fung Trading Co., Inc., owner.

SUBJECT – Application June 20, 2019 – Variance (§72-21) to permit the development of a twelve (12) story mixed-use building containing commercial use at the ground floor and twelve residential condominium units above contrary to ZR §42-00. M1-6 zoning district.

PREMISES AFFECTED – 118 West 28th Street, Block 00803, Lot 0051, Borough of Manhattan.

COMMUNITY BOARD #5M

ACTION OF THE BOARD – Laid over to May 24-25, 2021, at 10 A.M., for postponed hearing.

2019-277-BZ

APPLICANT – Jay Goldstein, Esq., for Bukharian Jewish Congregation of Hillcrest, owner.

SUBJECT – Application October 17, 2019 – Variance (§72-21) to permit the construction of a three-story plus cellar House of Worship (UG4) (Bukharian Jewish Congregation of Hillcrest) contrary to ZR §24-11 (FAR); ZR §24-34 (front yard); ZR §24-521 (height) and ZR §24-35 (side yard). R2A zoning district.

PREMISES AFFECTED – 81-04 166th Street, Block 7026, Lot 0021, Borough of Queens.

COMMUNITY BOARD #8Q

ACTION OF THE BOARD – Laid over to June 14-15, 2021, at 10 A.M., for postponed hearing.

MINUTES

2020-29-BZ

APPLICANT – Eric Palatnik, P.C., for WF Industrial III LLC, owner.

SUBJECT – Application April 2, 2020 – Variance (§72-21) to permit the enlargement of a UG 16 & 6 warehouse and office building previously before the Board contrary to ZR 22-00. R3-1 and R3-2 zoning districts.

PREMISES AFFECTED – 146-65 Springfield Boulevard, Block 13363, Lot 6, Borough of Queens.

COMMUNITY BOARD #13Q

ACTION OF THE BOARD – Laid over to June 14-15, 2021, at 10 A.M., for postponed hearing.

Carlo Costanza, Executive Director

BULLETIN

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April 2, 2021

DIRECTORY

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SHAMPA CHANDA, *Vice-Chair*

DARA OTTLEY-BROWN

NASR SHETA

SALVATORE SCIBETTA

Commissioners

Carlo Costanza, *Executive Director*

Kurt Steinhouse, *Counsel*

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HEARINGS HELD -	TELECONFERENCE PUBLIC HEARINGS
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2021-21-A

108 Winham Avenue, Block 4049, Lot(s) 48, Borough of **Staten Island, Community Board: 3**. Proposed development of a three-story residential building within the bed of a mapped street contrary to General City Law §35. R3-1 Lower Density Growth Management Area. R3-1 district.

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

CALENDAR

TELECONFERENCE PUBLIC HEARINGS
MAY 10-11, 2021, MONDAY-TUESDAY
10:00 A.M. and 2:00 P.M.

NOTICE IS HEREBY GIVEN of teleconference public hearings, Monday, May 10, 2021, at 10:00 A.M. and 2:00 P.M., and Tuesday May 11, 2021, at 10:00 A.M. and 2:00 P.M., to be streamed live through the Board's website (www.nyc.gov/bsa), with remote public participation, on the following matters:

SPECIAL ORDER CALENDAR

282-79-BZ

APPLICANT – David L Businelli, for 1745 Forest Avenue Corp., Anthony DiLeo, President, owner; 1745 Operating LLC, lessee.

SUBJECT – Application June 11, 2019 – Amendment to a condition of term for a previously approved Variance (§72-21) which permitted an accessory off-site parking facility accessory to an eating and drinking establishment located on the opposite side of the street which expired on July 24, 2009; Waiver of the Board's rules. R3A zoning district.

PREMISES AFFECTED – 840 Richmond Avenue, Block 1147, Lot(s) 1, Borough of Staten Island.

COMMUNITY BOARD # 1SI

105-81-BZ

APPLICANT – David L. Businelli, for 235 Forest Associates, owner; George Sieghardt, lessee.

SUBJECT – Application October 2, 2019 – Extension of Term of a previously approved Variance (§72-21) which permitted the operation of a commercial office building which expired on August 10, 2012; Amendment for signage, Waiver of the Board's Rules. R3A zoning district.

PREMISES AFFECTED – 235 Forest Avenue, Block 130, Lot(s) 44, Borough of Staten Island.

COMMUNITY BOARD #5SI

274-00-BZ

APPLICANT – Troutman Sanders LLP c/o Jeremiah H. Candreva, Zumpano Patricios & Popok Land Holdings, LLC owners.

SUBJECT – Application January 22, 2021 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of office use (UG 6) contrary to underlying use regulations which expired on February 27, 2021; Extension of Time to Obtain a Certificate of Occupancy which expired on October 22, 2020; Waiver of the Board's Rules of Practice and Procedures. R10, Murray Hill Historic District.

PREMISES AFFECTED – 134 East 38th Street, Block 893, Lot(s) 271, Borough of Staten Island.

COMMUNITY BOARD #6M

2017-204-BZ

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

SUBJECT – Application March 3, 2021 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) to permit the enlargement of a non-conforming Automotive Repair Facility (UG 16B) contrary to ZR §52-22 which expired on March 27, 2019. R4A zoning district.

PREMISES AFFECTED – 124-14 20th Avenue, Block 04169, Lot 21, Borough of Queens.

COMMUNITY BOARD #7Q

APPEALS CALENDAR

2019-255-A

APPLICANT – Shmuel D. Flaum, for Mendy Samuel Blau, owner.

SUBJECT – Application September 5, 2019 – Proposed enlargement of an existing single-family home with a portion located within the bed of a mapped street contrary to General City Law §36 and within the street widening line contrary to General City Law §35. R3X zoning district.

PREMISES AFFECTED – 621 Alonzo Road, Block 15510, Lot 0011, Borough of Queens.

COMMUNITY BOARD #14Q

CALENDAR

ZONING CALENDAR

2017-269-BZ

APPLICANT – David L. Businelli, R.A., for Grasmere Avenue LLC, owner; Auto Pro Collision Inc., lessee.

SUBJECT – Application – Variance (§72-21) to permit the legalization of a one-story enlargement of an existing non-conforming Automotive Repair Facility (UG 16B) contrary to ZR §22-10. R3-2 zoning district.

PREMISES AFFECTED – 65 Grasmere Avenue, Block 03163, Lot 0001, Borough of Staten Island.

COMMUNITY BOARD #2SI

2020-84-BZ

APPLICANT – Goldman Harris II LLC, for Institute for Community Living Inc., owner.

SUBJECT – Application October 28, 2020 – Variance (§72-21) to permit the development of income restricted supportive and affordable housing building contrary to floor area (§23-153) and density (§23-22). Special Permit (§73-623) seeking waivers of height, setback (§23-662(a)) and rear yard (§23-471 and §23-52) regulations for a Quality Housing Building. R6 zoning district.

PREMISES AFFECTED – 161 Emerson Place, Block 1909, Lot 0001, Borough of Brooklyn.

COMMUNITY BOARD #2BK

Margery Perlmutter, Chair/Commissioner

MINUTES

**PUBLIC HEARINGS
MONDAY-TUESDAY MORNING
MARCH 22-23, 2021, 10:00 A.M.**

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

SPECIAL ORDER CALENDAR

1070-84-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Epsom Downs Inc., owner.

SUBJECT – Application July 8, 2020 – Extension of Term of a previously approved variance permitting the operation of an eating and drinking establishment which expired on July 7, 2020, Extension of Time to Obtain a Certificate of Occupancy which expired on March 25, 2015; Waiver of the Board’s Rules of Practice and Procedures. R8B zoning district.

PREMISES AFFECTED – 234 East 58th Street, Block 1331, Lot 32, Borough of Manhattan.

COMMUNITY BOARD #6M

ACTION OF THE BOARD – Application granted.

THE VOTE –

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

Negative:.....0

Absent: Commissioner Scibetta.....1

THE RESOLUTION –

This is an application for a waiver of the Board’s Rules of Practice and Procedures; an extension of term of a variance, previously granted by the Board pursuant to Z.R. § 72-21, which permitted use of the first floor and portion of the cellar as an eating and drinking establishment, and expired on July 9, 2020; and an extension of time to obtain a certificate of occupancy, which expired on March 25, 2015.

A public hearing was held on this application on January 25, 2021, after due notice by publication in *The City Record*, with a continued hearing on March 8, 2021, and then to decision on March 22, 2021. Community Board 6, Manhattan, recommends approval of this application.

The Premises are located on the west side of East 58th Street, within an R8B zoning district, in Manhattan. With approximately 30 feet of frontage along East 58th Street, 100 feet of depth, 3,013 square feet of lot area, the Premises are occupied by an existing six-story mixed-use building with cellar.

The Board has exercised jurisdiction over the Premises since July 9, 1985, when, under the subject calendar number, the Board granted a variance, pursuant to Z.R. § 72-21, to permit, in an R8 district, a six-story, mixed-use building with a non-conforming showroom use in a portion of the cellar, the extension of a non-conforming use in the cellar in connection with the change in use of the first floor

to restaurant which does not conform with the use regulation, on condition that all work substantially conform to drawings as they apply to the objection as noted and filed with the application; the variance be limited to a term of 15 years, to expire on July 9, 2000; the owner comply with the conditions set forth in the Conditional Negative Declaration; all laws, rules, and regulations applicable be complied with; and substantial construction be completed in accordance with Z.R. § 72-23.

On July 11, 1989, under the subject calendar number, the Board waived its Rules of Practice and Procedures and amended the variance to permit the reconfiguration of the internal partitions of the restaurant use area on condition that all work substantially conform to BSA-approved plans and be completed within 36 months from July 9, 1987 by July 9, 1990; and that other than as amended the resolution be complied with in all respects.

On January 9, 2001, under the subject calendar number, the Board further amended the variance to extend the term for ten years, to expire on July 9, 2010, on condition that all signs be provided and maintained in accordance with BSA-approved plans; and that other than as amended, the resolution be complied with in all respects and a new certificate of occupancy be obtained within two years, by January 9, 2003.

On March 25, 2014, under the subject calendar number, the Board waived its Rules of Practice and Procedures and further amended the variance to extend the term for ten years, to expire on July 9, 2020, on condition that all work substantially conform to drawings as they apply to the objections filed with the application; the occupancy of the establishment not exceed 200 person; the above conditions be listed on the certificate of occupancy; an amended certificate of occupancy be obtained by March 25, 2015; all conditions from prior resolutions not waived by the Board remain in effect; the approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s); 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) and/or configuration(s) not related to the relief granted.

The term of the variance having expired, the applicant now seeks an extension of term and extension of time to obtain a certificate of occupancy. Because this application was filed within 30 days after the expiration of the term, the applicant requests a waiver, pursuant to § 1-14.2 of the Board’s Rules of Practice and Procedures (the Board’s Rules), of § 1-07.3(b)(1), of the Board’s Rules to permit the filing of this application.

Moreover, the applicant represents that there have been no changes to the Premises or its operations. In particular, the applicant notes: “The eating and drinking establishment has not been operating since March 2020 due to COVID. Prior to that time and for the past 30 years, the days and hours of operation were seven days a week, 4:00 p.m. to 4:00 a.m. It is intended to keep these days and hours

MINUTES

of operation in effect once the entity reopens with no changes.”

Over the course of hearings, the Board expressed concern over the conditions of the Premises, specifically proof of a public assembly permit for the eating and drinking establishment, a signage analysis for the Premises, and an application for a new certificate of occupancy submitted with DOB which was not processed. In response, the applicant submitted a receipt showing the existence of the public assembly permit for the first floor; a signed and sealed zoning and signage analysis; and a copy of the DOB filing submission for a new certificate of occupancy filed years prior but was not processed due to an open application for a residential unit at the Premises and a ongoing gas issue, both of which have since been resolved. The applicant further clarified that the application would be reactivated to obtain a new certificate of occupancy.

The Fire Department states, by letter dated January 19, 2021, that the Fire Department, Bureau of Fire Prevention has reviewed the plans submitted with this application. Inspections were performed by the Bureau of Fire Prevention Licensed Public Place of Assembly (LPPA) Unit, which found no violations at the time of their inspections. Based upon the foregoing, the Department has no objection to the application. The Bureau of Fire Prevention will continue to inspect these Premises and enforce all applicable rules and regulations.

Based upon its review of the record, the Board has determined that the requested rule waiver, extension of term, and extension of time to obtain a certificate of occupancy are appropriate with certain conditions as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *wave* its Rules of Practice and Procedures and *amend* the resolution, dated March 25, 2014, so that as amended this portion of the resolution shall read: “to extend the term of the variance for ten years, to expire on July 9, 2030; *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked ‘Received July 9, 2020 - Five (5) sheets’; and *on further condition*:

THAT the term of this grant shall be limited to ten years, expiring July 9, 2030;

THAT the occupancy of the establishment shall not exceed 200 persons;

THAT all signs shall be provided and maintained in accordance with BSA-approved plans;

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. 1070-84-BZ’), shall be obtained within two years and an additional six months, in light of the current state of emergency declared to exist within the City of New York resulting from an outbreak of novel coronavirus disease, by October 2, 2023;

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.”

Adopted by the Board of Standards and Appeals, March 22, 2021.

764-56-BZ

APPLICANT – Alfonso Duarte, for Barney’s Service Station Inc., owner.

SUBJECT – Application July 2, 2019 – Amendment (§11-412) of a previously approved variance permitting the operation of an automotive service station (UG 16B). The amendment seeks to permit the enlargement of the existing accessory building to permit the additions of convenience store, service bay, office and storage space. C1-2/R3-2 zoning district.

PREMISES AFFECTED – 200-05 Horace Harding Expressway, Block 7451, Lot 32, Borough of Queens.

COMMUNITY BOARD #11Q

ACTION OF THE BOARD – Laid over to June 28-29, 2021, at 10 A.M., for deferred decision.

207-68-BZ

APPLICANT – Gerald J. Caliendo, RA, AIA for Steve Green/Deerfield Meadows Inc., owner.

SUBJECT – Application September 24, 2018 – Extension of Term of a previously approved Variance (§72-21) which permitted the use manufacture and storage of paper vacuum bags (UG’s 16 & 17), with accessory parking, which expired on June 18, 2013; Waiver of the Board’s Rules. R3-2 zoning district.

PREMISES AFFECTED – 115-58 Dunkirk Street, westerly side of Dunkirk Street, 80 feet north of Newburg Street. Block 10315, Lot 134, Borough of Queens.

COMMUNITY BOARD #12Q

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 May 24-25, 2021, at 10 A.M. for decision, hearing closed.

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42-97-BZ

APPLICANT – Law Offices of Marvin Mitzner LLC, for NDC Elmhurst, LLC, owner.

SUBJECT – Application October 18, 2019 – Extension of Term of a previously approved Variance (§72-21) which permitted the construction and use of a one-story and cellar retail drug store (UG 6) which expired on March 3, 2018; Amendment to permit the elimination of a term since the use is now permitted with the exception of a portion located in a R6B zoning district; Waiver of the Board’s Rules. C1-3 and R6B zoning districts.

PREMISES AFFECTED – 93-20 Astoria Boulevard, Block 1367, Lot 48, Borough of Queens.

COMMUNITY BOARD #3Q

ACTION OF THE BOARD – Laid over to May 24-25, 2021, at 10 A.M. for continued hearing.

92-99-BZ, 94-99-BZ, 96-99-BZ, 98-99-BZ, 100-99-BZ, 102-99-BZ

APPLICANT – Goldman Harris LLC for Walden Terrace Inc., owner.

SUBJECT – Application June 30, 2020 – Application to extend the term of a variance allowing transient parking at the above-referenced Premises pursuant to §1-07.1(a)(2); extend the Applicant’s time to obtain Certificate of Occupancy pursuant to §1-07.1(a)(3); waiver pursuant to §1-07.3(d)(2). R7-1 Zoning District.

PREMISES AFFECTED – 98-09, 98-25, 98-41, 64th Road, 98-51, 98-33, 98-19 64th Avenue, Block 2101, Lot (s)0001, 0016, 0024, Block 2100, lot (s)0029, 0021, 0015, Borough of Queens.

COMMUNITY BOARD #6Q

ACTION OF THE BOARD – Laid over to June 14-15, 2021, at 10 A.M. for continued hearing.

299-99-BZ

APPLICANT – Glen V. Cutrono, AIA, for M & V LLC, owner.

SUBJECT – Application August 7, 2019 – Extension of Term (11-411) of a previously approved variance which permitted the operation of automotive service station (UG 16B) (Getty) which will expire on July 25, 2020. C2-4/R6A zoning district.

PREMISES AFFECTED – 8-16 Malcom X Boulevard, Block 1599, Lot 40, Borough of Brooklyn.

COMMUNITY BOARD #3BK

ACTION OF THE BOARD – Laid over to June 14-15, 2021, at 10 A.M. for continued hearing.

42-08-BZ

APPLICANT – Eric Palatnik, P.C., for Grigoriy Katsura, owner.

SUBJECT – Application September 11, 2020 – Amendment of a previously approved Special Permit (§73-622) which permitted the enlargement of an existing home; Extension of Time to Complete Construction which expired on September 18, 2019; Waiver of the Board’s Rules of Practice and Procedures. R3-1 zoning district.

PREMISES AFFECTED – 182 Girard Street, Block 8749, Lot 0275, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to June 14-15, 2021, at 10 A.M. for continued hearing.

2016-4340-BZ

APPLICANT – Law Office of Vincent L. Petraro, PLLC, for Flushing Holding, LLC, owner.

SUBJECT – Application November 25, 2020 – Amendment of a previously approved Special Permit (§73-66) to permit the construction of a new building in excess of the height limits established under ZR §61-21. The amendment seeks to increase the height of the building contrary to the previous approval. C4-2 zoning district.

PREMISES AFFECTED – 131-02 40th Road, Block 5066, Lot 150, Borough of Queens.

COMMUNITY BOARD #7Q

ACTION OF THE BOARD – Laid over to April 26-27, 2021, at 10 A.M. for continued hearing.

2017-213-BZ

APPLICANT – Hirschen Singer & Epstein, LLP, for Dynamic Youth Community, Inc., owner.

SUBJECT – Application October 21, 2020 – Amendment of a previously approved variance (ZR 72-21) for a six-story with cellar, community-facility building (Use Group 3), contrary to use and bulk regulations. Amendment to reduce the size of the cellar level, modify interior program, and change certain finishing materials. C8-2 ZD/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 April 26-27, 2021, at 10 A.M. for adjourned hearing.

2017-261-BZ

APPLICANT – Davidoff Hatcher & Citron LLP, for Congregation Chabad-In-Reach-Aliya, owners.

SUBJECT – Application September 5, 2017 – Variance (§72-21) to permit the development of a five-story and cellar house of worship (UG 4) (*Congregation Chabad-In-Reach-Aliya*) contrary to ZR §24-11 (Lot Coverage) and ZR §24-36 (Required 30 Foot Rear Yard). R6 zoning district.

PREMISES AFFECTED – 527 East New York Avenue,

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Block 1332, Lot 74, Borough of Brooklyn.

COMMUNITY BOARD #9BK

THE VOTE TO REOPEN –

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 June 14-15, 2021, at 10 A.M., for continued hearing.

APPEALS CALENDAR

2019-176-A

APPLICANT – Rosenberge & Estis, P.C., for Union Temple of Brooklyn, owner.

SUBJECT – Application June 18, 2019 – Appeal of a New York City Department of Buildings determination dated May 21, 2019, that musical and spoken word events held in the Temple’s sanctuary and ballroom are not “accessory use”. R8X zoning district.

PREMISES AFFECTED – 17 Eastern Parkway, Block 1172, Lot 6163, Borough of Brooklyn.

COMMUNITY BOARD #8BK

ACTION OF THE BOARD – Application withdrawn without prejudice.

THE VOTE –

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

Negative:.....0

Absent: Commissioner Scibetta.....1

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated May 21, 2019 (the “Determination”), states, in part:

The applicant’s request to accept “Theater, Music Concert Hall” as an accessory use for the community facility of a building is hereby DENIED...

Subjected building is a 11 stories building. First floor through 5th floor of the building is used for community facility (UG-4) and 6th floor through 11th floor of the building is used as a Physical Culture Establishment with BSA approval per certificate of Occupancy of the building..The owner of the building illegally converted some portions of the community facility to “Music Theater/Concert Hall” and it is rent[ed] for business purposes. Theater or music concert hall shall be considered a zoning use group 8,9, or 13 per ZR 32-17 and ZR 32-18, 22. Theater or music concert hall shall not be considered zoning use group 4C, accessory use for a community facility. Per ZR 12-10, accessory use is a use that is accessory to the principle use (here community facility), it is specifically provided in the applicable district regulations, and which is clearly incidental to and customarily found in

connection with, such principal. Proposed theater, zoning use group 8, 9, or 13 is not a accessory to a community facility, zoning use 4. Theater, concert hall is not commonly and customarily found in connection with a community facility. Proposed theater, a commercial use, is contrary to zoning section 12-10, an accessory use, for a community facility. Theater or music concert hall, zoning use group 8, 9, or 13 is not permitted in the subjected zoning lot which is located in R8X zoning district. Therefore, the request stated on above is DENIED.

This is an appeal for interpretation brought by the Union Temple of Brooklyn (the “Appellant”), alleging errors in the Determination pertaining to whether the use of a house of worship as a venue for music and spoken word performances is “accessory” to the principal use of the building as a house of worship under Z.R. § 12-10.

A public hearing was held on this application on December 15, 2020, after due notice by publication in *The City Record*, and then to decision on March 22, 2021. Vice-Chair Chanda and Commissioner Ottley-Brown performed inspections of the Premises and surrounding area.

The Premises are located on the east side of Eastern Parkway, in an R8X zoning district, in Brooklyn. With approximately 81 feet of frontage along Eastern Parkway, 156 feet of depth, and 14,476 square feet of lot area, the Premises are currently occupied by an existing 11-story community facility.

The appellant claims that the use of the banquet hall as a music venue serves its larger goal of fostering a connection to the public who may not know that there is a house of worship located at the Premises. In support of this claim, the appellant 1) argues that many community facilities and religious institutions within the City permit musical performances on their Premises, which are open to the general public, and these performances are deemed accessory to their use; 2) states the banquet hall is rarely used by its outside booking agency to plan concerts and other performances and that the frequency of events must be taken into account in any evaluation; and 3) cites the Equal Protections Clause under the Religious Land Use and Institutionalized Persons Act (“RLUIPA”) which states, “No government shall impose or implement a land use regulation in a manner that treats a religious institution or assembly on less than equal terms with a non-religious assembly or institution.” The appellant claims that because similarly situated community facilities and religious institutions are permitted to have concerts which are not directly incidental to its mission, DOB’s determination is in violation of RLUIPA’s Equal Protection Clause.

In support of its 2019 determination that the appellant’s use of the third-floor banquet room is not accessory use to the UG 4 house of worship, DOB argues that the appellants must pass a three-prong test as defined in Z.R. § 12-10:

- (a) is a use conducted on the same zoning lot as the principal use to which it is related;
- (b) a use which is clearly incidental to, and

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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.

First, DOB points to the appellant's contractual relationship with a third-party, for profit, music promoter as the first sign that this use of the banquet hall is not incidental or accessory to the synagogue's primary use. Then, DOB discusses BSA Cal. No. 60-06-A, which involved a religious school with a large auditorium that was being used as catering establishment, and, in which, the Board upheld DOB's denial of a request to allow catering as an accessory use to a house of worship in an R5 zoning district. DOB further argues that in similar community facilities, there is a required Temporary Public Assembly ("TPA") permit issued each time that such events are held on those Premises.

At hearing, in regards to the appellant's arguments, the Board expressed concerns the lack of cohesion in the appellant's arguments in which, for example, the appellant provided links to the sites for many religious institutions which it purports also provides musical performances as accessory use to their community facility but did not provide any further argument about its relationship to the appellant's case. The Board also requested further clarity on the frequency with which house of worship-related events occurred versus events which were not related to the house of worship's activities occurred.

In regard to DOB's submissions, at hearing, the Board requested that DOB provide the full procedural history BSA Calendar No. 60-06-A which, after the Board decision, was litigated at the state appellate and federal levels and, at the federal level, involved a discussion of RLUIPA. The Board further requested that DOB provide responses to the appellant's claims of unequal treatment, in light of the fact that concerts are regularly performed other community facilities and religious institutions. The Board further questioned whether TPAs are required for each event on Premises where a certificate of occupancy is already in place.

The Board posed these questions and requested that both the appellant and DOB respond to them in their next submission.

However, by correspondence, dated January 21, 2021, the appellant requested to withdraw the application without prejudice.

Therefore, it is Resolved, that this application is hereby *withdrawn* without prejudice.

Adopted by the Board of Standards and Appeals, March 22, 2021.

2020-3-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Lorenzo McFarlane, owner.

SUBJECT – Application January 10, 2020 – Proposed development of a two-family residential building located partially inside the bed of the street contrary to General City Law §35. R3X zoning district.

PREMISES AFFECTED – 142-18 Hook Creek Boulevard, Block 13616, Lot 105, Borough of Queens.

COMMUNITY BOARD #13Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE –

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

Negative:.....0

Absent: Commissioner Scibetta.....1

THE RESOLUTION –

The decision of the Department of Buildings ("DOB"), dated December 10, 2019, acting on New Building Application No. 440660795, reads in pertinent part: "proposed N.B. construction is located within the bed of a mapped street contrary to section 35 of the general city law therefore, approval from the board of standard and appeals is required."

This is an application under General City Law § 35 to permit construction within the bed of a mapped, but unimproved, street.

A public hearing was held on this application on January 25, 2021, after due notice by publication in *The City Record*, and then to decision on March 22, 2021.

The Premises are proposed to be subdivided from tax lot 5 with frontage on the west side of Hook Creek Boulevard, between 139th Avenue and 253rd Street, within an R3X zoning district, in Queens. With approximately 53 feet of frontage along Hook Creek Boulevard, an irregular depth between 41 feet and 101 feet, and 3,365 square feet of lot area, the Premises are currently vacant.

The applicant proposes to construct a new two-story, with cellar, two-family detached residence with approximately 2,019 square feet of floor area (0.60 FAR). The applicant represents that the proposed building will provide two required accessory parking spaces and will comply with all underlying zoning district regulations. The proposed building would be partially located in the bed of a mapped but unbuilt portion of Hook Creek Boulevard, for which the applicant requests the General City Law § 35 waiver.

The Board notes that, pursuant to General City Law § 35, it may authorize construction within the bed of the mapped street subject to reasonable requirements.

Over the course of hearings, the Board questioned whether the subdivision of tax lot 5 proposes an acute angle, creating a rear lot line two feet away from the existing house on tax lot 5, in an attempt to avoid rear yard zoning regulations. The Board states that its review takes no position on the legality of the zoning lot and tax lot subdivision and, therefore, the Board defers to the

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Department of Buildings to review the proposed subdivision of tax lot 5 with respect to existing and proposed structures on the lots.

The Department of Environmental Protection (“DEP”) states, by letter dated April 1, 2021, that there is an existing 10”-diameter sanitary sewer and 6”-diameter water main in the bed of Hook Creek Boulevard between 253rd Street and 254th Street. The Amended Drainage Plan No: 42S (24), 41SD (63) Sheet 1 of 3, dated September 10, 1951, for the above referenced location, calls for a future 10”-diameter sanitary sewer in the bed of Hook Creek Boulevard at the above location. The applicant submitted a Proposed Subdivision Survey, prepared by a licensed surveyor, dated August 7, 2019. The survey shows 100 feet of the total width of the mapped Hook Creek Boulevard, from which approximately 69.9 feet will be available for the installation, maintenance, and/or reconstruction of the future and existing sewers and water mains. Based on the above, the DEP has no objections to the application.

The Department of Transportation (“DOT”) states, by letter dated January 28, 2021, that, according to the Queens Topographical Bureau, Hook Creek Boulevard is mapped at 100-foot widths and the City does not have title to a portion at this location. At this time, DOT has reviewed all pertinent documents submitted by the BSA and DOT has no objection to the proposal. DOT, however, provided the following notes: 1. Hook Creek Boulevard has been recently reconstructed as part of HWQ274F1 in this location and is considered a protected street. DOT’s Office of Construction Mitigation and Coordination (OCMC) will only issue permits in case of emergency work. Permits will not be issued by OCMC until a minimum of two years to the date of the street reconstruction has passed; 2. notations concerning the roadway restoration for Hook Creek Boulevard should be revised—the base concrete on the newly constructed Hook Creek Boulevard is eight inches High Early Strength (H.E.S.) concrete, not six inches. In addition, notations regarding the curb and the sidewalk on the south side of the property should use the word “alignment” instead of “transition” because all the curb and sidewalks in this location have been reconstructed as part of HWQ274F1 to current standards; 3. notations on the site plan to the Department of Highways must be corrected to reference the New York City Department of Transportation; 4. the project lot should be revised in the application documents to reflect the current Lot 5 and Tentative Lot 105 as the lot location.

Accordingly, the applicant revised the site plan in response to DOT’s comments.

The Fire Department states, by letter dated March 22, 2021, that it is understood that all legal requirements, including those set forth in the New York City Fire Code and the New York City Construction Codes shall be complied with by the applicant. Based on the foregoing, the Fire Department has no objection to the application, and the Bureau of Fire Prevention will continue to inspect the Premises and enforce all applicable rules and regulations.

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, under the powers vested in the Board by Section 35 of the General City Law, to permit construction 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 March 22, 2021”- One (1) sheet; and *on further condition*:

THAT the Board takes no position on the legality of the zoning lot and tax lot subdivision and defers to the Department of Buildings to review the proposed subdivision of tax lot 5 with respect to existing and proposed structures on the lots;

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 2020-3-A”), shall be obtained within four years and an additional six months in light of the current state of emergency declared to exist within the City of New York, resulting from an outbreak of novel coronavirus disease, by October 2, 2025;

THAT the Department of Buildings must ensure that the Board-approved plans comply to the maximum extent feasible with all applicable zoning regulations as if the unimproved street were not mapped;

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 22, 2021.

2019-69-A & 2019-70-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 335 Mallory LLC, lessee.

SUBJECT – Application April 3, 2019 – Proposed construction of a new two-family not fronting on a legally mapped street contrary to General City Law Section §36. R3X zoning district.

PREMISES AFFECTED – 341 & 343 Mallory Avenue, Block 3417, Lot(s) 174, 173, Borough of Staten Island.

COMMUNITY BOARD # 2SI

ACTION OF THE BOARD – Laid over to June 14-15, 2021, at 10 A.M. for adjourned hearing.

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2019-90-A

APPLICANT – Riverside Tenants Association c/o Stephen Dobkin, for Joralemon Realty NY LLC c/o Pinnacle Managing Co. LLC, owner.

SUBJECT – Application May 10, 2019 – Appeal of a New York City Department of Buildings challenging the validity of a building permit dated April 10, 2019. R2 Brooklyn Heights Historic District

PREMISES AFFECTED – 24, 32 Joralemon Streets, 10,20, 30 Columbia Place, Block 258, Lot 17, Borough of Brooklyn.

COMMUNITY BOARD #2BK

ACTION OF THE BOARD – Laid over to April 27-28, 2021, at 10 A.M., for adjourned hearing.

2019-195-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for CAM LLC, owner.

SUBJECT – Application July 22, 2019 – Proposed development of a one-story warehouse (UG 16) not fronting on a mapped street contrary to General City Law §36. M3-1 Special South Richmond District.

PREMISES AFFECTED – 191 Industrial Loop, Block 7206, Lot 299, 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 May 10-11, 2021, at 10 A.M., for decision, hearing closed.

ZONING CALENDAR

2019-171-BZ

APPLICANT – Eric Palatnik, P.C., for 1610 Eastchester Road LLC, owner.

SUBJECT – Application June 11, 2019 – 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/R6 and M1-1 zoning districts.

PREMISES AFFECTED – 1610 Eastchester Road aka 1490 Williamsbridge Road, Block 4081, Lot 4, Borough of Bronx.

COMMUNITY BOARD #10BX

ACTION OF THE BOARD – Application withdrawn.

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

Negative:.....0

Absent: Commissioner Scibetta.....1

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated May 22, 2019, acting on DOB Alteration Type I Application No. 220703610, reads in pertinent part:

“proposed automotive filling station is contrary to ZR 32-10 and requires a Special Permit from the Board of Standards and Appeals pursuant to ZR 73-211.”

This is an application for a special permit, under Z.R. § 73-211, to permit the use of the Premises as an automotive service station.

A public hearing was held on this application on March 25, 2020, after due notice by publication in *The City Record*, with a continued hearing on July 14, 2020, and then to decision on March 22, 2021. Vice-Chair Chanda and Commissioner Sheta performed inspections of the Premises and surrounding area. Community Board 10, the Bronx, recommends approval of this application. The Board received one letter in objection to this application raising concerns regarding increased traffic, congestion, limited parking, and debris from the proposed use.

The Premises are located on the northeast corner of Eastchester Road and Williamsbridge Road, partially within a C2-2 (R6) zoning district and partially within an M1-1 zoning district, in the Bronx. With approximately 200 feet of frontage along Eastchester Road, 104 feet of frontage along Williamsbridge Road, and 21,678 square feet of lot area, the Premises are occupied by an existing one-story building. The applicant proposes to subdivide the tax lot and develop the C2-2 (R6) portion of the lot (14,775 square feet of lot area) pursuant to the proposed special permit; the applicant represents that the balance of the lot within the M1-1 zoning district (6,903 square feet of lot area) will be developed with an as-of-right use.

The Board has exercised jurisdiction over the Premises since March 1, 1966, when, under BSA Cal. No. 1171-65-BZ, the Board granted a special permit, under Z.R. § 73-211, to permit the erection and maintenance of an automotive service station with accessory uses and accessory signs on condition that the Premises conform to plans filed with the application, all other laws, rules, and regulations applicable be complied with, and a certificate of occupancy be obtained.

On January 31, 1967, under BSA Cal. No. 1171-65-BZ, the Board amended the resolution to extend the time to obtain permits and complete the work for one year, by January 31, 1968, on condition that a certificate of occupancy be obtained.

On February 15, 1967, under BSA Cal. No. 1171-65-BZ, the Board permitted an amendment to the automotive service station on condition that permits be obtained and work completed within one year, by February 15, 1968, a certificate of occupancy be obtained, and other than as amended the resolution be complied with in all respects.

On February 20, 1968, under BSA Cal. No. 1171-65-BZ, the Board further amended the resolution to extend the time to obtain a certificate of occupancy for six months, by August 20, 1968.

On October 12, 1999, under BSA Cal. No. 1171-65-BZ, the Board further amended the resolution to permit the removal of the existing pump islands and dispensers, the installation of four new pump islands with dispensers, the erection of a new steel canopy and a new arrangement for

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the existing sales area, creating an attendant's area and snack shop on condition that the Premises remain graffiti free at all times; all signs, lighting levels, and landscaping be maintained in accordance with BSA-approved plans; the Premises be maintained in substantial compliance with the proposed drawings filed with the application; and, other than as amended the resolution be complied with in all respects.

The applicant proposes to convert the existing one-story building to an accessory convenience store, under DOB Technical Policy and Procedure Notice # 10/99, and redevelop the Premises with a Use Group 16 automotive service station containing three pump islands under a canopy, five accessory parking spaces, and room for at least five reservoir parking spaces. The applicant represents that the automotive use, under BSA Cal. No. 1171-65-BZ, was discontinued, and the underground storage tanks were removed.

The Board notes that its determination herein is also subject to and guided by, *inter alia*, Z.R. §§ 73-01 through 73-04.

As a threshold matter, the Premises are located in an C2-2 (R6) zoning district that has a longer dimension of at least 375 feet; that the Premises have a minimum of 7,500 square feet of lot area; and, at 14,775 square feet, they meet the maximum lot area restriction. Further, the applicant represents that the Premises are located on Williamsbridge Road, a major street that is indicated on the Master Plan of Arterial Highways and Master Streets.

With regard to the conditions the Board is required to prescribe pursuant to Z.R. § 73-211, the applicant represents that the proposed automotive service station will not include facilities for lubrication, minor repairs, or washing of automobiles but, instead, will utilize the accessory building as a UG 6 convenience store in accordance with Department of Buildings Technical Policy and Procedure Notice # 10/99, and that the site is proposed to provide five accessory parking spaces and five reservoir spaces, in addition to those spaces available at the pumps.

In reference to vehicular movement on the site, the applicant submits that the entrances and exits have been planned so that at a maximum operation, vehicular movement into or from the site will cause minimum obstruction on the surrounding streets or sidewalks, and the site will be accessed by a total of four curb cuts: two will be provided on Eastchester Road (one will remain the same at 30.2' and one will be enlarged to 28') and two will be provided on Williamsbridge Road (one existing curb cut will be closed, one will be reduced to 21', and one will be enlarged to 17.6').

The applicant proposes landscape the southerly lot line of the Premises that is shared with residential use with a five-foot-wide planting area with trees that grow up to six-feet tall with a six-foot-high chain link fence on the southern residential boundary.

The applicant represents that the proposal will be compliant with C2 signage regulations and will provide 142 square feet of illuminated signage, which is less than the

150 square feet permitted.

Over the course of hearings, the Board raised concerns regarding the provision for sufficient screening of adjacent residential use and poor circulation proposed for the Premises. Specifically, the Board stated that the residential use behind the Premises must be shielded from the proposed use with respect to adequate landscaping, the presence of zero lumens on the residential property, and effective screening and buffering of the trash enclosure. Additionally, the Board questioned whether, with the proposed tax lot subdivision and proposed curb cuts, the maneuverability would be further restricted within the Premises and would encourage sidewalk parking and driving over landscaped areas to access the pumps.

The Department of Transportation ("DOT") states, by correspondence dated July 16, 2020, that the location and orientation of the pumps, and their proximity to Williamsburg Road, is such that more than one vehicle queued behind any fueling vehicle (in the eastbound direction) would at least partially obstruct or block the sidewalk on the east side of Williamsburg Road and that the applicant should reconsider the location and orientation of the pumps to increase queue storage for vehicles waiting behind the pumps; it is recommended that the applicant's design include only one curb cut on both Williamsburg Road and Eastchester Road in order to limit the number of conflict points with pedestrians, cyclists, and motor vehicles on both streets; the northerly curb cut on Williamsburg Road is less than 50' from the intersection with Eastchester Road and also conflicts with an existing bus stop, therefore it is recommended that this curb cut be eliminated to comply with the City's 50' requirement for spacing curb cuts from public street intersections, as well as to eliminate the conflict with the existing bus stop; the easterly curb cut on Eastchester Road does not appear wide enough to accommodate two-way (entering/exiting) turning movements simultaneously, increasing the potential for localized queuing, delays, and congestion on this street, and the applicant must confirm the sufficiency of all curb cut widths via a turning path analysis, using a standard passenger car (AASHTO "P"); all curb cuts must be able to accommodate simultaneous entries and exits by passenger vehicles; include a raised landscaping buffer (or another similarly permanent physical barrier) along the property line to concentrate all vehicular access at the curb cuts, as this is intended to prevent motorists entering and exiting the site from driving over the sidewalk/curb at any point along the Premises perimeter, which compromises safety for pedestrians, cyclists, and other motor vehicles; and, provide a turning path analysis for a fuel (tanker) truck entering and exiting the site.

DOT added, by correspondence dated September 28, 2020, that there is a bus stop located at the southeast corner of the intersection of Williamsbridge Road and Eastchester Road and on the Williamsbridge Road side. People waiting for the bus, are very close or by the ramp. This represents a potential conflict between pedestrian and inbound or outbound vehicles after the opening of the proposed

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development. The consultant must reconsider the location of the curb cut for the pedestrian/vehicular safety concern. Also, the consultant must verify the daily trip generation rate and temporal distribution of gasoline/service station based on the ITE 10th Edition and provide the backup information as well.

By letter dated March 3, 2021, the applicant requested to withdraw the application without prejudice.

Therefore, it is Resolved, that this application is hereby *withdrawn*.

Adopted by the Board of Standards and Appeals, March 22, 2021.

2020-72-BZ

CEQR #21-BSA-014K

APPLICANT – Kramer Levin Naftalis & Frankel, for LTF Club Operations, owner.

SUBJECT – Application September 11, 2020 – Special Permit (§73-36) to permit the operation of a physical cultural establishment (Life Time) located in the cellar, ground and mezzanine floors of an existing building contrary to ZR §42-10. M1-2/R8 (MX-2) zoning district. PREMISES AFFECTED – 85 Jay Street, Block 54, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #2BK

ACTION OF THE BOARD – Application granted on condition.

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

Negative:.....0

Absent: Commissioner Scibetta.....1

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated December 7, 2020, acting on DOB New Building Application No. 321188415, reads in pertinent part:

“Proposed Physical Culture Establishment in M1-2/R8, MX2 zoning district is contrary to section ZR 42-10, ZR 123-20, and requires a special permit from the BSA (ZR 73-36).”

This is an application under Z.R. §§ 73-36 and 73-03 to permit, on a site located within an M1-2/R8 zoning district and a Special Mixed Use District, the operation of a physical culture establishment (“PCE”) on portions of the lower level cellar, ground floor cellar, and mezzanine level of a proposed 21-story, plus cellars and mezzanine, mixed-use residential, commercial, and community facility building, contrary to Z.R. § 42-10.

A public hearing was held on this application on December 15, 2020, after due notice by publication in *The City Record*, and then to decision on March 22, 2021. Community Board 2, Brooklyn, waives its recommendation of this application. The Board received one form letter in support of this application.

The Premises are bounded by Jay Street to the west, York Street to the south, Bridge Street to the east, and Front Street to the north, within an M1-2/R8 zoning district and a Special Mixed Use District, in Brooklyn. With

approximately 135,084 square feet of lot area, the Premises are under construction of a proposed 21-story, plus cellars and mezzanine, mixed-use residential, commercial, and community facility building.

The Board notes that its determination is subject to and guided by Z.R. § 73-03. The Board notes that pursuant to Z.R. § 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. 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.

The applicant represents that the PCE will occupy 57,646 square feet of floor space on the lower level cellar with locker rooms with showers, whirlpools, sauna and steam rooms, massage therapy rooms, two group fitness rooms, cycle, barre and Pilates studios, a five-lane lap pool, a basketball court, and spaces for free weights, team training, and cardio and resistance, and massage treatment rooms where massage treatments will be provided by New York State licensed massage therapists; 4,872 square feet of floor space on the ground floor cellar with the PCE entrance, reception area, and staff offices; and 15,412 square feet of floor area on the mezzanine level with café, lounge, two yoga studios, and facilities for the PCE kids program. The PCE will operate as “Life Time,” with the following hours of operation: Monday through Friday, 4:00 a.m. to 12:00 a.m., and Saturday and Sunday, 7:00 a.m. to 12:00 a.m.

The applicant represents that the PCE use will neither impair the essential character nor the future use or development of the surrounding area because PCE use is consistent with the consistent with the mixed-use character of the surrounding area, the proposed PCE will be consistent with the Special Mixed Use District, and will add to the dynamic mix of uses within. 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.

The applicant submits that the PCE will contain basketball court, a swimming pool, facilities for classes, instruction and programs for physical improvement, body building, weight reduction, aerobics, and martial arts, and facilities for the practice of massage by New York State licensed massage therapists. 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. 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,

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which the Board has deemed to be satisfactory.

The applicant represents that the PCE will not impact the privacy, quiet, light and air of the neighborhood. Furthermore, the applicant states that the PCE activity will be distinctly separated from the other uses within the proposed building as the PCE will be located on the ground floor cellar, lower level cellar and mezzanine levels and residential units at the Premises will be located on the second floor and above. The applicant will maintain attenuation measures in the PCE space so as to present no adverse noise or vibration impacts to nearby occupied spaces. These measures include PCE uses that are more likely to generate noise and vibration, including the basketball court, cardio and free weight areas, and cycling studios, will all be located in the lower level, approximately two floors below the lowest level of residential units; the portions of the PCE dedicated to the storage and lifting of Olympic-styled weights would be protected with a platform to mitigate noise and vibration associated with gym activity and equipment; a 2-3/4" flooring mat will be placed in the free weight areas to dissipate impact vibrations from any dropping of free weights; additional measures to control vibration and noise generated by activities include the installation of resilient hung, sound isolation ceilings and the installation of sound attenuation-batt insulation within the cavity of selected partitions in the yoga, group fitness and cycling studios on the mezzanine and lower levels.

The applicant represents that the PCE will be fully sprinklered and protected by a 24-hour Class E fire alarm system. The Fire Department states, by letter dated December 8, 2020, that filings for a new fire suppression system and fire alarm have been made with the Department of Buildings and Fire Department for installation of these systems. These systems have not been inspected or signed-off by either a agency. The Fire Department has reviewed the plans submitted to the Board and, based on the foregoing, has no objection to the application. The Bureau of Fire Prevention will inspect the Premises when the systems are complete and enforce all applicable rules and regulations.

Accordingly, 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. In addition, the Board finds that the operation of the PCE will not interfere with any public improvement project.

The project is classified as an Unlisted action pursuant to 6 NYCRR, Part 617.2. 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. 21BSA014K, dated March 22, 2021. 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.

The Department of City Planning states, by correspondence dated December 14, 2020, that the proposed project will not substantially hinder the achievement of any Waterfront Revitalization Program policy.

The Landmarks Preservation Commission represents by correspondence dated December 19, 2020, that this is not a site of architectural concern and no adverse impacts are anticipated to listed historic properties as a result of this action.

No other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable. Accordingly, the Board has determined that the proposed action will not have a significant adverse impact on the environment.

Therefore, the Board has determined that the evidence in the record supports the requisite findings for the special permit pursuant to Z.R. §§ 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 *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 Z.R. §§ 73-36 and 73-03 *permit*, on a site located within an M1-2/R8 zoning district and a Special Mixed Use District, the operation of a physical culture establishment on portions of the lower level cellar, ground floor cellar, and mezzanine level of a proposed 21-story, plus cellars and mezzanine, mixed-use residential, commercial, and community facility building, contrary to Z.R. § 42-10, *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked "Received March 12, 2021"—Thirteen (13) sheets; and *on further condition*:

THAT this grant shall be limited to a term of ten years, expiring March 22, 2031;

THAT the PCE shall present no adverse noise or vibration impacts to tenants of the Premises;

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 fire safety measures shall be installed and maintained as shown on BSA-approved drawings;

THAT all individuals practicing massage at the Premises shall possess valid New York State licenses for such practice which licenses shall be prominently displayed at the Premises;

THAT minimum three-foot-wide exit pathways shall be maintained leading to the required exits and that pathways shall be maintained unobstructed, including from any gymnasium equipment;

THAT accessibility shall be provided pursuant to the

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standards set forth in applicable accessibility laws, including but not limited to Chapter 11 of the NYC Building Code, the 2009 American National Standards Institute (ANSI) A117.1 and Title III of the Americans with Disabilities Act, as reviewed and approved by DOB;

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. 2020-72-BZ”), shall be obtained within four years and an additional six months, in light of the current state of emergency declared to exist within the City of New York resulting from an outbreak of novel coronavirus disease, by September 30, 2025;

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.

Adopted by the Board of Standards and Appeals, March 22, 2021.

2017-317-BZ

APPLICANT – Sheldon Lobel, P.C., for 1693 Flatbush LLC, owner.

SUBJECT – Application December 13, 2017 – 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.

PREMISES AFFECTED – 1693 Flatbush Avenue, Block 7598, Lot 51, Borough of Brooklyn.

COMMUNITY BOARD #18BK

ACTION OF THE BOARD – Laid over to October 18-19, 2021, at 10 A.M., for adjourned hearing.

2019-162-BZ

APPLICANT – Jay Goldstein, Esq., for Agit Abeckaser and 725 6th Ave LLC, owner.

SUBJECT – Application May 30, 2019 – 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 ratio) and ZR §23-47 (rear yard). R2 zoning district.

PREMISES AFFECTED – 3336-3338 Bedford Avenue, Block 7642, Lot(s) 52, 53, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Laid over to June 14-15, 2021, at 10 A.M., for adjourned hearing.

2019-279-BZ

APPLICANT – Terminus Group, LLC, for CeeJay Real Estate Development Corp., owner.

SUBJECT – Application October 22, 2019 – Special Permit (§73-126) to permit the enlargement of an ambulatory diagnostic or treatment care facility which exceeds 1,500 square feet, located within a lower density growth management area, contrary to ZR §22-14. R3A Special South Richmond District (Lower Density Growth Management Area).

PREMISES AFFECTED – 4119 Richmond Avenue, Block 5268, Lot 37, Borough of Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Laid over to June 28-29, 2021, at 10 A.M., for adjourned hearing.

2020-14-BZ

APPLICANT – Akerman LLP, for 34-10 12th Realty LLC, owner.

SUBJECT – Application January 30, 2020 – Variance (§72-21) to permit the enlargement of a one-story, non-conforming manufacturing establishment (UG 17) contrary to ZR §§22-10 and 52-41. R5 zoning district.

PREMISES AFFECTED – 34-10 12th Street, Block 326, Lot 29, Borough of Queens.

COMMUNITY BOARD #1Q

ACTION OF THE BOARD – Laid over to June 28-29, 2021, at 10 A.M., for adjourned hearing.

PUBLIC HEARINGS

MONDAY-TUESDAY AFTERNOON

MARCH 22-23, 2021, 2:00 P.M.

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

Absent: Commissioner Scibetta.

ZONING CALENDAR

2018-13-BZ

APPLICANT – Law Office of Lyra J. Altman, for Joseph Mamrout, owner.

SUBJECT – Application January 30, 2018 – 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.

PREMISES AFFECTED – 30-32 Village Road North, Block 7123, Lot(s) 29 and 30, Borough of Brooklyn.

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COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to October 18-19, 2021, at 10 A.M., for continued hearing.

2020-55-BZ

APPLICANT – Eric Palatnik, P.C., for 1284 Plaza LLC, owner.

SUBJECT – Application July 2, 2020 – Variance (§72-21) to permit the development of and eight story and cellar residential building contrary to ZR §23-47 (rearyard). R7A zoning district.

PREMISES AFFECTED – 1284 East 19th Street, Block 6738, Lot (s) 31, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Laid over to July 22-23, 2021, at 10 A.M., for continued hearing.

2020-76-BZ

APPLICANT – Law Office of Jay Goldstein, for 8904 5th Avenue LLC, owner; The Learning Experience d/b/a TLE, lessee.

SUBJECT – Application September 25, 2020 – Special Permit (§73-19) to permit the operation of a day care facility C8-2 Special Bay Ridge Purpose District.

PREMISES AFFECTED – 8902 5th Avenue (8902-8906 5th Avenue, 442-452 89th Street), Block 6066, Lot 26, Borough of Brooklyn.

COMMUNITY BOARD #10BK

ACTION OF THE BOARD – Laid over to June 14-15, 2021, at 10 A.M., for continued hearing.

Carlo Costanza, Executive Director

BULLETIN

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April 23, 2021

DIRECTORY

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SHAMPA CHANDA, *Vice-Chair*

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NASR SHETA

SALVATORE SCIBETTA

Commissioners

Carlo Costanza, *Executive Director*

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HEARINGS HELD -	TELECONFERENCE PUBLIC HEARINGS
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2021-24-A

155 Johnson Street, Block 7207, Lot(s) 283, Borough of **Staten Island, Community Board: 3**. Proposed development of a one-story warehouse building (UG 16) not fronting on a legally mapped street contrary to General City Law §36. M3-1 Special South Richmond District. M3-1(SRD) district.

2021-25-BZ

1161 Victory Boulevard, Block 00247, Lot(s) 0038, Borough of **Staten Island, Community Board: 1**. Special Permit (§73-44) to permit the reduction of required accessory off-street parking spaces for ambulatory diagnostic and treatment health care facility use (UG 4A). C2-1/R2 in the Special Hillside Preservation zoning district and the Lower Density Growth Management Zone. R2/C2-1 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

**TELECONFERENCE PUBLIC HEARINGS
MAY 24-25, 2021, MONDAY-TUESDAY
10:00 A.M. and 2:00 P.M.**

NOTICE IS HEREBY GIVEN of teleconference public hearings, Monday, May 24, 2021, at 10:00 A.M. and 2:00 P.M., and Tuesday May 25, 2021, at 10:00 A.M. and 2:00 P.M., to be streamed live through the Board's website (www.nyc.gov/bsa), with remote public participation, on the following matters:

SPECIAL ORDER CALENDAR

516-75-BZIII

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Equinox SC Upper East Side, Inc., owner.
SUBJECT – Application November 16, 2020 – Extension of Term of a previously approved Variance (§72-21) which permit the operation of a physical culture establishment (Equinox) which expired on October 17, 2020. C8-4 zoning district.
PREMISES AFFECTED – 330 East 61st Street, Block 1345, Lot(s) 16, 37, Borough of Manhattan.
COMMUNITY BOARD #8M

2017-20-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for GTO Holding LLC, owner; Harbor Fitness Park Slope, Inc., lessee.
SUBJECT – Application September 17, 2020 – Amendment of a previously approved Variance (§72-21) which permitted the operation of a physical cultural establishment (Harbor Fitness Park Slope). The amendment seeks to legalize the enlargement of the establishment at the first floor; Extension of Time to Obtain a Certificate of Occupancy which expired on July 16, 2020. C4-3A/R6B zoning district.
PREMISES AFFECTED – 550 Fifth Avenue, Block 10417, Lot 7501, Borough of Brooklyn.
COMMUNITY BOARD #6BK

2017-289-BZ and 252-06-BZ

APPLICANT – Sheldon Lobel, P.C., for HP Walter Avenue Housing Development Fund Co. Inc., owner.
SUBJECT - Extension of Time to complete construction of a previously approved Variance (§72-21) and 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). Extension of Time to complete construction for the companion amendment of a variance under BSA Cal. No. 252-06-BZ.

PREMISES AFFECTED – 1761 Walton Avenue, Block 2850, Lot(s) 34,38,63, Borough of Bronx.
Community Board #5BX

APPEALS CALENDAR

2021-11-BZY

APPLICANT – Kenneth K. Loweinstein, for 559 Development, LLC, owner.
SUBJECT – Application January 21, 2021 – Extension of Time to Complete Construction and Obtain a Certificate of Occupancy (§11-332) for a period of two years from December 20, 2020.
PREMISES AFFECTED – 38-59 11th Street, Block 00473, Lot 559, Borough of Queens.
COMMUNITY BOARD #2Q

ZONING CALENDAR

2018-13-BZ

APPLICANT – Law Office of Lyra J. Altman, for Joseph Mamrout, owner.
SUBJECT – Application January 30, 2018 – 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.
PREMISES AFFECTED – 30-32 Village Road North, Block 7123, Lot (s) 29 & 30, Borough of Brooklyn.
COMMUNITY BOARD #15BK

2019-179-BZ

APPLICANT – Eric Palatnik, P.C., for Lee Yuen Fung Trading Co., Inc., owner.
SUBJECT – Application June 20, 2019 – Variance (§72-21) to permit the development of a twelve (12) story mixed-use building containing commercial use at the ground floor and twelve residential condominium units above contrary to ZR §42-00. M1-6 zoning district.
PREMISES AFFECTED – 118 West 28th Street, Block 00803, Lot 0051, Borough of Manhattan.
COMMUNITY BOARD #5M

CALENDAR

2019-257-BZ

APPLICANT – Sheldon Lobel, P.C., for 179 Tenants Corp., owner.

SUBJECT – Application September 6, 2019 – Special Permit (§73-621) to permit a 390 square foot enlargement of an existing super’s apartment contrary to ZR §§12-10 & 23-152. C1-5/R10A & R10A zoning districts.

PREMISES AFFECTED – 179 East 79th Street, Block 1508, Lot 0031, Borough of Manhattan.

COMMUNITY BOARD # 8M

2019-258-A

APPLICANT – Sheldon Lobel, P.C., for 179 Tenants Corp., owner.

SUBJECT – Application September 6, 2019 – Request to permit a 390 square foot enlargement of an existing super’s apartment contrary Multiple Dwelling Law (MDL) and Housing and Maintenance Code (HMC). C1-5/R10A & R10A zoning districts.

PREMISES AFFECTED – 179 East 79th Street, Block 1508, Lot 0031, Borough of Manhattan.

COMMUNITY BOARD # 8M

2019-275-BZ

APPLICANT – Sheldon Lobel, P.C., for Northern Star Textile Corporation, owner; Krav Maga NYC, LLC d/b/a Fit Hit, lessee.

SUBJECT – Application October 16, 2019 – Special Permit (§73-36) to permit the operation of a Physical Cultural Establishment (Fit Hit) located in the cellar and ground floor of an existing building contrary to ZR §42-10. M1-6 zoning district.

PREMISES AFFECTED – 122 West 27th Street, Block 00802, Lot 0056, Borough of Manhattan.

COMMUNITY BOARD #5M

2020-43-BZ

APPLICANT – Law Office of Christopher Wright PLLC, for Zan Optics Products Inc., owner.

SUBJECT – Application May 21, 2020 – Variance (§72-21) to permit the legalization of 2 residential units on the 2nd and 3rd floors of an existing 3 story building contrary to ZR §42-10. M1-2 zoning district.

PREMISES AFFECTED – 982 39th Street, Block 5583, Lot 0068, Borough of Brooklyn.

COMMUNITY BOARD #12BK

2020-55-BZ

APPLICANT – Eric Palatnik, P.C., for 1284 Plaza LLC, owner.

SUBJECT – Application July 2, 2020 – Variance (§72-21) to permit the development of and eight story and cellar residential building contrary to ZR §23-47 (rear yard). R7A zoning district.

PREMISES AFFECTED – 1284 East 19th Street, Block 6738, Lot (s) 31, Borough of Brooklyn.

COMMUNITY BOARD #14BK

2020-76-BZ

APPLICANT – Law Office of Jay Goldstein, for 8904 5th Avenue LLC, owner; The Learning Experience d/b/a TLE, lessee.

SUBJECT – Application September 25, 2020 – Special Permit (§73-19) to permit the operation of a day care facility (TLE) contrary to ZR §32-10.

C8-2 Special Bay Ridge Purpose District.

PREMISES AFFECTED – 8902 5th Avenue (8902-8906 5th Avenue, 442-452 89th Street), Block 6066, Lot 26, Borough of Brooklyn.

COMMUNITY BOARD #10BK

Margery Perlmutter, Chair/Commissioner

MINUTES

**PUBLIC HEARINGS
MONDAY-TUESDAY MORNING
APRIL 12-13, 2021, 10:00 A.M.**

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

SPECIAL ORER CALENDAR

677-53-BZ

APPLICANT – Akerman LLP, for James Marchetti, owner.
SUBJECT – Application September 4, 2020 – Extension of time to obtain a Certificate of Occupancy 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 30, 2019; Waiver of the Board’s Rules of Practice and Procedures. 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 – Application granted on condition.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta5

Negative:.....0

THE RESOLUTION –

This is an application for a waiver of the Board’s Rules of Practice and Procedures and an extension of time to obtain a certificate of occupancy, which expired on October 30, 2019, for a previously approved variance granted by the Board pursuant to Z.R. § 11-411 which permitted an auto body repair shop with incidental painting and spraying (Use Group 16).

A public hearing was held on this application on December 14, 2021, after due notice by publication in *The City Record*, with a continued hearing on February 22, 2021, and then to decision on April 12, 2021. Vice-Chair Chanda, Commissioner Ottley-Brown, and Commissioner Sheta performed inspections of the Premises and surrounding neighborhood. The Board received one form letter in support of this application and one letter of objection, citing concerns about potentially hazardous gas emanating from the Premises’ auto body spraying operation.

The Premises are located on the west side of Fresh Meadow Lane, between Horace Harding Expressway and 65th Avenue, in an C2-2 (R4) zoning district, in Queens. With approximately 67 feet of frontage along Fresh Meadows Lane, 93 feet of depth along the southern lot line, and 5,126 square feet of lot area, the Premises are currently occupied by an existing one-story automotive repair establishment.

The Board has exercised jurisdiction over the Premises

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 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'-0" 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 5'-6" in height with substantial posts at the lot lines; curb cuts may be as proposed, not more than 20'-0" in width and not nearer than 5'-0" 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, all permits required be obtained and all work completed within one year, by March 2, 1955, and a certificate of occupancy be obtained.

On March 29, 1955, under the subject calendar number, the Board extended the time to obtain permits and complete construction for one year, by March 29, 1956.

On April 21, 1959, under the subject calendar number, the Board further amended the variance to extend the term for five years, to expire on April 21, 1964, on condition that other than as amended the resolution be complied with in all respects, all permits, including a new certificate of occupancy, be obtained, and all work completed within six months, by October 21, 1959.

On February 9, 1960, under the subject calendar number, the Board extended the time to obtain permits and complete construction for one year, by February 9, 1961, and required a certificate of occupancy to be obtained.

On July 21, 1964, under the subject calendar number, the Board further amended the variance to extend the term for five years, to expire on 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.

On October 15, 1969, and November 7, 1979, under the subject calendar number, the Board further amended the variance to extend the term for periods of ten years, the latter of which to expire on 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 year, by November 7, 1980.

On March 24, 1987, under the subject calendar number, the Board further amended the variance to extend the term for ten 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

MINUTES

than 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 year, by March 24, 1988.

On January 13, 1998, under the subject calendar number, the Board further amended the variance to extend the term for ten 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 year, by January 13, 1999.

On October 18, 2011, under the subject calendar number, the Board waived its Rules of Practice and Procedures and further amended the variance to extend the term for five years, expiring October 18, 2016, and to extend the time to obtain a certificate of occupancy for one year, expiring October 18, 2012, on condition that all spray painting at the Premises 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 Premises 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.

The auto repair establishment located on Lot 52, immediately adjacent to the south of the Premises, has been in operation since the 1950s; is a legal non-conforming use which has a certificate of occupancy for automotive repair; and has operated under the "Carriage House Collision" name since 1996. While Lot 52 and the Premises are currently under the same ownership, Lot 52 is not subject to the previously granted variances nor this extension of time request. In addition on October 18, 2011, the Board granted an amendment to the approved plans to reflect the removal of a fence between the Premises and adjacent Lot 52, thereby necessitating the placement of Lot 52 in the Board-approved plans.

On October 30, 2018, under the subject calendar number, the Board waived its Rules of Practice and Procedures and further amended the resolution to extend the term of the variance for ten years, to expire on October 18, 2026, on condition that all work and site conditions conform to the drawings filed with the application; the hours of operation of the automotive repair establishment be limited to 8:00 a.m. to 5:00 p.m. daily; the permitted hours of operation of the tow truck establishment are 24 hours per

day, seven days per week; the applicant return to Community Board 8, Queens, to demonstrate compliance of parking at the Premises with the approved plans and Board's resolution; all signage comply with the BSA- approved plans; the Premises remain free of debris and graffiti at all times; all spray painting on Premises be limited to water-based paint; there be no outdoor lift located on the Premise; the sidewalks be adequately maintained; there be no parking of vehicles on the sidewalk; all conditions not specifically waived by the Board remain in effect; the above conditions appear on the certificate of occupancy; a certificate of occupancy be obtained within one year, by October 30, 2019; the approval is 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 DOB ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and other relevant laws under its jurisdiction irrespective of plan(s) and/configuration(s) not related to the relief granted.

The time to obtain a certificate of occupancy having expired, the applicant now seeks an extension of time to obtain a certificate of occupancy. Because this application was filed more than 30 days after the expiration of time to obtain a certificate of occupancy, the applicant requests a waiver pursuant to § 1-14.2 of the Board's Rules of Practice and Procedures (the Board's Rules), of § 1-07.3(d)(2) to permit the filing of this application.

The applicant represents that no new work is proposed to the site, and this application does not seek any amendments to the previously Board-approved plans. The applicant further submitted a condition compliance chart, which included each condition from prior BSA resolutions along with materials supporting the applicant's compliance with the Board conditions. Additionally, the applicant submitted an operational plan stating how it planned to remain in compliance with conditions of the Board's grant.

Over the course of hearings, the Board expressed concern over the potential for potentially hazardous gases to emanate from the painting and spraying used in the automotive repair shop and negatively impact nearby properties. Further, the Board questioned whether the operation at the Premises could effectively handle parking within the site and prevent sidewalk and other illegal parking. In response, the applicant submitted an operational plan in which the applicant specifically agreed to refrain from any outdoor repair work and to add a sign banning all parking on the sidewalk.

The operational plan states, with regard to customer intake, that the operating hours are Monday to Friday from 8:00 a.m. to 5:00 p.m. and on Saturday from 8:00 AM to 3:00 PM. No auto repair work shall occur on the property after 5:00 p.m. Monday to Friday and after 3:00 p.m. on Saturday. The office shall remain open until 5:30 p.m. for administrative functions only. In order to deter parking on the sidewalk, no vehicle shall be accepted for repair or left on the property if such vehicle would exceed the capacity of

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the auto repair establishment (either inside the existing building or within the yard). In the event a customer asks to leave a vehicle for service and there is no capacity, the customer shall be informed that they must return once there is sufficient capacity on the property to accommodate their vehicle. Employees shall contact such customers once there is capacity on-site. No vehicle lifts shall be utilized in the yard, including for initial diagnostic purposes.

The operational plan states, with regard to parking, that no parking shall be permitted on the sidewalk. The frontage of the property along Fresh Meadow Lane shall include a minimum of two "no parking" signs that shall be clearly visible from the street and sidewalk. In the event that any vehicle is observed by an employee to be parked on the sidewalk in front of the property, it shall be promptly reported to 311.

The operational plan states, with regard to tow truck operations at the Premises, that towing operations to the property are 24 hours a day, 7 days a week. However, tow truck operators shall not leave vehicles on the sidewalk or parked on the streets in the surrounding neighborhood. All cars towed to the property must be left within the yard. All Carriage House Collision tow trucks shall be accommodated within the yard and shall not be parked on the sidewalk or streets surrounding the property.

The operational plan states, with regard to the maintenance of the Premises, that all debris and trash shall be promptly moved to the trash receptacles located within the yard and shall be removed from the property on a regular basis. Any graffiti on the property shall be promptly cleaned and removed. All sidewalks in front of the property shall be adequately maintained. If it is observed that a sidewalk is in need of repair, an employee shall promptly notify management so the issue can be addressed as expeditiously as possible.

The operational plan states, with regard to the operation of the spray booth, that all spray painting on the property shall be limited to water-based paint.

The operational plan states, with regard to work conducted on vehicles at the Premises, that all work conducted on vehicles shall take place inside the building on the property. No repair work of any kind is permitted outside of the building.

By letter dated December 7, 2020, the Fire Department Bureau of Fire Prevention states that a review of our records indicates that the Premises are current with their Fire Department permits with respect to the motor vehicle repair shop, storage of combustible gases and paints, and spray booth. Based on the foregoing, the Fire Department has no objection to the application. The Bureau of Fire Prevention will continue to inspect the Premises and enforce all applicable rules and regulations.

The Board states that a two-year extension of time to obtain a certificate of occupancy is appropriate in this instance to ensure that the applicant has complied with the conditions of the variance.

Based upon its review of the record, the Board has determined that the requested extension of time is

appropriate with certain conditions as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *wave* its Rules of Practice and Procedures and *amends* the resolution, dated March 2, 1954, as amended through October 30, 2018, so that as amended this portion of the resolution shall read: "to extend the time to obtain a certificate of occupancy for two years year, by April 12, 2023, *on condition*:

THAT the term of the variance shall expire on expire on October 18, 2026;

THAT there shall be no parking of tow trucks or cars awaiting service on the streets or sidewalks;

THAT the operation of the spray booth must be in compliance with the Department of Environmental Protection regulations;

THAT signage shall be provided and maintained on the sidewalk stating: "No parking on the sidewalk. Violators will be towed at their own expense";

THAT the operating hours shall be limited to: Monday to Friday from 8:00 a.m. to 5:00 p.m. and on Saturday from 8:00 a.m. to 3:00 p.m.;

THAT no auto repair work shall occur on the property after 5:00 p.m. Monday to Friday and after 3:00 p.m. on Saturday. The office shall remain open until 5:30 p.m. for administrative functions only;

THAT in order to deter parking on the sidewalk, no vehicle shall be accepted for repair or left on the property if such vehicle would exceed the capacity of the auto repair establishment (either inside the existing building or within the yard);

THAT in the event a customer asks to leave a vehicle for service and there is no capacity, the customer shall be informed that they must return once there is sufficient capacity on the property to accommodate their vehicle. Employees shall contact such customers once there is capacity on-site;

THAT no vehicle lifts shall be utilized in the yard, including for initial diagnostic purposes;

THAT the frontage of the property along Fresh Meadow Lane shall include a minimum of two "no parking" signs that shall be clearly visible from the street and sidewalk;

THAT in the event that any vehicle is observed by an employee to be parked on the sidewalk in front of the property, it shall be promptly reported to 311;

THAT even though towing operations to the property are 24 hours a day, 7 days a week, tow truck operators shall not leave vehicles on the sidewalk or parked on the streets in the surrounding neighborhood. All cars towed to the property must be left within the yard;

THAT all Carriage House Collision tow trucks shall be accommodated within the yard and shall not be parked on the sidewalk or streets surrounding the property;

THAT all debris and trash shall be promptly moved to the trash receptacles located within the yard and shall be removed from the property on a regular basis;

THAT any graffiti on the property shall be promptly cleaned and removed;

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THAT all sidewalks in front of the property shall be adequately maintained. If it is observed that a sidewalk is in need of repair, an employee shall promptly notify management so the issue can be addressed as expeditiously as possible;

THAT all spray painting on the property shall be limited to water-based paint;

THAT all work conducted on vehicles shall take place inside the building on the property. No repair work of any kind is permitted outside of the building;

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. 677-53-BZ”), shall be obtained within two years, by April 12, 2023;

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 12, 2021.

195-02-BZ

APPLICANT – Pryor Cashman LLP, for McDonald’s Corporation, owner.

SUBJECT – Application September 4, 2019 – Extension of Term of a previously approved Variance (§72-21) permitting an eating and drinking establishment with an accessory drive through facility which expires on November 23, 2023; Amendment to permit an enlargement; Waiver of the Rules. R4 zoning district.

PREMISES AFFECTED – 2797 Linden Boulevard, Block 4471, Lot 21, Borough of Brooklyn.

COMMUNITY BOARD #5BK

ACTION OF THE BOARD – Application withdrawn without prejudice.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

This is an application for a waiver of the Board’s Rules of Practice and Procedures, an extension of term of a variance, previously approved under Z.R. § 72-21, which permitted an eating and drinking establishment with an accessory drive-through facility and expires on February 11, 2023, and an amendment to the same.

A public hearing was held on this application on June 30, 2020, after due notice by publication in *The City Record*, and then to decision on April 12, 2021. Vice-Chair Chanda and Commissioner Ottley-Brown performed inspections of the Premises and surrounding neighborhood.

The Premises are bounded by Linden Boulevard to the south, Ruby Street to the east, and Drew Street to the west, within an R4 zoning district, in Brooklyn. With approximately 200 feet of frontage along Linden Boulevard, 100 feet of frontage along each Ruby Street and Drew Street, and 20,000 square feet of lot area, the Premises are occupied by an existing one-story eating and drinking establishment (2,239 square feet of floor area) with accessory drive-through and 18 accessory parking spaces.

The Board has exercised jurisdiction over the Premises since October 31, 1972, when, under BSA Cal. No. 231-72-BZ, the Board granted a variance, under Z.R. § 72-21, to permit the erection of a one-story restaurant with accessory parking in the open area on condition that all work substantially conform to drawings filed with the application; the hours of operation be from 11:00 a.m. to 12:00 a.m.; all laws, rules, and regulations applicable thereto be complied with, and substantial construction be completed within one year.

On May 22, 1973, under BSA Cal. No. 231-72-BZ, the Board amended the variance to permit the hours of operation from 7:00 a.m. to 12:00 a.m.

On December 16, 1975, under BSA Cal. No. 231-72-BZ, the Board further amended the variance to permit a curb cut on Drew Street where shown on revised drawings submitted with the application, on condition that all work be completed within one year and other than as amended the resolution be complied with in all respects.

On May 8, 1979, under BSA Cal. No. 231-72-BZ, the Board waived its Rules of Procedure and further amended the variance to extend the term for ten years, to expire May 8, 1989, and permit the construction of a drive-through window and change in the location of curb cuts and parking, on condition that other than as amended the resolution be complied with in all respects, and a new certificate of occupancy be obtained within one year.

On March 8, 1983, under BSA Cal. No. 231-72-BZ, the Board waived its Rules of Procedure and extended the time to obtain a certificate of occupancy to 40 months from May 8, 1980.

On July 11, 1989, under BSA Cal. No. 231-72-BZ, the Board further amended the variance to extend the term for ten years, to expire May 8, 1999, on condition that all signs comply with C1 district regulations; the lights be directed down and away from adjacent residential dwellings; the Premises be maintained clean and free of graffiti at all times; the landscaping be maintained and replaced when necessary; the Premises be in accordance with the plans filed 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 year.

On February 11, 2003, under the subject calendar number, the Board granted a new variance, under Z.R. § 72-

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21, to permit the reestablishment of an expired variance previously granted under BSA Cal. No. 231-72-BZ which permitted an eating and drinking establishment with an accessory drive-through facility in an R-4 zoning district, also the legalization of a small addition to the establishment, on condition that all work substantially conform to drawings filed with the application; the term of the variance be limited to ten years, to expire on February 11, 2013; the Premises be maintained free of debris and graffiti; any graffiti located on the Premises be removed within 48 hours; the conditions be noted in the certificate of occupancy; substantial construction be completed in accordance with Z.R. § 72-23; 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) and/or configuration(s) not related to the relief granted.

On April 15, 2015, under the subject calendar number, the Board amended the variance to permit an extension of the term for an additional ten years from the prior expiration, to expire on February 11, 2023, on condition that all work substantially conform to drawings filed with the application; the term of the variance expire on February 11, 2023; the signage comply with the C1 regulations; landscaping be maintained in accordance with the BSA-approved plans; the Premises be maintained free of graffiti and debris; the menu board volume not exceed 50 decibels between the hours of 9:00 p.m. and 8:00 a.m.; the conditions be noted on the certificate of occupancy; a certificate of occupancy be obtained by April 15, 2016; the approval be limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s); 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) and/or configuration(s) not related to the relief granted.

Because this application was filed more than one year before the expiration of the term of the variance, the applicant requests a waiver pursuant to § 1-14.2 of the Board's Rules of Practice and Procedures (the Board's Rules), of § 1-07.3(b)(2) to permit the filing of this application.

The applicant seeks an amendment to the variance to construct a 1,138 square foot horizontal enlargement on the existing one-story restaurant (3,377 square feet of floor area proposed) and increase the number of accessory parking spaces from 18 to 23 spaces. The applicant represents that the existing conditions are insufficient to accommodate ramps and vestibules, while still providing appropriate egress widths or ADA accessible routes in the interior spaces and that the proposed enlargement is the minimum necessary to upgrade the restaurant's ADA route and egress

accessibility, by providing Energy Code and ADA compliant vestibules to provide accessible routes into and out of the restaurant.

At hearing, the Board questioned whether the proposed amendment continued to meet the findings of Z.R. § 72-21; specifically, whether the proposed changes continued to be the minimum variance necessary. The Board stated that the applicant must demonstrate that, without the proposed enlargement, the restaurant could not make a reasonable return. Further, the Board raised concerns regarding the potential negative impact of the use of the Premises on nearby residential properties, specifically with respect to the 24 hours per day, seven days per week operation of the restaurant; location of the trash enclosure immediately adjacent to residential properties with infrequent, two times per week, pickup; the impact of the audible menu board to nearby residences; high lumens at the residential property line; and the maneuverability of the site with respect to the curb cut widths and exits on Drew Street.

By letter dated March 24, 2021, the applicant states that they have decided to forego the proposed amendment and continue to operate the Premises in compliance with the Board's approval under the subject calendar number. Accordingly, the applicant requests to withdraw this application.

Therefore, it is Resolved, that this application is hereby *withdrawn without prejudice*.

Adopted by the Board of Standards and Appeals, April 12, 2021.

245-03-BZ

APPLICANT – Seyfarth Shaw LLP, for Allied Enterprises NY LLC c/o Muss Development 118-35 Queens Boulevard, owner; McDonald's Real Estate Company, lessee.

SUBJECT – Application January 8, 2019 – Extension of Term of a previously granted special permit (§72-243) for an accessory drive-thru to an existing eating and drinking establishment (McDonald's), which expired on December 9, 2018. C1-2/R3-2 zoning district.

PREMISES AFFECTED – 160-11 Willets Point Boulevard, Block 4758, Lot 100, Borough of Queens.

COMMUNITY BOARD #7Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta5
Negative:.....0

THE RESOLUTION –

This is an application for an extension of term of a special permit, previously granted by the Board under Z.R. § 73-243, which permitted the use of the Premises as an eating and drinking establishment with accessory drive-through facility, and expired on December 9, 2018.

A public hearing was held on this application on March 26, 2019, after due notice by publication in *The City*

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Record, with continued hearings on September 10, 2019, November 26, 2019, April 6, 2020, June 29, 2020, August 24, 2020, January 11, 2021, and February 22, 2021, and then to decision on April 12, 2021. Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta performed inspections of the Premises and surrounding area. Community Board 7, Queens, recommends approval of this application. The Queens Borough President recommends approval of this application on condition that the applicant implement measures to reduce the overflow of vehicles backed up onto the street while waiting for the drive-through or access to the parking spaces to assure the safety of pedestrians and vehicles moving in and out of the facility and around the parking lot. A New York City Council Member, within whose district the Premises are located, also recommends approval of this application.

The Premises are located on the northeast corner of Willets Point Boulevard and Francis Lewis Boulevard, partially within a C1-2 (R3-2) zoning district and partially within an R3-2 zoning district, in Queens. With approximately 166 feet of frontage along Willets Point Boulevard, 122 feet of frontage along Francis Lewis Boulevard, and 17,318 square feet of lot area, the Premises are occupied by an existing 4,725 square foot one-story building used as an eating and drinking establishment with accessory drive-through facility, ten-vehicle reservoir capacity, and thirteen accessory parking spaces, two of which are designated handicapped parking spaces.

The Board has exercised jurisdiction over the Premises since December 9, 2003, when, under the subject calendar number, the Board granted a special permit, under Z.R. §§ 73-243 and 73-521, to permit the use of the Premises as an eating and drinking establishment with accessory drive-through facility, on condition that all work substantially conform to drawings as they apply to the objection, filed with the application; the term of the special permit be limited to five years, to expire on December 9, 2008; the Premises be maintained free of debris and graffiti; any graffiti located on the Premises be removed within 48 hours; substantial construction be completed in accordance with Z.R. § 73-30; the approval be limited to the relief granted by the Board in response to specifically cited and filed Department of Buildings objections only; the approved plans be considered approved only for the portions related to the specific relief granted; 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, the conditions be noted in the certificate of occupancy.

1 The 2003 Board-approved plans reference Z.R. § 73-52 and mark the 25-foot section extending out from the district boundary line into the R3-2 portion of the lot. Accordingly, the Board approved the 2003 application under both Z.R. §§ 73-243 and 73-52.

On February 10, 2009, and July 22, 2014, under the subject calendar number, the Board amended the resolution to extend the term of the special permit for terms of five years, the latter of which to expire on December 9, 2018, on condition that all signage comply with C1 zoning district regulations; there be no change in the operator of the subject eating and drinking establishment (“McDonald’s”) without the prior approval of the Board; all conditions from the prior resolution not specifically waived by the Board remain in effect; the approved plans be considered approved only for the portions related to the specific relief granted; 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.

The term of the special permit having expired, the applicant now seeks an extension.

The applicant represents that no changes to the drive-through facility have occurred since the Board’s last approval: the drive-through continues to maintain reservoir space for at least ten automobiles and there have been no modifications to the drive-through that would cause any increased interference with the traffic flow in the immediate vicinity. There have been no changes to the operator of the eating and drinking establishment (“McDonald’s”), which operates Sunday to Thursday, 6:00 a.m. to 12:00 a.m., and, Friday and Saturday, 6:00 a.m. to 1:00 a.m. Further, the applicant represents that signage will be modified to comply with the C1 zoning district restrictions by de-illuminating one, 14 square-foot, sign on Willets Point Boulevard.

Over the course of hearings, the Board questioned the potential for adverse impacts from the operation of the eating and drinking establishment to the surrounding area and nearby residences. Specifically, the Board raised concerns over the maintenance of the Premises, specifically with respect to the fencing, landscaping, and trash enclosure, and lumen levels at the residential property line. Further, the Board questioned the maneuverability about the Premises and whether it would cause conflicts within and surrounding the Premises.

The applicant proposes to update the drive-through and parking at the Premises to meet modern standards and ADA accessibility requirements and, in response to comments from the Board and community, proposes a redesign of the drive-through to minimize interference with traffic flow on Willets Point Boulevard. Specifically, the applicant proposes to speed up the process of order intake, food production, and presentation to the customer with: (1) menu simplification; (2) a dual-order point by adding a second ordering point; (3) removing the loading dock to the left of the drive-through; (3) mobile ordering and mobile order pay capabilities. Signage will be maintained in the parking lot prohibiting the use of horns, sound systems or creating any other unnecessary noise and requesting respect

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for the adjacent residential neighbors. Further, the applicant proposes shortening the center island dividing the drive-through from the parking lot to allow greater vehicular maneuverability.

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 amend the resolution, dated December 9, 2003, as amended through July 22, 2014, so that as amended this portion of the resolution shall read: "to extend the term of the special permit for five years, to expire on April 12, 2026; on condition that all work, site conditions and operations shall conform to drawings filed with this application marked 'Received April 8, 2021—Eleven (11) sheets'; and on further condition:

THAT the term of the special permit shall expire on April 12, 2026;

THAT the hours of operation shall be limited to Sunday to Thursday, 6:00 a.m. to 12:00 a.m., and, Friday and Saturday, 6:00 a.m. to 1:00 a.m.

THAT signage shall be maintained in the parking lot prohibiting the use of horns, sound systems or creating any other unnecessary noise and requesting respect for the adjacent residential neighbors;

THAT the menu board shall be operated and maintained so as to be inaudible at the residential property line;

THAT landscaping and fencing shall be maintained in first-class condition at all times;

THAT trash shall be maintained in the fenced trash area only, which shall be maintained in first-class condition;

THAT overflow parking at the rear of the Premises shall be provided and maintained, as shown on Board-approved plans;

THAT access to the drive-through lane shall be provided only from the C1-2 zoning district portion of the Premises as extended in 2003 by special permit pursuant to Z.R. § 73-52;

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, also indicating this approval and calendar number ("BSA Cal. No. 245-03-BZ"), shall be obtained within one year and an additional six months, in light of the current state of emergency declared to exist within the City of New York resulting from an outbreak of novel coronavirus disease, by November 28, 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;

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 12, 2021.

55-45-BZ

APPLICANT – Carl A. Sulfaro, Esq., for John Passarella, owner; Kingsland Service Station, LLC, lessee.

SUBJECT – Application March 25, 2019 – Extension of Term (§11-411) of a previously approved variance permitting the operation of an Automotive Service Station (UG 16B) (Spirit) with accessory automotive repair which expired on February 27, 2019. C2-4/R6B zoning district.

PREMISES AFFECTED – 63 Kingsland Avenue (f/k/a 51-61 Kingsland Avenue), Block 2866, Lot 40, Borough of Brooklyn.

COMMUNITY BOARD #3BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Shelta, and Commissioner Scibetta5
Negative:.....0

ACTION OF THE BOARD – Laid over to May 24-25, 2021, at 10 A.M., for decision, hearing closed.

758-84-BZIII

APPLICANT – David L. Businelli, for Gina Sgarlato Benfante, owner.

SUBJECT – Application January 7, 2021 – Extension of Term of a variance (§72-21) permitted the operation of two-story and cellar commercial building contrary to use regulations which expired on July 2, 2020; Waiver of the Board's Rules of Practice and Procedures. R3X zoning district.

PREMISES AFFECTED – 1444 Clove Road, Block 658, Lot 20, Borough of Staten Island.

COMMUNITY BOARD #1SI

ACTION OF THE BOARD – Laid over to June 14-15, 2021, at 10 A.M., for postponed hearing.

648-88-BZ

APPLICANT – Rampulla Associates Architects, for Fratello Corp., owner.

SUBJECT – Application November 25, 2020– Amendment of a previously approved Variance (§72-21) which permitted the development of a UG 6 Pharmacy. The amendment seeks to permit the change in use to a UG 6 food store, addition of refrigeration space, the removal of a curb cut and relocation of 2 parking spaces. R1-2 zoning district.

PREMISES AFFECTED – 2107 Richmond Road, Block 00899, Lot 0018, Borough of Staten Island.

COMMUNITY BOARD #2SI

THE VOTE TO CLOSE HEARING –

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Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Shelta, and Commissioner Scibetta5
Negative:.....0

ACTION OF THE BOARD – Laid over to April 26-27, 2021, at 10 A.M., for decision, hearing closed.

21-91-BZ

APPLICANT – Sheldon Lobel, P.C., for Hardath Latchminarain, owner.

SUBJECT – Application July 19, 2017 – Extension of Term of a previously approved Variance (§72-21) which permitted the operation of an automotive glass and mirror repair establishment (UG 7D) and used car sales (UG 16B) which expired on March 16, 2015; Amendment to permit the legalize the conversion of the existing building to Use Car Sales (UG 16B) and relinquishing the automotive glass and mirror repair establishment (UG 7D); Waiver of the Board’s Rules. R5 zoning district.

PREMISES AFFECTED – 2407-2417 Linden Boulevard, Block 4478, Lot 24, Borough of Brooklyn.

COMMUNITY BOARD #5BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Shelta, and Commissioner Scibetta5
Negative:.....0

ACTION OF THE BOARD – Laid over to June 28-29, 2021, at 10 A.M., for decision, hearing closed.

122-95-BZ

APPLICANT – Capell Barnett Matalon & Schoenfeld LLC, for 152-65 Realty Company LLC, owner.

SUBJECT – Application October 1, 2019 – Extension of Term of a previously approved Variance (§72-21) which permitted a warehouse (UG 16) and trucking terminal (UG 17) with accessory offices, loading and unloading contrary to use regulations which expired on July 11, 2016; Amendment to permit a change in the hours of operation and a request to eliminate the term. C2-2/R3-1 zoning district.

PREMISES AFFECTED – 152-65 Rockaway Boulevard, Block 12278, Lot 60, Borough of Queens.

COMMUNITY BOARD #12Q

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Shelta, and Commissioner Scibetta5
Negative:.....0

ACTION OF THE BOARD – Laid over to June 14-15, 2021, at 10 A.M., for decision, hearing closed.

12-01-BZII

APPLICANT – Greenberg Traurig, LLP, for German Rodriguez, owner.

SUBJECT – Application November 2, 2020 – Amendment or Extension of Term of a previously approved Variance (§72-21) which permitted the development of a one-story commercial building (UG 6) with 93 accessory parking spaces which is set to expire on July 17, 2021. The application seeks to change to remove the Board’s condition of term. R4 zoning district.

PREMISES AFFECTED – 2829 Edson Avenue, Block 4800, Lot 0018, Borough of Bronx.

COMMUNITY BOARD #12BX

ACTION OF THE BOARD – Laid over to June 14-15, 2021, at 10 A.M., for continued hearing.

200-01-BZ

APPLICANT – Davidoff Hutter & Citron LLP, for Bowne Associates, owner; Hillside Manor Rehabilitation and Extended Care Center LLC, lessee.

SUBJECT – Application August 19, 2019 – Extension of Time to Obtain a Certificate of Occupancy of a previously approved variance (72-21) to permit the enlargement of an existing 11-story and penthouse rehabilitation and long-term care facility (Hillside Manor Rehabilitation and Extended Care Center) which expired on March 17, 2011; Waiver of the Board’s Rules. C2-4/R6A Special Downtown Jamaica District.

PREMISES AFFECTED – 182-15 Hillside Avenue, Block 9950, Lot 1, Borough of Queens.

COMMUNITY BOARD #8Q

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Shelta, and Commissioner Scibetta5
Negative:.....0

ACTION OF THE BOARD – Laid over to June 28-29, 2021, at 10 A.M., for decision, hearing closed.

395-04-BZIV

APPLICANT – Vassalotti Associates Architects, LLP, for Congregation Imrei Yehudah, owner; Rabbi Meyer Unsdorfer, lessee.

SUBJECT – Application May 21, 2020 – Extension of Time to Complete Construction of a previously approved variance (§72-21) for the construction of a UG4 synagogue which expired on June 5, 2016; waiver of the Rules. R5 zoning district.

PREMISES AFFECTED – 1232 54th Street, Block 5676, Lot(s) 0017, Borough of Brooklyn.

COMMUNITY BOARD #12BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Shelta, and Commissioner Scibetta5
Negative:.....0

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ACTION OF THE BOARD – Laid over to June 14-15, 2021, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

2020-24-A

APPLICANT – Law Offices of Marvin B. Mitzner LLC, for Sela 27th Street LLC, owner.

SUBJECT – Application March 20, 2020 – Appeal seeking a determination that the owner has acquired a common law vested right to obtain a Certificate of Occupancy for a development commenced under the prior zoning district regulations.

PREMISES AFFECTED – 39-35 27th Street, Block 397, Lot 2, Borough of Queens.

COMMUNITY BOARD #1Q

ACTION OF THE BOARD – Application granted.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta5
Negative:0

THE RESOLUTION –

This is an application, based on the common-law doctrine of vested rights, to establish the right to continue construction and to renew building permits lawfully issued by the Department of Buildings, acting on New Building Application No. 402569886 (the “New Building Application”), before the effective date of an amendment to the Zoning Resolution, which have lapsed as a result of such amendment.

A public hearing was held on this application on January 26, 2021, after due notice by publication in *The City Record*, with a continued hearing on February 23, 2021, and then to decision on April 12, 2021. The Board received two letters in support of this application.

I.

The Premises are located on the east side of 27th Street, between 39th Avenue and 40th Avenue, within an M1-2/R5B zoning district and in the Special Long Island City Mixed Use District, in Queens. With approximately 75 feet of frontage along 27th Street, 100 feet of depth and 7,514 square feet of lot area, they are under construction of a nine-story commercial building for use as a hotel (the “Hotel Building”).

The Board notes that New Building Permit No. 402569886-01-NB (the “Permit”), which authorized the development of a nine-story hotel building pursuant to M1-3D zoning district regulations was issued on December 4, 2007. By letter dated December 17, 2009, the Department of Buildings (“DOB”) states that the Permit was lawfully issued, authorizing construction of the proposed Building.

However, on October 7, 2008 (the “Effective Date”), the City Council voted to adopt the Dutch Kills Rezoning, which rezoned the site to M1-2/R5B. The Permit lapsed by operation of law on the Rezoning Date because the plans did

not comply with the new M1-2/R5B zoning district regulations and DOB determined that the Building’s foundation was not complete.

On May 25, 2010, under BSA Cal. No. 300-08-A, the Board recognized a common law vested right to complete construction and reinstatement the Permit, as well as all related permits for various work types, either already issued or necessary to complete construction and obtain a certificate of occupancy, for four years, by May 25, 2014.

On November 1, 2016, under BSA Cal. No. 300-08-A, the Board granted an extension of time to complete construction and obtain a certificate of construction for four years, by November 1, 2020, on condition that construction shall be completed by November 1, 2020; a certificate of occupancy for the Premises be obtained by November 1, 2020; all conditions from the prior resolution not specifically waived by the Board remain in effect; 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) and/or configuration(s) not related to the relief granted.

II.

“Under New York law, a property owner has no right to an existing land-use benefit unless that right has ‘vested.’ In New York, a vested right can be acquired when, pursuant to a legally issued permit, the landowner demonstrates a commitment to the purpose for which the permit was granted by effecting substantial changes and incurring substantial expenses to further the development. *Town of Orangetown v. Magee*, 88 N.Y.2d 41, 47, 643 N.Y.S.2d 21, 665 N.E.2d 1061 (1996). In order to gain the vested right, the landowner’s actions relying on a valid permit must be so substantial that the municipal action results in serious loss rendering the improvements essentially valueless,” *Cine SK8, Inc. v. Town of Henrietta*, 507 F.3d 778, 784 (2d Cir. 2007) (internal quotation marks omitted); *see also Zahra v. Town of Southold*, 48 F.3d 674, 681 (2d Cir. 1995) (recognizing a “protectible ‘property interest’ in a benefit that affects land use—i.e. a building permit, certificate of occupancy, zoning variance, excavation permit or business license”).

Notwithstanding this general framework, “there is no fixed formula which measures the content of all the circumstances whereby a party is said to possess a vested right,” *Estate of Kadin v. Bennett*, 163 A.D.2d 308, 309 (N.Y. App. Div. 1990) (internal quotation marks omitted).

A.

First, as noted above, the record shows that the owner of the Premises obtained lawfully issued permits to construct the Hotel Building in accordance with the New Building Application before the Effective Date.

B.

Second, the applicant submitted evidence that, in accordance with the building permits authorizing work associated with the New Building Application, the owner has effected substantial construction to further development of the Hotel Building.

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In particular, the applicant submits that the Hotel Building is approximately 70% complete: the existing non-story section of the building is currently receiving finishes on the upper floors and the new addition to the building is nearly complete on the superstructure phase until the sixth floor. The Board notes that, before the Effective Date, the owner completed: (1) site preparation; (2) 75 percent of the excavation; (3) the creation of concrete forms for foundation, footings, and underpinning; and (4) the pouring of 25.89 cubic yards of concrete required for footings, 24.85 cubic yards of concrete required for the foundation, and 19 cubic yards of concrete required for underpinning; for a total of 69.74 cubic yards of concrete, or approximately 24 percent, out of a total of approximately 290 cubic yards of concrete required for all foundation work. Accordingly, the record reflects that, in accordance with the building permits authorizing work associated with the New Building Application, the owner has effected substantial construction to further development of the Hotel Building.

C.

Third, the applicant submitted evidence that, prior to the Effective Date, the owner expended \$820,231, including hard and soft costs and irrevocable commitments, out of \$3,837,850 budgeted for the entire project. The applicant submits that the owner has expended \$8,323,180.56 in construction costs to date in furtherance of the Hotel Building. Accordingly, the record reflects that the owner has incurred substantial expenses to further development of the Hotel Building.

D.

Fourth, the applicant submitted evidence that, if the right to continue construction of the Hotel Building were denied, the owner would suffer serious loss—that is, substantial economic harm.

In particular, the applicant submits that the overall budget for the project is \$6,976,776.57 and the current committed cost of the project is \$4,616,030.81. Redesigning the Hotel Building to comply with current zoning regulations would reduce the available FAR from 5.0 to 2.0, reduce the unit count from 62 rooms to 28 rooms, and decrease the front wall building height from the lesser of 85 feet or six stories to 60 feet or four stories. The applicant states that, to comply with current underlying zoning regulations, the owner would lose the \$4,158,216 (14,904 square feet multiplied by \$279) that it took to build 14,904 square feet of the vested portion of the building (24,904 square feet less 10,000 square feet). The compliant building would contain 34 less hotel rooms resulting in \$1.7 million per year of lost profits. Four stories or 60% of the vested rights portion of the building would have to be partially demolished and would cost the owner approximately an additional \$3.5 million in expenditures.

Because of the substantial nature of the financial losses pertaining to redesigning the Hotel Building to comply with current zoning regulations, it is unnecessary for the Board to determine the full extent of the economic harm that would be inflicted were common-law vested rights denied herein.

Accordingly, the record reflects that, if the right to continue construction of the Hotel Building were denied, the owner would suffer serious loss in the form of substantial economic harm.

III.

Based on the foregoing, the Board finds that the evidence in the record supports the establishment of a right to continue construction of the Hotel Building, based on the common-law doctrine of vested rights, and that the applicant has substantiated a basis to warrant renewal of building permits authorizing work associated with the New Building Application.

Nothing herein shall inhibit any tolling applicable by virtue of any executive order related to the current state of emergency declared to exist within the City of New York resulting from an outbreak of novel coronavirus disease.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *grant* this application, based on the common-law doctrine of vested rights, to *establish* the right to continue construction and to *renew* building permits lawfully issued by the Department of Buildings, acting on New Building Application No. 402569886, before the effective date of an amendment to the Zoning Resolution, which have lapsed as a result of such amendment, as well as all related permits for various work types, either already issued or necessary to complete construction and obtain a certificate of occupancy, for four years and an additional six months, in light of the current state of emergency declared to exist within the City of New York resulting from an outbreak of novel coronavirus disease, expiring October 12, 2025, or such later date as may be allowed by applicable tolling.

Adopted by the Board of Standards and Appeals, April 12, 2021.

2020-49-A

APPLICANT – Law Office of Marvin B. Mitzner LLC, for 38-30 28th Street LLC, owner.

SUBJECT – Application June 8, 2020 – Extension of time to complete construction and obtain a Certificate of Occupancy of a previously granted common law vested right to construct an 8-story hotel, which expired on October 7, 2018.

PREMISES AFFECTED – 38-30 28th Street, Block 00386, Lot 0027, Borough of Queens.

COMMUNITY BOARD #1Q

THE VOTE TO CLOSE HEARING –

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

ACTION OF THE BOARD – Laid over to May 24-25, 2021, at 10 A.M., for decision, hearing closed.

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2020-34-A

APPLICANT – Goldner Architects by Davis Iszard, RA, for Vlad Tsirkin, CFO, 45 John NY, LLC, owner.

SUBJECT – Application April 10, 2020 – Application requesting a variance of the Multiple Dwelling Law to existing HACA multiple dwelling to be partially converted to a hotel. An existing inner court supplying legal light and air to apartments does not meet the size requirements for hotels. C6-4 Lower Manhattan Special Purpose District.

PREMISES AFFECTED – 45 John Street, Block 00078, Lot 28, Borough of Manhattan.

COMMUNITY BOARD #1M

ACTION OF THE BOARD – Laid over to May 24-25, 2021, at 10 A.M., for continued hearing.

ZONING CALENDAR

2019-200-BZ

CEQR #20-BSA-012Q

APPLICANT – Sheldon Lobel, P.C., for 83-32 Parsons Blvd LLC, owner; Queensfitness dba Orangetheory Fitness, lessee.

SUBJECT – Application July 26, 2019 – Special Permit (§73-36) to permit the legalization of the operation of a physical cultural establishment (*OrangeTheory Fitness*) located on a portion of the first floor and cellar of an existing building contrary to ZR §31-10. C2-2/R6B and C8-1 zoning districts.

PREMISES AFFECTED – 41-19 Bell Boulevard, Block 6290, Lot 5, Borough of Queens.

COMMUNITY BOARD #11Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta5
Negative:0

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated July 5, 2019, acting on DOB Application No. 421653204, 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 C2 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.”

This is an application under Z.R. §§ 73-36 and 73-03 to legalize, on a site located partially within a C2-2 (R6B) zoning district and partially within a C8-1 zoning district, the operation of a physical culture establishment (“PCE”) on portions of the first floor and cellar level of an existing one-story plus cellar commercial building, contrary to Z.R. § 32-10.

A public hearing was held on this application on

January 26, 2021, after due notice by publication in *The City Record*, and then to decision on April 12, 2021. Community Board 11, Queens, recommends approval of this application, provided the fire exits remain clear and the alleyway access be shared.

The Premises are located on the east side of Bell Boulevard, between 42nd Avenue and 43rd Avenue, partially within a C2-2 (R6B) zoning district and partially within a C8-1 zoning district, in Queens. With approximately 37 feet of frontage along Bell Boulevard, 12 feet of frontage along 42nd Avenue, and 5,713 square feet of lot area, the Premises are occupied by an existing one-story plus cellar commercial building.

The Board notes that its determination is subject to and guided by Z.R. § 73-03. The Board notes that pursuant to Z.R. § 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. As a threshold matter, the Board notes that the Premises are within the boundaries of a designated area in which the subject special permit is available.

The applicant represents that the PCE occupies 3,271 square feet of floor space on a portion of the cellar level with a reception area, showers, bathrooms, and the PCE fitness area, and 54 square feet of floor area on a portion of the first floor used as the PCE entrance and exit. The applicant represents that the PCE began operation November 23, 2018, as “Orangetheory Fitness,” with the following hours of operation: 4:30 a.m. to 9:30 p.m., Monday through Thursday; 4:30 a.m. to 8:15 p.m., Friday; and, 5:30 a.m. to 1:45 p.m., Saturday and Sunday.

The applicant represents that PCE use will neither impair the essential character nor the future use or development of the surrounding area because the PCE will be entirely contained within the cellar and a portion of the first floor of an existing commercial building, and, as such, visibility from the street will be limited. The applicant further states that the surrounding area is primarily comprised of offices, banks, retail stores, eating and drinking establishments and other gyms, and the PCE will not attract significant additional traffic to the area. 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.

The applicant submits that sound attenuation measures will be maintained to ensure the PCE operation does not negatively impact nearby occupied spaces. These measures include: the entire gym has a 1/4-inch rubber finish above the existing floor slab; the weightlifting area has an isolated built-up floor with two-inch gym tiles positioned on top of

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the existing floor slab; two layers of gypsum board are located in the gym cellar's ceiling and walls; and, decorative ceiling acoustical tiles are applied directly to the gypsum board with Loctite PL300 adhesive. The applicant represents that the PCE use will produce no adverse effect on the privacy, quiet, light and air in the neighborhood and the benefits provided by the PCE greatly outweigh any potential disadvantages to the community.

The applicant submits that the PCE contains facilities for classes, instruction and programs for physical improvement, body building, weight reduction, and aerobics. 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. 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.

The applicant states that the Premises are equipped with a fire alarm system and a sprinkler system. By correspondence dated January 8, 2021, the Fire Department, Bureau of Fire Prevention, states that the Premises have a fire suppression system (sprinkler) that has been tested and FDNY permits are current. A fire alarm system is also installed and operational. A Place of Assembly application shall be filed, approved, and permitted upon approval for a special permit from the Board of Standards and Appeals. Based upon the foregoing, the Fire Department has no objection to the application. The Bureau of Fire Prevention will continue to inspect these Premises and enforce all applicable rules and regulations.

Based on the foregoing, 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. In addition, the Board finds that the operation of the PCE will not interfere with any public improvement project.

The project is classified as a Type II action pursuant to 6 NYCRR Part 617.5, as noted in CEQR Checklist No. 20BSA012Q, dated April 12, 2021.

Accordingly, the Board has determined that the evidence in the record supports the requisite findings for the special permit pursuant to Z.R. §§ 73-36 and 73-03 and that the applicant has substantiated a basis to warrant exercise of discretion. The term of the special permit has been reduced to reflect the period the PCE operated without approval from the Board.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby make each and every one of the findings required under Z.R. §§ 73-36 and 73-03 to *legalize*, on a site located partially within a C2-2 (R6B) zoning district and partially within a C8-1 zoning district, the operation of a physical culture establishment ("PCE") on portions of the first floor and cellar level of an existing one-story plus cellar commercial building, contrary to Z.R. § 32-10, *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked

"Received April 9, 2021"—Five (5) sheets; and *on further condition*:

THAT this grant shall be limited to a term of ten years, expiring November 23, 2028;

THAT there shall be no noise or vibration that presents disturbance to neighbors;

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-foot-wide exit pathways shall be maintained leading to the required exits and that pathways shall be maintained unobstructed, including from any equipment;

THAT an approved fire alarm and sprinkler system shall be maintained in the entire PCE space, as indicated on the Board-approved plans;

THAT accessibility shall be provided pursuant to the standards set forth in applicable accessibility laws, including but not limited to Chapter 11 of the NYC Building Code, the 2009 American National Standards Institute (ANSI) A117.1 and Title III of the Americans with Disabilities Act, as reviewed and approved by DOB;

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. 2019-200-BZ"), shall be obtained within one year and an additional six months, in light of the current state of emergency declared to exist within the City of New York resulting from an outbreak of novel coronavirus disease, by October 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;

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 12, 2021.

2020-8-BZ
CEQR #20-BSA-059M

APPLICANT – Francis R. Angelino, Esq., for Lerad Company, owner; Bode NYC, lessee.

SUBJECT – Application January 14, 2020 – Special Permit (§73-36) to permit the operation of a physical cultural establishment (Bode) to be located on a portion of the second floor of an existing building contrary to ZR §32-10. C1-9 zoning district.

PREMISES AFFECTED – 173 East 83rd Street, Block 1512, Lot 0033, Borough of Manhattan.

COMMUNITY BOARD #8M

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ACTION OF THE BOARD – Application granted.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta5

Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated December 24, 2019, acting on DOB Application No. 104463073, reads in pertinent part:

“Proposed Physical Culture Establishment (Yoga Studio) is not permitted as of right in C1-9 district and it is contrary to ZR 32-18.”

This is an application under Z.R. §§ 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, the operation of physical culture establishment (“PCE”) on a portion of the second floor of an existing six-story, mixed-use commercial and residential building.

A public hearing was held on this application on February 23, 2021, after due notice by publication in *The City Record*, and then to decision on April 12, 2021. Community Board 8, Manhattan, recommends approval of this application.

The Premises are located on the northwest corner of East 83rd Street and Third Avenue, partially within a C1-9 zoning district and partially within an R8B zoning district, in Manhattan. With approximately 110 feet of frontage on East 83rd Street, 51 feet of frontage along Third Avenue, 5,637 square feet of lot area, the Premises are occupied by an existing six-story, mixed-use commercial and residential building. The PCE is located wholly within the C1-9 zoning district portion of the Premises.

The Board has exercised jurisdiction over the Premises since May 8, 2007, when, under BSA Cal. No. 44-07-BZ, the Board granted a special permit, pursuant to Z.R. § 73-36, to permit the legalization of a PCE on a portion of the second floor of the Premises (3,679 square feet of floor area), operated as “Bikram Yoga New York,” on condition that all work substantially conform to drawings as they apply to the objection, filed with application; the term be for ten years, to expire on May 8, 2017; there be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board; the hours of operation shall be limited to Monday through Friday, 6:00 a.m. to 10:00 p.m., and Saturday and Sunday, 7:30 a.m. to 8:00 p.m.; all massages be performed by New York State licensed massage therapists; the above conditions appear on the certificate of occupancy; Local Law 58/57 compliance be reviewed and approved by DOB; fire safety measures be installed and/or maintained as shown on the Board-approved plans; the approval is 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 portions related to the specific relief granted; and the Department of Buildings ensure compliance with 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.

On May 25, 2010, under BSA Cal. No. 20-10-BZ, the Board granted a special permit, under Z.R. § 73-36, to permit the operation of a PCE (“Soul Cycle”) on a portion of the first floor of the Premises (1,480 square feet of floor area) on condition that all work substantially conform to drawings filed with the application; the term be for ten years, to expire on September 25, 2019; there be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board; all signage comply with C1 district regulations; all massages be performed by New York State licensed massage therapists; the above conditions appear on the certificate of occupancy; the fire safety measures be installed and/or maintained as show on the Board-approved plans; the approval is 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; and the Department of Buildings must ensure compliance with all 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.

On May 8, 2012, under BSA Cal. No. 22-12-BZ, the Board granted a new special permit, under Z.R. § 73-36, to permit the extension of an existing PCE (“Soul Cycle”) to include an additional 1,945 square feet of floor area on the first floor of the Premises (for a total PCE floor area of 3,425 square feet), with additional floor space located in a portion of the cellar, on condition that all work substantially conform to drawings filed with the application; the term be for ten years, to expire on May 8, 2022; there be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board; all signage comply with C1 district regulations; all massages be performed by New York State licensed massage therapists; the above conditions appear on the certificate of occupancy; the fire safety measures be installed and/or maintained as shown on the Board-approved plans; the approval is 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; and the Department of Buildings must ensure compliance with all 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.

Because this application was filed more than two years after the expiration of term on May 8, 2017, § 1-07.3(b)(3)(iv) of the Board’s Rules of Practice and Procedures require the filing of a new special permit application.

The Board notes that its determination is subject to and guided by Z.R. § 73-03. The Board notes that pursuant to

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Z.R. § 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. As a threshold matter, the Board notes that the Premises are within the boundaries of a designated area in which the subject special permit is available.

The applicant seeks to re-establish the PCE on the second floor of the Premises and states that the operating name of the PCE has changed to "Bode," with the following hours of operation: Monday through Sunday, 6:00 a.m. to 11:00 p.m. The applicant represents that the PCE continues to occupy 3,679 square feet of floor area on the second floor with a north and south studio used for yoga classes, and massage services are no longer offered.

The applicant represents that PCE use will neither impair the essential character nor the future use or development of the surrounding area because the PCE will be entirely contained within the second floor of an existing mixed-use residential and commercial building, and, as such, visibility from the street will be limited. The applicant further states that the surrounding area is primarily comprised of residential, commercial, and community facilities uses, and the PCE will not attract significant additional traffic to the area. 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.

The applicant submits that sound attenuation measures will be maintained to ensure the PCE operation does not negatively impact nearby occupied spaces. These measures include: adding 2" thick rigid foam insulation formula R to the studio ceilings; 5/8" gypsum board on each side of the metal studs construction in areas called for ceramic tile or stone installation; 1/2" backer board in damp areas; and thermal fiber acoustical insulation in the walls.

The applicant submits that the PCE contains facilities for classes, instruction and programs for physical improvement, flexibility, improved circulation, and reduced stress. 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.

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.

The applicant states that the PCE is equipped with fire safety protection measures, including a fire alarm and residential sprinklers, although neither a fire alarm system or a sprinkler system is required for this occupancy and population.

By correspondence dated February 20, 2021, the Fire Department states that the Premises are protected by a fire suppression system (residential sprinkler), a sprinkler system is not required for this PCE space. A fire alarm was installed at these Premises, which covers the current Public Assembly space at the cellar and first floor only. A fire alarm system is not required for the subject PCE space. Based upon the foregoing, the Fire Department has no objection to the application, and the Bureau of Fire Prevention will continue to inspect these Premises and enforce all applicable rules and regulations.

Based on the foregoing, 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. In addition, the Board finds that the operation of the PCE will not interfere with any public improvement project.

The project is classified as a Type II action pursuant to 6 NYCRR Part 617.5, as noted in CEQR Checklist No. 20BSA059M, dated April 12, 2021.

Accordingly, the Board has determined that the evidence in the record supports the requisite findings for the special permit pursuant to Z.R. §§ 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 Z.R. §§ 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, the operation of physical culture establishment ("PCE") on a portion of the second floor of an existing six-story, mixed-used commercial and residential building, contrary to Z.R. § 32-10, *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked "Received April 11, 2021"—Four (4) sheets; and *on further condition*:

THAT this grant shall be limited to a term of ten years, expiring April 12, 2031;

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-foot-wide exit pathways shall be maintained leading to the required exits and that pathways shall be maintained unobstructed, including from any equipment;

THAT accessibility shall be provided pursuant to the standards set forth in applicable accessibility laws, including but not limited to Chapter 11 of the NYC Building Code, the 2009 American National Standards Institute (ANSI) A117.1 and Title III of the Americans with Disabilities Act, as reviewed and approved by DOB;

THAT the above conditions shall appear on the certificate of occupancy;

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THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 2020-8-BZ”), shall be obtained within one year and an additional six months, in light of the current state of emergency declared to exist within the City of New York resulting from an outbreak of novel coronavirus disease, by October 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;

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 12, 2021.

2020-62-BZ CEQR #21-BSA-005M

APPLICANT – Akerman LLP, for PFNY, LLC, lessee.
SUBJECT – Application July 30, 2020 – Special Permit (§73-36) to permit the legalization of the operation of a physical culture establishment (Planet Fitness) on portions of the first and second floors of an existing building contrary to 32-10. C8-3 zoning district.

PREMISES AFFECTED – 90 West 225th Street, Block 2215, Lot 7502, Borough of Manhattan.

COMMUNITY BOARD #7M

ACTION OF THE BOARD – Application granted.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta5
Negative:0

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated July 24, 2020, acting on DOB New Building Application No. 103171951, reads in pertinent part:

“Proposed “Physical Culture Establishment” in a C8-3 zoning district is not “as of right” and requires a special permit from The New York City Board of Standards and Appeals (BSA) per ZR 32-21 and ZR 73-36.”

This is an application under Z.R. §§ 73-36 and 73-03 to legalize, on a site located within a C8-3 zoning district, the operation of a physical culture establishment (“PCE”) on portions of the first floor and second floor of an existing two-story, with cellar, commercial building, contrary to Z.R. § 32-10.

A public hearing was held on this application on February 23, 2021, after due notice by publication in *The City Record*, and then to decision on April 12, 2021. Community Board 7, the Bronx, recommends approval of

this application.

The Premises are located on the southeast corner of West 225th Street and Broadway, within a C8-3 zoning district, in Manhattan.1 With approximately 45,281 square feet of lot area, the Premises are occupied by an existing two-story commercial building.

The Board has exercised jurisdiction over the Premises since November 20, 2007, when, under BSA Cal. No. 175-07-BZ, the Board granted a special permit, under Z.R. § 73-36, to legalize the operation of a PCE (15,480 square feet of floor area), operated as “Planet Fitness,” in a then M1-1 zoning district, on condition that the term of the grant expire on July 1, 2017; there be no change in ownership or operating control of the physical culture establishment without prior application to and approval from the Board; all massages be performed by New York State licensed massage therapists; the PCE use be limited to the portion of the site within the M1-1 zoning district; the 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); 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 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.

Because this application was filed more than two years after the expiration of the term of the special permit, § 1-07.3(b)(3)(iv) of the Board’s Rules of Practice and Procedures requires the filing of a new special permit application.

The Board notes that its determination is subject to and guided by Z.R. § 73-03. The Board notes that pursuant to Z.R. § 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. 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.

1 Marble Hill is the northernmost section of Manhattan. Although it is legally a part of Manhattan, it is physically located in the Bronx. Marble Hill is within Bronx Community District 7 but within City Council District 10 that includes the northernmost areas of Manhattan.

MINUTES

The applicant represents that the PCE occupies 4,750 square feet of floor area on a portion of the first floor with a reception area, exercise areas with cardiovascular and weightlifting machines, and a spa area (no massage services are provided); and 10,730 square feet of floor area on a portion of the second floor with exercise areas with cardiovascular and weightlifting machines, men's and women's locker rooms with showers, changing areas, and restrooms. The PCE began operation in 2007, continues to operate as "Planet Fitness," and proposes to operate 24 hours per day, daily.

The applicant represents that PCE use will neither impair the essential character nor the future use or development of the surrounding area because PCE use is consistent with the commercial character of the area, where retail and services are available to local residents. The applicant submits that the PCE contains facilities for classes, instruction and programs for physical improvement. The Board finds that the subject PCE use is consistent with those eligible pursuant to Z.R. § 73-36(a)(2) for the issuance of the special permit. 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.

The applicant submits that sound attenuation measures will be maintained to ensure PCE use will not cause averse noise or vibration impacts. These measures include all fitness areas in the PCE with 9mm thick rubber flooring and the PCE sound system installed with a sound limiter to limit amplified music levels. Additionally, the PCE demising walls are constructed with two 5/8-inch-thick gypsum boards on the PCE side and filled with 3-1/2 inches of insulation resulting in a Sound Transmission Class (STC) of 52. The applicant represents that the PCE use will produce no adverse effect on the privacy, quiet, light and air in the neighborhood and the benefits provided by the PCE greatly outweigh any potential disadvantages to the community.

The applicant states that a sprinkler system and a fire alarm system, with connection to a central monitoring station, are maintained within the PCE. The Fire Department states, by letter dated February 19, 2021, that the proposed occupant load as per plans submitted to the Board is for 285 persons at the first floor and 240 persons at the second floor. A Public Assembly application (PA#122836716) has been filed with the Department of Buildings. The Premises are protected by a fire suppression system (sprinkler) and fire alarm system. Based on the foregoing, the Fire Department has no objection to the application, as the Bureau of Fire Prevention will continue to inspect the Premises and enforce all applicable rules and regulations.

Accordingly, 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. In addition, the Board finds that the operation of the PCE will not interfere with any public improvement

project.

The project is classified as a Type II action pursuant to 6 NYCRR Part 617.5. The Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 21-BSA-005M, dated April 12, 2021.

Therefore, the Board has determined that the evidence in the record supports the requisite findings for the special permit pursuant to Z.R. §§ 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 Z.R. §§ 73-36 and 73-03 to *legalize*, on a site located within a C8-3 zoning district, the operation of a physical culture establishment on portions of the first floor and second floor of an existing two-story commercial building, contrary to Z.R. § 32-10, *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked "Received April 12, 2021"—Five (5) sheets; and *on further condition*:

THAT this grant shall be limited to a term of ten years, expiring April 12, 2031;

THAT PCE operation shall present no adverse noise or vibration impact to neighbors;

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-foot-wide exit pathways shall be maintained leading to the required exits and that pathways shall be maintained unobstructed, including from any equipment;

THAT accessibility shall be provided pursuant to the standards set forth in applicable accessibility laws, including but not limited to Chapter 11 of the NYC Building Code, the 2009 American National Standards Institute (ANSI) A117.1 and Title III of the Americans with Disabilities Act, as reviewed and approved by DOB;

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. 2020-62-BZ"), shall be obtained within one year and an additional six months, in light of the current state of emergency declared to exist within the City of New York resulting from an outbreak of novel coronavirus disease, by October 16, 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;

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, April 12, 2021.

2018-26-BZ

APPLICANT – Gerald J. Caliendo, RA, AIA, for Ivan Duque, owner.

SUBJECT – Application February 21, 2018 – 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.

PREMISES AFFECTED – 79-03 Roosevelt Avenue, Block 1290, Lot 46, Borough of Queens.

COMMUNITY BOARD #3Q

ACTION OF THE BOARD – Laid over to July 22-23, 2021, at 10 A.M., for adjourned hearing.

2019-30-BZ

APPLICANT – Eric Palatnik, P.C., for Georgy Reyderman, owner.

SUBJECT – Application November 19, 2019 – Special Permit (§73-622) to permit the enlargement of an existing single-family home, contrary to rear yard requirements (ZR §23-47) and side yard (ZR §23-461). R4 zoning district.

PREMISES AFFECTED – 2705 East 28th Street, Block 8791, Lot 120, Borough of Brooklyn.

COMMUNITY BOARD #15BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Shelta, and Commissioner Scibetta5
Negative:0

ACTION OF THE BOARD – Laid over to May 24-25, 2021, at 10 A.M., for decision, hearing closed.

2019-67-BZ

APPLICANT – Sheldon Lobel, P.C., for Sheperd DT Corp., owner.

SUBJECT – Application March 29, 2019 – Variance (§72-21) to permit the development of a six-story, three-family residential building contrary to ZR §§ 23-32 (minimum lot area), 23-45 (front yard), and 23-631 (street wall, setback and total height). R5 zoning district.

PREMISES AFFECTED – 2781 Coyle Street, Block 8805, Lot 105, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to June 28-29, 2021, at 10 A.M., for adjourned hearing.

2019-95-BZ

APPLICANT – Slater & Beckerman, P.C., for Caspcar III LLC, owner.

SUBJECT – Application May 15, 2019 – Variance (§72-21) to permit the construction of a six-story mixed-use building with conforming commercial use on the ground floor and residential uses on the upper floors contrary to ZR §32-10. C8-2 zoning district.

PREMISES AFFECTED – 19 Maspeth Avenue aka 220 Conselyea Street, Block 2893, Lot(s) 1 & 59, Borough of Brooklyn.

COMMUNITY BOARD #1BK

ACTION OF THE BOARD – Laid over to September 13-14, 2021, at 10 A.M., for adjourned hearing.

2019-192-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 16 Harrison Place Partners LLC, owner.

SUBJECT – Application July 18, 2019 – Variance (§72-21) to permit the construction of a cellar and four-story residential building contrary to ZR §42-10. M1-2 zoning district.

PREMISES AFFECTED – 16 Harrison Place, Block 3093, Lot 13, Borough of Brooklyn.

COMMUNITY BOARD #1BK

ACTION OF THE BOARD – Laid over to June 14-15, 2021, at 10 A.M., for continued hearing.

2019-298-BZ

APPLICANT – Sheldon Lobel, P.C., for Milt Holdings LLC, owner.

SUBJECT – Application November 27, 2019 – Special Permit (§73-19) to permit the operation of a school (UG 3) (Washington Heights and Inwood Music Community Charter School) contrary to ZR §32-10. C8-3 zoning district.

PREMISES AFFECTED – 506 West 181st Street, Block 2152, Lot 72, Borough of Manhattan.

COMMUNITY BOARD #12M

ACTION OF THE BOARD – Laid over to December 6-7, 2021, at 10 A.M., for adjourned hearing.

2020-25-BZ

APPLICANT – Sheldon Lobel, P.C., for Angela Guarino, owner.

SUBJECT – Application March 27, 2020 – Variance (§72-21) to legalize an existing single-family house contrary to ZR §§23-45 & 23-48 (side and front yard requirements. R1-2 zoning district.

PREMISES AFFECTED – 142-30 13th Avenue, Block 4435, Lot 27, Borough of Queens.

COMMUNITY BOARD #7Q

ACTION OF THE BOARD – Laid over to July 22-23, 2021, at 10 A.M., for adjourned hearing.

MINUTES

2020-73-BZ

APPLICANT – Sheldon Lobel, P.C., for Lampros Moumouris, as Trustee, South Bronx Charter School for International Cultures and Arts, lessee.

SUBJECT – Application September 14, 2020 – Special Permit (73-19) to permit the construction of a new school (UG 3) (South Bronx Charter School for International Culture and Arts) contrary to ZR 42-10. M1-4 zoning district.

PREMISES AFFECTED – 2500 Park Avenue, Block 2322, Lot 5, Borough of the Bronx.

COMMUNITY BOARD #2BX

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Shelta, and Commissioner Scibetta5
Negative:.....0

ACTION OF THE BOARD – Laid over to April 30, 2021, at 10 A.M., for decision, hearing closed.

PUBLIC HEARINGS
MONDAY-TUESDAY AFTERNOON
APRIL 12-13, 2021, 2:00 P.M.

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

ZONING CALENDAR**2020-65-BZ**

APPLICANT – Law Office of Lyra J. Altman, for 1215 East 22nd LLC by David Herzka, owner.

SUBJECT – Application August 21, 2020 – Special Permit (§73-622) to permit the enlargement and combination of two single-family residences into one single-family residence. R2) zoning district.

PREMISES AFFECTED – 1215-1217 East 22nd Street, Block 7622, Lot 24, 26, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Laid over to June 22-23, 2021, at 10 A.M., for continued hearing.

2020-70-BZ

APPLICANT – Law Office of Lyra J. Altman, for The Albert Dweck Irri Trust FBO Morris Dweck, owner.

SUBJECT – Application September 11, 2020 – Special Permit (§73-622) to permit the enlargement of a single-family residences into one single-family residence. R4-1 zoning district.

PREMISES AFFECTED – 1903 Homecrest Avenue, Block 7291, Lot 0168, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to May 24-25, 2021, at 10 A.M., for continued hearing.

2020-75-BZ

APPLICANT – Eric Palatnik, P.C., for 474 Associates, Inc., owner.

SUBJECT – Application September 22, 2020 – Special Permit (§73-36) to permit the legalization of a physical cultural establishment (Spa 7) located in the third floor an existing building contrary to ZR §42-10. M1-6 zoning district.

PREMISES AFFECTED – 474 7th Avenue, Block 00785, Lot 0043, Borough of Manhattan.

COMMUNITY BOARD #5M

ACTION OF THE BOARD – Laid over to May 24-25, 2021, at 10 A.M., for continued hearing.

MINUTES

2020-80-BZ

APPLICANT – Eric Palatnik, P.C., for 459 Lexington Associates, Inc., owner; Spa 45, lessee.

SUBJECT – Application October 8, 2020 – Special Permit (§73-36) to permit the operation of a Physical Culture Establishment (Spa 45) contrary to ZR §32-10. C5-3 Special Midtown Purpose District.

PREMISES AFFECTED – 459 Lexington Avenue, Block 1300, Lot 0023, Borough of Manhattan.

COMMUNITY BOARD #6M

ACTION OF THE BOARD – Laid over to May 24-25, 2021, at 10 A.M., for continued hearing.

2020-87-BZ

APPLICANT – Eric Palatnik, P.C., for 30 West 32nd Street, owner; NY Spa 32 Inc., lessee.

SUBJECT – Application November 13, 2020 – Special Permit (§73-36) to permit the operation of a physical culture establishment (Spa 32) contrary to ZR §32-10. C6-4 zoning district.

PREMISES AFFECTED – 30 West 32nd Street, Block 00833, Lot 0061, Borough of Manhattan.

COMMUNITY BOARD #5M

ACTION OF THE BOARD – Laid over to May 24-25, 2021, at 10 A.M., for continued hearing.

2020-88-BZ

APPLICANT – Sheldon Lobel, P.C., for 315 Berry St Corp., owner; Microgrid Networks, lessee.

SUBJECT – Application November 16, 2020 – Special Permit (§73-14) to permit the construction of an electric utility substation (UG 6D) on the roof of an existing building contrary to ZR §22-10. R6 zoning district.

PREMISES AFFECTED – 315 Berry Street, Block 2430, Lot 2, Borough of Brooklyn.

COMMUNITY BOARD #1BK

ACTION OF THE BOARD – Laid over to June 28-29, 2021, at 10 A.M., for continued hearing.

Carlo Costanza, Executive Director

BULLETIN

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May 7, 2021

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DOCKETS

New Case Filed Up to April 26-27, 2021

2021-26-BZ

12 Coles Street, Block 00513, Lot(s) 0012, Borough of **Brooklyn, Community Board: 6.** Variance (§72-21) to permit the development of a four (4) story residential-use building contrary to ZR §42-00. M1-1 zoning district. M1-1 district.

2021-27-BZ

13 Luquer Street, Block 00513, Lot(s) 0045, Borough of **Brooklyn, Community Board: 6.** Variance (§72-21) to permit the development of a four (4) story residential-use building contrary to ZR §42-00. M1-1 zoning district. M1-1 district.

2021-28-BZ

375 Columbia Street, Block 00513, Lot(s) 0002, Borough of **Brooklyn, Community Board: 6.** Variance (§72-21) to permit the development of a four (4) story residential-use building contrary to ZR §42-00. 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

**TELECONFERENCE PUBLIC HEARINGS
JUNE 14-15, 2021, MONDAY-TUESDAY
10:00 A.M. and 2:00 P.M.**

NOTICE IS HEREBY GIVEN of teleconference public hearings, Monday, June 14, 2021, at 10:00 A.M. and 2:00 P.M., and Tuesday June 15, 2021, at 10:00 A.M. and 2:00 P.M., to be streamed live through the Board's website (www.nyc.gov/bsa), with remote public participation, on the following matters:

SPECIAL ORDER CALENDAR

758-84-BZIII

APPLICANT – David L. Businelli, for Gina Sgarlato Benfante, owner.

SUBJECT – Application January 7, 2021 – Extension of Term of a variance (§72-21) permitted the operation of two-story and cellar commercial building contrary to use regulations which expired on July 2, 2020; Waiver of the Board's Rules of Practice and Procedures. R3X zoning district.

PREMISES AFFECTED – 1444 Clove Road, Block 00658, Lot(s) 0020, Borough of Staten Island.

COMMUNITY BOARD #1 SI

339-02-BZ

APPLICANT – Eric Palatnik, P.C., for WF Industrial III LLC, owner.

SUBJECT – Application June 1, 2021 – Amendment to modify the Board's condition of term pursuant to (§ 1-07.3(3) (ii) of the Board's Rules of Practice and Procedures for a previously granted Variance (§72-21) which permitted warehouse and office uses contrary to underlying use regulations which expired on February 25, 2013; Amendment to legalize the addition of mezzanine increasing the degree of non-conformance; Waiver of the Board's Rules. R3-1 and R3-2 zoning districts.

PREMISES AFFECTED – 146-65 Springfield Boulevard, corner of Springfield Boulevard and 147th Avenue, Block 13363, Lot 6. Borough of Queens.

COMMUNITY BOARD #13Q

18-09-BZIV

APPLICANT – Klein Slowik PLLC, for West 54th Street LLC c/o ZAR Property, owner; Crunch LLC, lessee.

SUBJECT – Application March 29, 2021 – Extension of Time to Obtain a Certificate of Occupancy of a previously approved Special Permit (§73-36) permitting the operation of a physical culture establishment (Crunch Fitness) which expires on May 21, 2020; 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

ZONING CALENDAR

2019-206-BZ

APPLICANT – Akerman LLP, for HW LIC One LLC, owner.

SUBJECT – Application August 22, 2019 – Special Permit (§73-66) to permit the construction of a development that exceeds the height limits established contrary ZR §61-20. C2-3/R6 zoning district.

PREMISES AFFECTED – 51-22 Roosevelt Avenue, Block 1320, Lot 0012, Borough of Queens.

COMMUNITY BOARD # 2Q

2019-277-BZ

APPLICANT – Jay Goldstein, Esq., for Bukharian Jewish Congregation of Hillcrest, owner.

SUBJECT – Application October 17, 2019 – Variance (§72-21) to permit the construction of a three-story plus cellar House of Worship (UG4) (Bukharian Jewish Congregation of Hillcrest) contrary to ZR §24-11 (FAR); ZR §24-34 (front yard); ZR §24-521 (height) and ZR §24-35 (side yard). R2A zoning district.

PREMISES AFFECTED – 81-04 166th Street, Block 7026, Lot 0021, Borough of Queens.

COMMUNITY BOARD #8Q

2020-33-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 437 88 LLC, owner.

SUBJECT – Application April 9, 2020 – Special Permit (§73-36) to permit the operation of a physical cultural establishment (Blink Fitness) to be located within the cellar, first and second floors of an existing building contrary to ZR §32-10. C8-2 and C4-2A Special Bayridge zoning districts.

PREMISES AFFECTED – 2020-33-BZ- 437 88th Street, Block 06050, Lot 45, Borough of Brooklyn.

COMMUNITY BOARD #10BK

2021-12-BZ

APPLICANT – Terminus Group LLC, for Igor Yakubov, owner.

SUBJECT – Application January 22, 2021 – Variance (§72-21) to permit the construction of a single-family dwelling contrary to ZR 23-45 (Front Yard Regulations). R3A Special Hillside Preservation District.

PREMISES AFFECTED – 250 Westervelt Avenue, Block 41, Lot 25, Borough of Staten Island.

COMMUNITY BOARD #1SI

Margery Perlmutter, Chair/Commissioner

MINUTES

**PUBLIC HEARINGS
MONDAY-TUESDAY MORNING
APRIL 26-27, 2021, 10:00 A.M.**

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

SPECIAL ORDER CALENDAR

648-88-BZ

APPLICANT – Rampulla Associates Architects, for Fratello Corp., owner.

SUBJECT – Application November 25, 2020 – Amendment of a previously approved Variance (§72-21) which permitted the development of a UG 6 Pharmacy. The amendment seeks to permit the change in use to a UG 6 food store, addition of refrigeration space, the removal of a curb cut and relocation of 2 parking spaces. R1-2 zoning district.

PREMISES AFFECTED – 2107 Richmond Road, Block 00899, Lot 0018, Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Application granted.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta5

Negative:.....0

THE RESOLUTION –

This is an application for an amendment of a variance, previously granted by the Board under Z.R. § 72-21, to permit a change in use from a Use Group (“UG”) 6 store and pharmacy (PRC-B) to UG 6 food store (PRC-A) and a reduction of parking spaces to accommodate a refrigerated storage area.

A public hearing was held on this application on March 8, 2021, after due notice by publication in *The City Record*, with a continued hearing on April 12, 2021, and then to decision on April 26, 2021. Community Board 2, Staten Island, recommends approval of this application. The Board received a letter in support of this application from a New York City Councilmember within whose district the Premises are located.

The Premises are located on the west side of Richmond Road, between Colfax Avenue and Lincoln Avenue, in an R1-2 zoning district and in the Special Natural Area District, on Staten Island. With approximately 253 feet of frontage along Richmond Road, an irregular depth ranging from 104 feet along the southern lot line to 176 feet along the northern lot line, and 38,054 square feet of lot area, the Premises are occupied by an existing one-story commercial building (10,000 square feet of floor area) used as a UG 6 store and pharmacy.

The Board has exercised jurisdiction over the Premises since February 5, 1991, when, under the subject calendar

number, the Board granted a variance, under Z.R. § 72-21, to permit the erection of a two-story commercial and retail building (UG 6) on condition that all work substantially conform to drawings as they apply to the objection, filed with the application; there be no parking on the rooftop after dark; all landscaping be planted and maintained in accordance with BSA-approved plans; the 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, substantial construction be completed in accordance with Z.R. § 72-23.

On January 11, 1994, under the subject calendar number, the Board waived its Rules of Procedure and amended the variance to permit a decrease in parking spaces and street frontage, and an increase in the side yard dimensions and building depth on condition that all work substantially conform to proposed conditions drawings submitted with the application; other than as amended the resolution be complied with in all respects; and, substantial construction be completed within two years.

On July 2, 1996, and April 27, 1999, under the subject calendar number, the Board further amended the variance to extend the time to complete construction the latter of which to expire 27 months from August 11, 1998.

On March 19, 2002, under the subject calendar number, the Board further amended the variance to permit a reduction in the side of the building to 10,000 square feet, allow the elimination of rooftop parking, increase the number of grade parking spaces to 38, and extend the time to complete construction on condition that construction be completed within 68 months from July 11, 1998; the Department of Transportation (“DOT”) be notified 3 months following prior to the opening of the proposed project in order to install a Quik-Kurb fronting the second “one-way” entrance-only servicing the southbound traffic to prohibit northbound left-turns into the project; landscaping be provided and maintained in accordance with BSA-approved plans; there be no left turns for vehicles exiting from the eastern curb cut; the hours of operation be limited to 8:00 a.m. to 11:00 p.m., Sunday through Saturday; the Premises be maintained in substantial compliance with previously 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; 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.

By letter dated July 28, 2003, the Board approved a modification to signage at the Premises as in substantial compliance with the variance.

By letter dated September 1, 2004, the Board permitted the removal of the condition requiring “Quik-

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Kurb” and the installation of the two traffic signals, so long as the eastern curb cut be used for entrance only as indicated on Board-approved plans on condition of final approval and installation of the two traffic signals by DOT, and final approval of Building Code compliance by DOB.

The applicant seeks an amendment to the variance to permit a change in use from a Use Group (“UG”) 6 store and pharmacy (PRC-B) to UG 6 food store (PRC-A) and a reduction of parking spaces, from 38 to 37, to accommodate the change in use. Specifically, the applicant proposes to relocate the existing dry trash enclosure closer to the building. A refrigerated trash receptacle for perishable waste will be installed within the building. Two new exterior doors will be installed to access the refrigeration waste area. The two new exterior double doors will also allow refrigerated deliveries to take place. To accommodate the refrigerated walk-in area, one of the required 38 accessory parking spaces will be eliminated, leaving 37 accessory parking lot spaces.

The applicant submitted a technical memorandum concluding that, under multiple analysis methodologies, the proposed 37-space parking lot is projected to be adequate to meet peak parking demand of the proposed food store and the change in use to a food store will not result in greater traffic, nor will the peak parking demand exceed the provided accessory parking spaces. Furthermore, the applicant represents that the food store hours of operation will be 8:00 a.m. to 9:00 p.m., which is a reduction in the prior approved hours of 8:00 a.m. to 11:00 p.m.

By letter dated February 27, 2021, the Fire Department states that the Premises are protected by a fire suppression system (sprinkler) that has been tested and FDNY permits are current. The Fire Department has no objection to the application and the Bureau of Fire Prevention will continue to inspect the Premises and enforce all applicable rules and regulations.

By correspondence dated March 3, 2021, the Department of City Planning states that, based on the information submitted, the Waterfront Open Space Division, on behalf of the New York City Coastal Commission, having reviewed the waterfront aspect of this action, finds that the actions will not substantially hinder the achievement of any Waterfront Revitalization Program (“WRP”) policy and hereby determines the project consistent with the WRP policies.

By letter dated April 26, 2021, DOT states that the present application seeks to convert the existing 10,000 square foot pharmacy into a gourmet food store with the same square footage. In order to accommodate a refrigerated walk-in area for the new food store, the application would modify the previous site plan to eliminate one of the 38 accessory parking spaces. Additionally, two “Do Not Enter” signs have been installed against exiting traffic at the eastern, exit-only drive. Based on the NYC DOT approved trip generation rates, temporal distribution and modal split, lower traffic generation is anticipated for the new proposal compared to the previous land use. DOT concurs with the lead agency’s determination that detailed traffic and

pedestrian analyses are not needed. As part of the new site plan, one accessory parking space will be eliminated. Therefore, a parking accumulation assessment was performed. Based off the parking accumulation assessment, 37 parking spaces is adequate for the new land use.

Based upon its review of the record, the Board has determined that the requested amendment to the variance is appropriate with certain conditions as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *amend* the resolution, dated February 5, 1991, as amended through March 19, 2002, so that as amended this portion of the resolution shall read: “to permit a change in use from UG 6 store and pharmacy (PRC-B) to UG 6 food store (PRC-A) and a reduction of parking spaces to accommodate a refrigerated storage area, from 38 spaces to 37 spaces, *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked ‘Received March 23, 2021—Seven (7) sheets’; and *on further condition*:

THAT landscaping shall be provided and maintained in accordance with BSA-approved plans;

THAT there shall be no left turns for vehicles exiting from the eastern curb cut;

THAT trash pickup for regular and putrid waste shall be scheduled three times per week;

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. 648-88-BZ”), shall be obtained within four years and an additional six months, in light of the current state of emergency declared to exist within the City of New York resulting from an outbreak of novel coronavirus disease, by November 18, 2025;

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 26, 2021.

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193-13-BZ

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

SUBJECT – Application February 21, 2020 – Extension of Time to Complete Construction of a previously approved Special Permit (§73-44) to permitting the reduction in the required number of accessory parking spaces for a Use Group (“UG”) 6 office space which expired on January 22, 2020. C2-2/R6A and R5 zoning district.

PREMISES AFFECTED – 4770 White Plains Road, Block 5114, Lot 14, Borough of Bronx.

COMMUNITY BOARD #12BX

ACTION OF THE BOARD – Application granted on condition.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta5

Negative:.....0

THE RESOLUTION –

This is an application for an extension of time to complete construction and obtain a certificate of occupancy pursuant to a previously approved special permit, previously granted under Z.R. § 73-44, which permitted the reduction in the required number of accessory parking spaces for a Use Group (“UG”) 6 office space from 190 spaces to 95 spaces and expired on January 22, 2020.

A public hearing was held on this application on August 24, 2020, after due notice by publication in *The City Record*, and then to decision on April 26, 2021.

The Premises are bounded by White Plains Road to the east, East 242nd Street to the north, and Penfield Street to the south, partially within a C2-2 (R6A) zoning district and partially within an R5 zoning district, in the Bronx. With approximately 199 feet of frontage along White Plains Road, 245 feet of frontage along East 242nd Street, 215 feet of frontage along Penfield Street, and 46,029 square feet of lot area, the Premises are occupied by an existing three-story plus cellar commercial building (68,670 square feet of floor area).

The Board has exercised jurisdiction over the Premises since May 15, 1923 when, under BSA Cal. No. 317-23-BZ (the “1923 Resolution”), the Board granted a special permit to allow the erection and maintenance of a garage for the storage of more than five motor vehicles.

The 1923 Resolution identifies the premises as one “partly in a business district and partly in a residence district” and acknowledges that the office use on the second floor of the proposed building would “extend approximately 30 feet into the residence district.”

On October 27, 1970, under BSA Cal. No. 376-70-BZ (the “1970 Resolution”), the Board granted a special permit to allow the enlargement of the second floor and a new third floor for the existing building that exceeded the permitted floor area ratio and penetrated the sky exposure plane.

On January 22, 2016, under the subject calendar number, the Board granted a special permit, under Z.R. § 73-44, to permit, on a Premises located partially within a

C8-1 zoning district, and partially within an to permit the reduction in the required number of accessory parking spaces for a UG 6 office space from 190 spaces to 95 spaces, contrary to Z.R. § 36-21, on condition that all work substantially conform to drawings as they apply to the objections filed with the application marked “Received December 23, 2015”– Fourteen (14) sheets; a minimum of 134 parking spaces be provided at the Premises; there be no change in the uses at the Premises without prior review and approval by the Board; a certificate of occupancy not be issued if either of the uses for which parking has been reduced has been 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 Premises or within the permitted off-street radius; the conditions appear on the certificate of occupancy; the applicant provide landscaping as shown on the BSA-approved plans; the landscaping be maintained at all times to conceal parking area, including the upper level of the double stackers; the walls be maintained free of graffiti; 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 January 22, 2020; this 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; and, DOB 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.

The time to complete construction and obtain a certificate of occupancy having expired, the applicant now seeks an extension of time.

The applicant represents that, while DOB approved the construction plans on January 24, 2019, the construction of the parking lot has not yet begun. The applicant states that the owner needed additional time to finalize construction of the building in order to account for the changing needs of the company using the building. Final inspections and sign-offs need to be obtained for the interior work. Further, construction of the parking lot has not begun as there were significant issues with the parking stacker vendor and the owner is no longer using the original vendor and is working on obtaining a new vendor. The applicant anticipates that it will take 3 to 4 months to have permits issued by the DOB to the Premises; an additional 18 to 24 months to complete construction of the parking lot and obtain final sign-off of the building; it will take an additional 6 to 8 months to obtain a certificate of occupancy. As such, the applicant seeks a four-year extension of time to complete construction and obtain a certificate of occupancy.

At hearing, the Board raised concerns regarding inconsistencies in comparing the prior BSA-approved plans to the DOB plans. Specifically, the Board noted that dimensions, the width of planting beds, queuing count, stacker layout, and fence added in parking area on the DOB

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plans do not match the BSA plans.

The applicant represents that a ZRD1, Zoning Resolution Determination Form, was filed with DOB on October 22, 2020, to obtain approval to utilize parking at a nearby location in order to supplement the existing on-site parking and satisfy parking requirements. The DOB had denied the request on October 29, 2020, in part due to an error in submitting an outdated BSA letter. The applicant states that on November 12, 2020, the correct BSA determination for the reduction in parking was provided to DOB, but DOB upheld the denial and proceeded to audit the Alt I and Alt II applications related to the on-site parking lot.

The Board states that the DOB plans must be amended to conform to the previously approved BSA plans and a new set of plans will not be approved by the Board.

Based upon its review of the record, the Board has determined that the requested extension of time is appropriate with certain conditions as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *amends* the resolution, dated January 22, 2016, so that as amended this portion of the resolution shall read: “to extend the time to complete construction and obtain a certificate of occupancy for four years year, by April 26, 2025, *on condition*:

THAT DOB plans shall be amended to conform to BSA-approved plans marked “Received December 23, 2015” – Fourteen (14) sheets;

THAT a minimum of 134 parking spaces shall be provided at the Premises;

THAT there shall be no change in the uses at the Premises without prior review and approval by the Board;

THAT a certificate of occupancy shall not be issued if either of the uses for which parking has been reduced has been 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, also indicating this approval and calendar number (“BSA Cal. No. 193-13-BZ”), shall be obtained within four years, by April 26, 2025;

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 26, 2021.

169-49-BZ

APPLICANT – Rampulla Associates Architect, LLP, for 5270 Amboy Road, LLC, owner.

SUBJECT – Application April 20, 2020 – Amendment (§11-412) to permit the enlargement of an accessory repair establishment of a previously approved variance permitting the operation of an Automotive Service Station (UG 16B). R3A Special South Richmond District within the Lower Density Growth Management Area.

PREMISES AFFECTED – 5270 Amboy Road, Block 6523, Lot 80, Borough of Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Laid over to June 14-15, 2021, at 10 A.M. for adjourned hearing.

853-53-BZ

APPLICANT – Eric Palatnik, P.C., Knapp, LLC, owner, Bolla EM Realty, LLC, lessee.

SUBJECT – Application November 15, 2019 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of an automotive service station (UG 16B) which expires on October 23, 2019. C2-2/R3-2 zoning district.

PREMISES AFFECTED – 2402/16 Knapp Street, Block 7429, Lot 0010, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to June 28-29, 2021, at 10 A.M. for adjourned hearing.

523-58-BZ

APPLICANT – Glen V. Cutrona, AIA, for Yehuda LLC, owner; Farmers Mini Mart Inc., lessee.

SUBJECT – Application August 26, 2019 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of an automotive service station (UG 16B) which expired on May 7, 2014; Waiver of the Board’s Rules. C1-3/R5D zoning district.

PREMISES AFFECTED – 117-30 Farmers Boulevard, Block 12448, Lot 0031, Borough of Queens,

COMMUNITY BOARD #12Q

ACTION OF THE BOARD – Laid over to May 24-25, 2021, at 10 A.M. for continued hearing.

803-61-BZ

APPLICANT – Eric Palatnik, P.C., for Martin Blessinger, owner; BP Products North America Inc., lessee.

SUBJECT – Application November 15, 2019 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of an automotive service station (UG 16B) which expires on July 27, 2020. C2-1/R3-2 zoning district.

PREMISES AFFECTED – 1416 Hylan Boulevard, Block 3350, Lot 30, Borough of Staten Island.

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COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Laid over to June 14-15, 2021, at 10 A.M. for continued hearing.

528-71-BZ

APPLICANT – Eric Palatnik, P.C., for PMG NE LLC, owner.

SUBJECT – Application May 29, 2018 – Amendment of a previously approved Variance (§72-21) which permitted the operation of an Automotive Service Station (UG 16B) which expired on October 3, 1982. The Amendment is filed pursuant to §1-07.3 (b)(4)(ii) of the Board’s Rules of Practice and Procedures to requests a modification of the term specified as a condition of the Board’s resolution. The application seeks to legalize modifications to signage, landscaping, site layout and the accessory

PREMISES AFFECTED – 133-40 150th Street, Block 12116, Lot 0001, Borough of Queens.

COMMUNITY BOARD # 12Q

ACTION OF THE BOARD – Laid over to June 14-15, 2021, at 10 A.M. for continued hearing.

315-90-BZIII

APPLICANT – Vassalotti Associates Architects, LLP for Hills Fuels, LLC, owner.

SUBJECT – Application May 21, 2020 – Extension of Tem (§11-411) for the continued operation of an Automotive Service Station (BP Amoco) with accessory convenience store which expires on January 25, 2021. C2-2/R4 zoning district.

PREMISES AFFECTED – 82-06 Astoria Boulevard, Block 1094, Lot 0001, Borough of Queens.

COMMUNITY BOARD #3Q

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 14-15, 2021, at 10 A.M. for decision, hearing closed.

7-95-BZIII

APPLICANT – Law Office of Fredrick A. Becker, for Redmont Realty Company, LLC, owner; TSI Whitestone, LLC dba New York Sports Club, lessee.

SUBJECT – Application November 2, 2020 – Amendment of a previously approved Variance (§72-21) which permitted the operation of a physical cultural establishment (*New York Sports Club*). The amendment seeks to relocate the facility to another portion of the zoning lot; Extension of Time to Obtain a Certificate of Occupancy which expired on February 14, 2018; Waiver of the Board’s Rules of Practice and Procedures. C1-2/R3-2 zoning district.

PREMISES AFFECTED – 153-37 Cross Island Parkway, Block 4717, Lot 16, Borough of Queens.

COMMUNITY BOARD #7Q

ACTION OF THE BOARD – Laid over to October 4-5, 2021, at 10 A.M. for continued hearing.

238-07-BZ

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for Graduate Center Foundation Housing Corporation, LLC, owner.

SUBJECT – Application September 22, 2020 – Extension of Time to Complete Construction of a previously approved variance (§72-21) which allowed the construction of a 12-story mixed-use residential/commercial building and a 6-story graduate student housing building which expired on September 23, 2020. M1-4 and M1-4/R6A Special Long Island City Purpose District.

PREMISES AFFECTED – 5-17 47th Avenue, Block 00028, Lot(s) 12,15,17,18,121, Borough of Queens.

COMMUNITY BOARD #2Q

ACTION OF THE BOARD – Laid over to October 4-5, 2021, at 10 A.M. for postponed hearing.

23-08-BZ

APPLICANT – Sheldon Lobel, P.C., for Boris Aronov, owner.

SUBJECT – Application February 15, 2019 – Amendment of a previously approved Variance (§72-21) which permitted the construction of a two-story and cellar house of worship (UG 4) contrary to floor area and parking requirements. R1-2 zoning district.

REMISES AFFECTED – 80-14 Chevy Chase Street, Block 7248, Lot 44, Borough of Queens.

COMMUNITY BOARD #8Q

ACTION OF THE BOARD – Laid over to July 22-23, 2021, at 10 A.M., for deferred decision.

6-09-BZ

APPLICANT – Rampulla Associates Architects for Joseph Romeo, owner.

SUBJECT – Application June 18, 2020 – Extension of Tem of a previously approved Variance (§72-21) which permitted the use of Automotive Repair (UG 16B) which will expire on November 9, 2020. C4-1 Special South Richmond Development and Special Growth Management Districts.

PREMISES AFFECTED – 24 Nelson Avenue, Block 31, Lot 5429, Borough of Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Laid over to June 28-29, 2021, at 10 A.M., for adjourned hearing.

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24-09-BZ

APPLICANT – Bryan Cave Leighton Paisner LLP, for Meadow Park Rehabilitation and Health Care Center, owner.

SUBJECT – Application July 26, 2019 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) permitting the enlargement of a community facility (Meadow Park Rehabilitation and Health Care Center) which expired on July 26, 2015; Waiver of the Board’s Rules. R3-2 zoning district.

PREMISES AFFECTED – 78-10 164th Road, Block 6851, Lot(s) 9, 11, 12, 23, 14, Borough of Queens.

COMMUNITY BOARD #8Q

ACTION OF THE BOARD – Laid over to June 28-29, 2021, at 10 A.M., for continued hearing.

120-13-BZ

APPLICANT - Pryor Cashman, LLP, for Doris Kurlender and Samuel Jacobson, Owner; Spillane Parkside Corp., lessee.

SUBJECT – August 13, 2019 – Extension of Term of a previously approved Special Permit (§73-243) which permitted an accessory drive-thru to an eating and drinking establishment (UG 6) (McDonald’s) which expired on January 14, 2019; Waiver of the Board’s Rules. C1-1/R3-2 zoning district.

PREMISES AFFECTED – 1815 Forest Avenue, Block 1180, Lots 6, 49, Borough of Staten Island.

COMMUNITY BOARD #1SI

ACTION OF THE BOARD – Laid over to July 22-23, 2021, at 10 A.M., for continued hearing.

2016-4340-BZ

APPLICANT – Law Office of Vincent L. Petraro, PLLC, for Flushing Holding, LLC, owner.

SUBJECT – Application November 25, 2020 – Amendment of a previously approved Special Permit (§73-66) to permit the construction of a new building in excess of the height limits established under ZR §61-21. The amendment seeks to increase the height of the building contrary to the previous approval. C4-2 zoning district.

PREMISES AFFECTED – 131-02 40th Road, Block 5066, Lot 150, Borough of Queens.

COMMUNITY BOARD #7Q

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 May 10-11, 2021, at 10 A.M. for decision, hearing closed.

2017-213-BZ

APPLICANT – Hirschen Singer & Epstein, LLP, for Dynamic Youth Community, Inc., owner.

SUBJECT – Application October 21, 2020 – Amendment of a previously approved variance (ZR 72-21) for a six-story with cellar, community-facility building (Use Group 3), contrary to use and bulk regulations. Amendment to reduce the size of the cellar level, modify interior program, and change certain finishing materials. C8-2 ZD/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 28-29, 2021, at 10 A.M., for continued hearing.

APPEALS CALENDAR

2019-90-A

APPLICANT – Riverside Tenants Association c/o Stephen Dobkin, for Joralemon Realty NY LLC c/o Pinnacle Managing Co. LLC, owner.

SUBJECT – Application May 10, 2019 – Appeal of a New York City Department of Buildings challenging the validity of a building permit dated April 10, 2019. R2 Brooklyn Heights Historic District

PREMISES AFFECTED – 24, 32 Joralemon Streets, 10, 20, 30 Columbia Place, Block 258, Lot 17, Borough of Brooklyn.

COMMUNITY BOARD #2BK

ACTION OF THE BOARD – Application dismissed.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta5
Negative:.....0

THE RESOLUTION –

This is an appeal brought by a Tenants’ Association, (“the appellant”) challenging the validity of a New York City Department of Buildings (“DOB”) Alteration Type 1 Application No. 320774667, dated April 10, 2019.

A public hearing was held on this application on July 28, 2020, after due notice by publication in *The City Record*, and then to decision on April 26, 2021. Vice-Chair Chanda performed an inspection of the Premises and surrounding neighborhood.

The Premises are a complex of buildings which form an L-shape at the intersection of Joralemon Street and Columbia Place, in an R6 zoning district and the Brooklyn Heights Historic District, in Brooklyn. With approximately 298 feet of frontage along Columbia Place, 167 feet of frontage along Joralemon Street, and 36,769 square feet of lot area, the Premises are currently occupied by five existing, six-story, mixed-use residential and commercial buildings.

In this appeal, the appellant argues that the Tenant’s

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Protection Plan (“TPP”) filed by the building owner and necessary for the excavation of the courtyard area to install a parking garage in the cellar is inadequate and does not comply with Building Code § 28-104.8.4. In support of this contention, the appellant argues that the safety plans that the building owner filed with the DOB do not reflect the field conditions which the members of the Tenants’ Association have observed and alleges that the DOB has failed to enforce the requirements for a TPP, specifically for egress, fire safety, health requirements, and structural safety.

To begin, the appellant argues that in the approved TPP, the building owner does not address how excavation of the courtyard will affect egress from this courtyard onto Joralemon Street. The appellant further expresses frustration at that the building owner’s lack of response to fire safety, health requirements, and structural safety, which it represents will not be adversely affected.

In support of its decision to grant this permit and accept the building owner’s TPP, DOB first notes that because this site is within a historic district, the New York City Landmarks Preservation Commission (“LPC”) issued a Certificate of Appropriateness regarding the proposed work on May 28, 2009, prior to any filing with the DOB, and has renewed this Certificate of Appropriateness on September 18, 2014, and again, on August 1, 2018. DOB then argues that its determination in accepting the sufficiency of the TPP is reasonable and within its discretionary powers. DOB continues to that it has conducted numerous audits of the application at issue and the building owner has responded to and resolved all audit objections. DOB states that appellant’s challenges to the TPP are misplaced and speculative. Finally, DOB argues that if the issues raised by the appellant do occur, DOB can still issue Stop Work Orders and/or violations as necessary.

At hearing, the Board voiced its concern that many of the appellant’s articulated issues regarding the proposed project would be solved with increased cooperation and open communication with DOB and the building owner. As a plan to move forward, the Board proposed, and the parties agreed to, a combined inspection by DOB and FDNY in the presence of a member of the Tenants’ Association. Additionally, the Board requested a more updated timeline from the appellants, as the one submitted was from May 2019 and clearer and more legible SOE drawings to better assess any potential structural damage that could occur during the proposed work and to clarify the location of the ramps to the parking garage; and an architect’s signed and sealed plans reflecting current site conditions.

The Board posed these questions and requested that both the appellant and DOB respond to them in their next submissions.

However, on March 29, 2021, the owner withdrew its application to the DOB for this project, thereby, nullifying the appellants’ stated concerns and the Board’s jurisdiction over the case.

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, April 26, 2021.

2019-207-A

APPLICANT – Eric Palatnik, P.C., for Fongtar Realty Inc., owner.

SUBJECT – Application August 27, 2019 – Appeal of a New York City Department of Buildings determination.

PREMISES AFFECTED – 32-35 Queens Boulevard, Block 244, Lot 50, Borough of Queens.

COMMUNITY BOARD # 2Q

ACTION OF THE BOARD – Application withdrawn without prejudice.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), regarding Application No. 421018963, dated July 29, 2019 (the “Determination”), states, in part:

The request to accept that the Support of Excavation (“SOE”) permit as a permit that would qualify the hotel building to start the construction is hereby denied.

The Premises are located in M1-4 zoning district. A new hotel building was approved on 05/31/2017 but work permit was never issued. SOE application in conjunction with the proposed hotel was also filed and approved. The SOE work permit was issued on 3/01/2018.

The zoning text was amended requiring certain hotel applications in M1 districts to obtain special permit from the City Planning Commission effective December 20, 2018 except that applications with work permit issued before December 20, 2018 may be continued. Z.R. §42-111 in pertinent part states that, “The provisions of Section 11-30 (BUILDING PERMITS ISSUED BEFORE EFFECTIVE DATE OF AMENDMENT) regarding the right to continue construction shall apply. As an alternative, if on or before April 23, 2018, a new building permit for a development, enlargement or conversion to a transient hotel, or a partial permit for a development of a transient hotel was lawfully issued by the Department of Buildings, such construction may be started or continued.” This application is requesting to accept the SOE permit as partial permit pursuant to Z.R. §42-111 that qualifies the new hotel building to start the construction.

Z.R. §42-111 stipulates that the provisions of Z.R. §11-30 Building Permits issued before Effective Date of Amendment regarding the right to continue construction shall apply. As per Z.R.

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§11-31 specifies that a lawfully issued building permit shall be a building permit which is based on an approved application showing complete plans and specifications.

Z.R. §42-111 provides alternative (“alternative”) to the requirements of Z.R. § 11-30. The alternative simply states that if a building permit or partial permit was lawfully issued on or before April 23, 2018, such construction may be continued. The vesting provisions of Z.R. §11-30 and the alternative both require that permit has been issued.

The SOE permit was merely a preparation work for the building that will be constructed. The SOE drawing does not show complete plans and specifications of the hotel building. The complete plans and specifications of the hotel building are shown in the New Building hotel application; however, this application was never permitted. The request to accept the SOE permit as a permit would qualify the hotel building to start the construction is hereby denied.

This is an appeal for interpretation brought by Fongar Realty Inc. (the “Appellant”), alleging errors in the Determination pertaining to whether the SOE permit issued on March 2, 2018, pursuant to Permit Number 421597962-01-EW-OT in conjunction with New Building Application Number 421018963 qualifies as a “partial permit” as set forth in Z.R. §42-11, therefore “vesting” the proposed hotel use and allowing construction to continue until December 20, 2021.

A public hearing was not held on this application after the appellant requested two adjournments, and then this application was set for decision on April 26, 2021. Vice-Chair Chanda performed inspections of the Premises and surrounding area.

The Premises are located on the northeast corner of Queens Boulevard and 32nd Place, in an M1-4 zoning district, in Queens. With approximately 100 feet of frontage along Queens Boulevard, 100 feet of frontage along 32nd Place, and 10,000 square feet of lot area, the Premises are currently occupied by an existing 17-story commercial and office building.

The Board has exercised jurisdiction over the Premises since, October 18, 1994, when, under BSA Cal. No. 173-93-BZ, the Board granted a variance to permit, in what was then an M2-1 zoning district, a proposed change in use of an existing two-story factory (Use Group “UG” 17) to a community facility (UG 4) with an accessory parking garage with rooftop parking on condition that the Premises remain free of debris and graffiti; the parking garage be locked after hours; the above conditions appear on the certificate of occupancy; the development, as approved, is subject to verification by the Department of Buildings for compliance with all other applicable provisions of Zoning Resolution, the Administrative Code, and any other relevant laws under the jurisdiction of the Department; and substantial construction be completed in accordance with

Z.R. §72-23.

On September 18, 1995, the City Planning Commission (“CPC”) rezoned property bound by Skillman Avenue, 34th Street, 48th Avenue and 30th Street, which includes the Premises, from an M2-1 zoning district to an M1-4 zoning district (CP No. C950403 ZMQ).

On December 9, 1997, under BSA Cal. No. 173-93-BZ, the Board amended the variance to permit changes to the approved plans, including a reduction in size of the structure, omission of the 65-car parking garage and provision of 43 on-site parking spaces on condition that the Premises 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 88 resolution be complied with in all respects and the substantial work be completed within 38 months of October 18, 1996, by December 18, 1999.

On December 4, 2001, under BSA Cal. No. 173-93-BZ, the Board amended the variance to permit an enlargement of 29,440’ of the existing community facility on condition that the Premises be maintained free of debris and graffiti; all parking facilities be secured after hours; in accordance with Fire Department requests, a new fire alarm system and a fully automatic wet sprinkler be provided throughout the new addition: Premises be maintained in substantial with proposed plans submitted with the application; and other than as herein amended, the resolution and all other relevant laws and regulations of the City of New York be completed with in all respects and the substantial work be completed within two years of this amended resolution.

On April 5, 2016, under BSA Cal. No. 173-93-BZ, the Board amended the variance to permit the merger of the Premises with a contiguous parcel on Block 244, in Queens, and the associated modifications to the BSA-approved site plans 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; the site remain subject to the Board’s jurisdiction, including modifications to the buildings on the site; all conditions from the prior resolution not specifically waived by the Board shall remain in effect; 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.

By letter dated August 10, 2016, the Board stated that it had no objection to the transfer of 40,000 square feet of commercial development rights from the subject site to a contiguous parcel on Block 244, Queens, as set forth in the Zoning Lot and Development Agreement on condition that the Department of Buildings ensure compliance with all applicable provisions of the Zoning Resolution, Building Code, or any other relevant law.

By letter dated March 8, 2019, the Board stated that it has no objection to a proposed modification to permit the design of the development proposed at the Receiving Site on

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condition that the Department of Buildings ensure compliance of the proposed development with all the applicable provisions of the Zoning Resolution, Building Code, or any other relevant law.

With this appeal for interpretation, the appellant argues that the determination should be reversed because 1) the plain language of the section shows that neither a new building permit or a building permit is required to meet the definition of partial permit as set forth in Z.R. §42-111; 2) based on statutory construction, common law doctrine of vested rights, and legislative history of the M1 Hotel Text Amendment, the intent of the statute was to vest applications for projects having a partial permit in place, a significantly lower standard than the generally applied standard set forth in Z.R. §11-331, which requires completely approved plans, full building permits, and completion of foundation; and 3) a decision against the appellant in this case would prevent it from proceeding with its proposed project and be arbitrary, capricious and confiscatory. The main thrust of a appellant's argument is that because in this matter, the DOB plans were approved, as well as SOE, plumbing, sidewalk shed, construction fence, temporary standpipe permits were issued, and substantial construction was performed pursuant to the SOE pattern, this development does not constitute one that is in the planning or investment stage but one that consists of an issued partial permit that satisfies the requirements of Z.R. §42-111.

In support of its 2019 determination that the appellant's SOE permit does not qualify the hotel building to start the construction, DOB states that 1) the appellant cannot satisfy Z.R. §42-111 because it requires applicants to obtain a partial permit for development of a transient hotel in order to vest and an SOE permit does not constitute a permit or partial permit for "development, enlargement, or conversion"; and 2) DOB's position is rational and reasonable as it is supported by the record as a whole. DOB refutes appellant's argument that its determination is "confiscatory" because the determination did not deprive the appellant of opportunity to derive an economic benefit from the Premises.

By correspondence, dated April 14, 2021, the appellant requests to withdraw the application without prejudice.

Therefore, it is Resolved, that this application is hereby *withdrawn* without prejudice.

Adopted by the Board of Standards and Appeals, April 26, 2021.

2020-16-A

APPLICANT – Eric Palatnik, P.C., for Fongtar Realty Inc., owner.

SUBJECT – Application January 31, 2020 – Appeal seeking a determination that the owner has acquired a common law vested right to obtain a Certificate of Occupancy for a development commenced under the prior zoning district regulations.

PREMISES AFFECTED – 32-35 Queens Boulevard, Block 244, Lot 50, Borough of Queens.

COMMUNITY BOARD #2Q

ACTION OF THE BOARD – Application withdrawn without prejudice.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

This is an appeal brought by Fongtar Realty Inc. (the "Appellant"), requesting a determination that the appellant has acquire a vested right to complete construction and obtain a certificate of occupancy pursuant to approved plans and permits issued under M1-4 district regulations in effect prior to December 20, 2018 that permit the planned hotel use (Use Group "UG" 5) as of right.

A public hearing was not held on this application after the appellant requested two adjournments, and then to decision on April 26, 2021. Vice-Chair Chanda performed inspections of the Premises and surrounding area.

The Premises are located on the northeast corner of Queens Boulevard and 32nd Place, in an M1-4 zoning district, in Queens. With approximately 100 feet of frontage along Queens Boulevard, 100 feet of frontage along 32nd Place, and 10,000 square feet of lot area, the Premises are currently occupied by an existing 17-story commercial and office building.

The Board has exercised jurisdiction over the Premises since, October 18, 1994, when, under BSA Cal. No. 173-93-BZ, the Board granted a variance to permit, in what was then an M2-1 zoning district, a proposed change in use of an existing two-story factory (Use Group "UG" 17) to a community facility (UG 4) with an accessory parking garage with rooftop parking on condition that the Premises remain free of debris and graffiti; the parking garage be locked after hours; the above conditions appear on the certificate of occupancy; the development, as approved, is subject to verification by the Department of Buildings for compliance with all other applicable provisions of Zoning Resolution, the Administrative Code, and any other relevant laws under the jurisdiction of the Department; and substantial construction be completed in accordance with Z.R. §72-23.

On September 18, 1995, the New York City Planning Commission ("CPC") rezoned property bound by Skillman Avenue, 34th Street, 48th Avenue and 30th Street, which includes the subject premises, from an M2-1 zoning district to an M1-4 zoning district (CP No. C950403 ZMQ).

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On December 9, 1997, under BSA Cal. No. 173-93-BZ, the Board amended the previously approved variance to permit changes to the approved plans, including a reduction in size of the structure, omission of the 65-car parking garage and provision of 43 on-site parking spaces on condition that the Premises 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 88resolution be complied with in all respects and the substantial work be completed within 38 months of October 18, 1996, by December 18, 1999.

On December 4, 2001, under BSA Cal. No. 173-93-BZ, the Board amended the previously approved variance to permit an enlargement of 29,440' of the existing community facility on condition that the Premises be maintained free of debris and graffiti; all parking facilities be secured after hours; in accordance with Fire Department requests, a new fire alarm system and a fully automatic wet sprinkler be provided throughout the new addition; Premises be maintained in substantial with proposed plans submitted with the application; and other than as herein amended, the resolution and all other relevant laws and regulations of the City of New York be completed with in all respects and the substantial work be completed within two years of this amended resolution.

On April 5, 2016, under BSA Cal. No. 173-93-BZ, the Board amended the previously approved variance to permit the merger of the subject site with a contiguous parcel on Block 244, in Queens, and the associated modifications to the BSA-approved site plans 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; the site remain subject to the Board's jurisdiction, including modifications to the buildings on the site; all conditions from the prior resolution not specifically waived by the Board shall remain in effect; 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.

By letter dated August 10, 2016, the Board stated that it had no objection to the transfer of 40,000 square feet of commercial development rights from the subject site to a contiguous parcel on Block 244, Queens, as set forth in the Zoning Lot and Development Agreement on condition that the Department of Buildings ensure compliance with all applicable provisions of the Zoning Resolution, Building Code, or any other relevant law.

By letter dated March 8, 2019, the Board stated that it has no objection to a proposed modification to permit the design of the development proposed at the Receiving Site on condition that the Department of Buildings ensure compliance of the proposed development with all the applicable provisions of the Zoning Resolution, Building Code, or any other relevant law.

The appellant argues that it has a vested right to finish

the construction of hotel based on issued permits and approved applications based on Z.R. § 42-111, which allows work to continue on a development if a partial permit has been issued prior to April 23, 2018. The appellant further argues that such a vested right is warranted because it has undergone substantial construction on the proposed project and taken significant expenditure, and without the grant, it would suffer serious loss through continued delay associated with review, approval, and redesign of the proposed hotel.

DOB claims the appellant does not have a vested right to construct the proposed hotel as of right because that 1) the appellant cannot satisfy Z.R. §42-111 because it requires applicants to obtain a partial permit for development of a transient hotel in order to vest and an SOE permit does not constitute a permit or partial permit for "development, enlargement, or conversion"; and 2) DOB's position is rational and reasonable as it is supported by the record as a whole. DOB refutes appellant's argument that its determination is "confiscatory" because the determination did not deprive the appellant of opportunity to derive an economic benefit from the Premises.

By correspondence, dated April 14, 2021, the appellant requested to withdraw the application without prejudice. The Board requested that appellant's counsel confirm that the appellant was aware of the potential implications of withdrawing this application, as changes to zoning within New York City would disallow building a hotel as of right without a vested right. The appellant's counsel confirmed that the appellant was aware.

Therefore, it is Resolved, that this application is hereby *withdrawn* without prejudice.

Adopted by the Board of Standards and Appeals, April 26, 2021.

2020-78-A & 2020-79-A

APPLICANT – Terminus Group, LLC, for John Barbieri, owner.

SUBJECT – Application October 8, 2020 – Common Law Vesting to allow for the reinstatement of a alteration permits to obtain a Certificate of Occupancy under the former R3-2 zoning regulations.

PREMISES AFFECTED – 90 & 92 Elm Street, Block 00158, Lot(s) 0081, 0082. 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 May 10-11, 2021, at 10 A.M. for decision, hearing closed.

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ZONING CALENDAR

2019-25-BZ

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

SUBJECT – Application February 1, 2019 – Variance (72-21) to permit the development of a nine-story plus cellar mix-use commercial and residential building contrary to ZR 24-154(b) (residential FAR); ZR 23-22 (dwelling units); 23-662(c)(1) (street wall setback) and ZR 25-23 (parking). M1-2/R6 zoning district. MX-8.

PREMISES AFFECTED – 40-48 Commercial Street, Block 2482, Lot(s) 1, 4 and 6, Borough of Brooklyn.

COMMUNITY BOARD #1BK

ACTION OF THE BOARD – Application denied.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta5
Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings, dated January 4, 2019, acting on New Building Application No. 322066474, reads in pertinent part:

- #1 Z.R. 23-154(b) - OBJ: The proposed new building exceeds the Residential F.A.R. as per Z.R. 23-154(b) . . .
- #3 Z.R. 23-662(c)(1) - OBJ: The proposed new building does not comply with required initial street wall setback as per Z.R. 23-662(c)(1)
- #4 Z.R. 25-23 - OBJ: The proposed new building does not provide the required parking spaces as per Z.R. 25-23.

This is an application for a variance under Z.R. § 72-21 to permit—in an M1-2/R6 zoning district within the Special Mixed Use District 8 (Greenpoint–Williamsburg)—the development of a six-story mixed-use building that would not comply with applicable zoning regulations for residential floor area (Z.R. § 23-154(b)), initial street wall setbacks (Z.R. § 23-662(c)(1)), and required accessory off-street parking spaces (Z.R. § 25-23).

A public hearing was held on this application on October 22, 2019, after due notice by publication in *The City Record*, with continued hearings on August 11, 2020, and February 9, 2021, and then to decision on April 26, 2021.

Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta performed inspections of the Premises and surrounding neighborhood.

Community Board 1, Brooklyn, recommends disapproval of this application, citing concerns with contamination at the Premises, the addition of market-rate housing, the lack of green space proposed, and site maintenance.

As discussed herein, the Board has considered all of the evidence in the record and testimony presented but ultimately finds that this application does not meet

applicable requirements and that the applicant has not demonstrated a basis to warrant the exercise of discretion.

I.

The Premises are located on the northeast corner of Commercial Street and Clay Street, in an M1-2/R6 zoning district within the Special Mixed Use District 8 (Greenpoint–Williamsburg), in Brooklyn. With approximately 144 feet of frontage along Commercial Street, 144 feet of frontage along Clay Street, and 5,273 square feet of lot area, the Premises are used for the storage of construction equipment and vehicles.

II.

Originally, the applicant proposed to construct a nine-story, with cellar, mixed-use building that would contain commercial use and 27 dwelling units with three parking spaces (the “Original Building”). The Original Building would house 22,974 square feet of floor area (4.36 FAR)—2,809 square feet of commercial floor area (0.53 FAR) and 20,165 square feet of residential floor area (3.82 FAR)—and would have a base height of 53’-0” with a 10’-6” setback at the fifth floor and rising to a total height of 108’-0”.

The Original Building could not be constructed as of right because, at the Premises, residential floor area cannot exceed 11,600 square feet (2.20 FAR), *see* Z.R. § 23-154(b); density regulations do not allow more than 19 dwelling units, *see* Z.R. § 23-22; buildings need to set back 15’-0” above a height of 60’-0”, *see* Z.R. § 23-662(c)(1); and a minimum of 14 parking spaces are required, *see* Z.R. § 25-23.

In response to questions from the Board over the course of hearings about the applicant’s alleged cost estimates for remediation, the applicant reduced the scale of the building proposed.

Now, the applicant proposes to construct a six-story building with 16,479 square feet of floor area (3.13 FAR), a base height of 53’-0” with a 10’-6” setback, and a total of 3 parking spaces.

Accordingly, the applicant requests the relief set forth herein.

III.

The Zoning Resolution vests the Board with wide discretion to “vary or modify [its] provision[s] so that the spirit of the law shall be observed, public safety secured and substantial justice done,” Z.R. § 72-21.

A.

Consistent with Z.R. § 72-21, the applicant submits that there are unique physical conditions inherent in the Premises—namely, the presence of underground storage tanks, soil and groundwater contamination, proximity to a superfund site and the Premises’ configuration as an irregularly shaped, vacant corner lot—that 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.

The applicant asserts that the Premises are uniquely burdened by subsurface contamination, citing a Remedial Investigation Report concluding that on-site soil and groundwater contamination have volatile organic

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compound, semi-volatile organic compound, PCB, and metal contamination. The applicant also notes that there are underground storage tanks at the Premises and that subsurface contamination has resulted from historical use of the Premises as a gasoline station. The applicant further states that the Premises are adjacent to a superfund site.

To support these assertions that contamination of the Premises causes unnecessary hardship, the applicant prepared a construction cost estimate for the removal of underground storage tanks and remediation of on-site contaminated soil and groundwater that purports to conclude that these conditions cause hardship in developing the Premises as of right.

However, the applicant's assertions about remediation of the Premises as a basis for "unnecessary hardship" are not credible. First, the Board questions whether this application is premature in that off-site contamination from a superfund site may be compensable through environmental litigation or other means, thereby alleviating any claimed hardship associated with contamination derived from the superfund site. Rather than demonstrating that this would not be the case, the applicant furnished a memorandum on a different issue—whether the Board would be "precluded" from granting a variance by the potential for environmental litigation. However, the Board has the discretion—and duty—to seek assurances that a proposed variance would not result in a financial windfall, a concern that the applicant has not adequately addressed.

More significantly, the applicant's proffered evidence does not demonstrate that contamination of the Premises would result in unnecessary hardship. As described at hearing, the Board notes that the proposed remediation costs for development of the Premises should not include any costs associated with a standard dewatering system because of the Premises' location near a river. For any site with such proximity, there would be standard costs associated with creating a cellar as proposed (with remediation or without)—undercutting the applicant's assertion that these costs are associated with any unique physical condition.

Additionally, the costs associated with dewatering themselves were not credible, considering the applicant initially represented that dewatering would be required over a 30-day period but eventually conceded that, at the Board's questioning, dewatering could be achieved in 3 days by using sheeting in the deep, clay layer and using sump pumps.

Furthermore, the applicant submitted a faulty analysis of the purported costs associated with remediation, considering that any excavation for construction (regardless of contamination) would require disposal of the excavated soil. The Board notes that, instead, the applicant should have quantified the amount of excavation, calculated the percentage of contaminated soil as a percentage of the whole, and then calculated costs associated with contaminated soil as a percentage of the entire excavation. The remainder (i.e., uncontaminated soil to be excavated) would be included as standard construction costs—not remediation costs.

Turning to overall construction costs, the Board finds that, without these purported remediation costs, this application does not reflect realistic construction costs per square foot. At nearly \$400 per square foot for an as-of-right development and more than \$400 square foot for the Proposed Building, base construction costs are inflated for these types of buildings, which should instead be closer to \$200 or \$250 per square foot. With realistic base construction costs substituted, the application materials reflect that an as-of-right development would not suffer any hardship.

Lastly, as to the applicant's assertions that the shape of the Premises itself poses a hardship, the Board notes that the shape may be unique but that the applicant has not demonstrated that this condition poses any hardship either. As discussed at hearing, the allowable floor area can be used to develop an as-of-right building at the Premises before setback requirements apply, indicating that the shape of the Premises does not in fact pose any hardship. Additionally, the as-of-right apartment layouts submitted by the applicant are traditional and attractive with the building core at the rear, and there is no indication that there are any heightened construction costs associated with the configuration or shape of the Premises.

Accordingly, the Board finds that the above physical conditions do not 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.

B.

The applicant asserts that there is no reasonable possibility that developing the Premises in strict conformity with the Zoning Resolution would result in a reasonable return.

However, because of the foregoing discussion about inflation of the purported base construction costs as well as an unrealistic capitalization rate discussed by commissioners at hearing, the Board finds that the applicant's financial analysis is flawed and does not credibly demonstrate a lack of reasonable return.

IV.

Based on the foregoing, the Board need not reach the remaining findings required to be made under Z.R. § 72-21. Instead, the Board finds that the evidence in the record does not support each and every one of the findings, as required by the Zoning Resolution, and the applicant has not substantiated a basis to warrant exercise of discretion in this instance.

Therefore, it is Resolved, that this application shall be and hereby is *denied*.

Adopted by the Board of Standards and Appeals, April 26, 2021.

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2019-203-BZ

APPLICANT – Snyder & Snyder LLP on behalf of New York SMSA Limited Partnership d/b/a Verizon Wireless, for Cheaper Peepers of Springfield Gardens Real Estate, LLC, owner.

SUBJECT – Application August 13, 2019 – Special Permit (§73-30) to allow a non-accessory radio tower (*Verizon*) on the rooftop of an existing building. R3-2 zoning district.

PREMISES AFFECTED – 144-43 Farmers Boulevard, Block 13314, Lot 1, Borough of Queens.

COMMUNITY BOARD #13Q

ACTION OF THE BOARD – Application withdrawn without prejudice.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta5
Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated August 1, 2019, acting on Application Type Alteration 2 No. Q00082681-I1, reads in pertinent part:

“In all districts, the Board of Standards and Appeals may permit non-accessory radio or television towers, provided that it finds that the proposed location, design, and method of operation of such tower will not have detrimental effect on the privacy, quiet, light, and air of the neighborhood. The Board may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area.”

This is an application under Z.R. § 73-30 for a special permit to erect a non-accessory radio tower on the rooftop of an existing building, contrary to Z.R. § 22-21.

A public hearing was held on this application on January 28, 2020, after due notice by publication in *The City Record*, and then to decision on April 26, 2021. Community Board 13, Queens, recommends approval of this application with the following condition:

“The Verizon facility located at 147-10 Guy R. Brewer Boulevard (corner of 147 Avenue) in Springfield Gardens will upgrade the fence at this compound – presently an ugly tin fence – with a fence that is more attractive and complementary to the local community.”

The Board received one letter in support of this application.

The Premises are located at the southeast corner of the intersection of South Conduit Avenue and Farmers Boulevard, within an R3-2 zoning district, in Queens. With approximately 43 feet of frontage on Farmers Boulevard, 79 feet of depth, 4,054 square feet of lot area, the Premises are occupied by an existing one-story, commercial building.

The Board has exercised jurisdiction over the Premises since March 6, 2001, when, under BSA Cal. No. 192-00-BZ, the Board granted a variance, pursuant to Z.R. § 72-21, to permit the construction of a one-story building for use as

a store (Use Group “UG” 6) with an accessory parking lot for seven cars, which is contrary to Z.R. § 22-00, on condition that all work substantially conform to drawings as they apply to the objection noted and filed with the application; the Premises remain graffiti free at all times; fencing and landscaping be maintained in accordance with the BSA-approved plans; lighting be positioned down and away from residential uses; in accordance with BSA-approved plans, all fire safety measures be complied with; the above conditions appear on the certificate of occupancy; the development, as approved, is 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 in accordance with Z.R. 72-23.

On March 19, 2002, under BSA Cal. No. 192-00-BZ, the Board amended the variance to permit the inclusion of a cellar for use as storage and as a utility and meter room on condition that the cellar be used only as storage and as a utility and meter room with no public access; all lighting be installed and maintained down and away from neighboring residential properties; the Premises be maintained in substantial compliance with the drawings filed with the application; new certificate of occupancy be obtained within one year from the date of the amended resolution; the approval is 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 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.

At hearing, the Board expressed concerns regarding the existing cell tower, which, although erected on a site under Board jurisdiction, was granted a DOB permit for its construction without a review by the Board, and because of this oversight, the Board requested that the applicant discuss the Z.R. § 72-21 findings as they apply to this proposed project; if this application should be filed as an amendment to the original variance; the need for cell towers in this area; clarification on whether the cellular tower is an accessory use to the existing building; and the Board asked for the property owner to join as a co-applicant because they would be the beneficiary of the use of the cell tower and could better answer some of the Board’s questions.

The Board posed these questions and requested that the applicant respond to them in its next submission.

However, by correspondence, dated March 19, 2021, the applicant requested to withdraw the application without prejudice.

Therefore, it is Resolved, that this application is hereby *withdrawn* without prejudice.

Adopted by the Board of Standards and Appeals, April 26, 2021.

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2019-263-BZ

APPLICANT – Eric Palatnik, P.C., for Andrew Lester, owner.

SUBJECT – Application September 11, 2019 – Special Permit (§73-243) to permit an eating and drinking establishment (Starbucks) with an accessory drive-thru contrary to ZR §32-10. C1-2/R3-2 zoning district.

PREMISES AFFECTED – 2122 Richmond Avenue, Block 2102, Lot 120, Borough of Richmond.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Laid over to April 26-27, 2021, at 10 A.M. for continued hearing.

2019-278-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 9201 Fith LLC, owner.

SUBJECT – Application October 21, 2019 – Special Permit (§73-44) to permit the reduction of required accessory off-street parking spaces for a UG 6B office use and ambulatory diagnostic or treatment facilities (UG 4) (PRC-B1 parking category) contrary to ZR §36-21. C2-3/R6B & R5B Special Bay Ridge District.

PREMISES AFFECTED – 9201 5th Avenue, Block 6109, Lot 23, Borough of Brooklyn.

COMMUNITY BOARD #10BK

ACTION OF THE BOARD – Laid over to April 26-27, 2021, at 10 A.M. for adjourned hearing.

2020-42-BZ

APPLICANT – Eric Palatnik, PC, for Dmitry and Marianna Gorelik, owner.

SUBJECT – Application May 13, 2020 – Special Permit (§73-622) to permit the enlargement of an existing one-family dwelling. R3-1 zoning district.

PREMISES AFFECTED – 155 Girard Street, Block 8750, Lot 0383, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to April 26-27, 2021, at 10 A.M. for continued hearing.

PUBLIC HEARINGS MONDAY-TUESDAY AFTERNOON APRIL 26-27, 2021, 2:00 P.M.

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

ZONING CALENDAR

2019-32-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 801 Co-Op City Boulevard Realty LLC, owner; Co-Op Medical Realty LLC, lessee.

SUBJECT – Application February 11, 2019 – Project: Special Permit (§73-44) to permit the reduction of required accessory off-street parking spaces for an ambulatory diagnostic or treatment facility (UG 4) (PRC-B1 parking category) contrary to ZR §36-21. C4-1 zoning district.

PREMISES AFFECTED – 801 Co-Op City Boulevard, Block 5141, Lot 0280, Borough of Bronx.

COMMUNITY BOARD #10BX

ACTION OF THE BOARD – Laid over to July 22-23, 2021, at 10 A.M. for continued hearing.

2019-38-BZ

APPLICANT – Sheldon Lobel, P.C., for Peabody Real Estate Co., Inc., owner; CoreBalFit, Inc., lessee.

SUBJECT – Application February 28, 2019 – Special Permit (§73-36) to permit the operation of a Physical Culture Establishment (*CoreBalFit*) to be located on the 1st floor of an existing building contrary to ZR §42-10. M1-1 zoning districts.

PREMISES AFFECTED – 222-34 96th Avenue, Block 10812, Lot 0091, Borough of Queens.

COMMUNITY BOARD #13Q

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 May 24-25, 2021, at 10 A.M. for decision, hearing closed.

2019-294-BZ

APPLICANT – The Law Offices of Marvin B. Mitzner LLC, for GM7 Realty LLC, owner.

SUBJECT – Application November 15, 2019 – Variance (§72-21) to permit the construction of a mixed-use residential building (UG 2) with ground floor commercial (UG 6) contrary to underlying bulk requirements. C2-4/R7D zoning district.

PREMISES AFFECTED – 241-243 Throop Avenue, Block 1756, Lot 6, Borough of Brooklyn.

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COMMUNITY BOARD #3BK

ACTION OF THE BOARD – Laid over to June 28-29, 2021, at 10 A.M. for continued hearing.

2020-1-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 31 West 27th Street Property Investors IV, LLC, owner; Equinox West 27th Street, Inc., lessee.

SUBJECT – Application January 3, 2020 – Special Permit (§73-36) to permit the operation of a physical culture establishment (Equinox) within an existing commercial building §42-10. M1-6 zoning district. Madison Square North Historic District.

PREMISES AFFECTED – 31 West 27th Street, Block 829, Lot 16, Borough of Manhattan.

COMMUNITY BOARD #5M

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 September 13-14, 2021, at 10 A.M. for decision, hearing closed.

2020-18-BZ

APPLICANT – Eric Palatnik, P.C, for Albert Hasson, owner.

SUBJECT – Application December 16, 2020 – Request for Re-Hearing of an application requesting a Special Permit (§73-622) to permit the enlargement of an existing single-family home contrary to ZR §23-142 (floor area) which was denied on October 19, 2020. R3-1 zoning district

PREMISES AFFECTED – 920 Shore Boulevard, Block 8746, Lot 107, Borough of Brooklyn.

COMMUNITY BOARD #15BK

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 28-29, 2021, at 10 A.M. for decision, hearing closed.

2020-73-BZ

APPLICANT – Sheldon Lobel, P.C., for Lampros Moumouris, as Trustee, South Bronx Charter School for International Cultures and the Arts, lessee.

SUBJECT – Application September 14, 2020 – Special Permit (73-19) to permit the construction of a new school (UG 3) (South Bronx Charter School for International Cultures and the Arts) contrary to ZR 42-10. M1-4 zoning district.

PREMISES AFFECTED – 2500 Park Avenue, Block 2322, Lot 5, Borough of the Bronx.

COMMUNITY BOARD #2BX

ACTION OF THE BOARD – Laid over to April 30, 2021, at 10 A.M. for continued hearing.

Carlo Costanza, Executive Director

BULLETIN

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May 21, 2021

DIRECTORY

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HEARINGS HELD -	TELECONFERENCE PUBLIC HEARINGS
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Monday-Tuesday, May 10-11, 2021**

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599-76-BZII	72-02 72 nd Place, Queens
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105-81-BZ	235 Forest Avenue, Staten Island
274-00-BZ	134 East 38 th Street, Staten Island
21-10-BZ	2801 Roebling Avenue, Bronx
2017-204-BZ	124-14 20 th Avenue, Queens
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DOCKETS

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2021-29-BZ

3904 Orloff Avenue, Block 3263, Lot(s) 0195, Borough of **Bronx, Community Board: 8.** Variance (§72-21) to permit the construction of a two-story, two-family residential building that does not provide one required front yard contrary to ZR §23-45. R4A zoning district. R4A district.

2021-30-BZ

222 44th Street, Block 00736, Lot(s) 0013, Borough of **Brooklyn, Community Board: 7.** Variance (§72-21) to permit the development of a school (UG 3) (Brooklyn Rise Charter School) contrary to ZR §42-10 (use), ZR §43-26 (rear yard), ZR §43-43 (street wall height, setback and sky exposure plane). 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

**TELECONFERENCE PUBLIC HEARINGS
JUNE 28-29 & 30, 2021, MONDAY-WEDNESDAY
10:00 A.M. and 2:00 P.M.**

NOTICE IS HEREBY GIVEN of teleconference public hearings, Monday, June 28, 2021, at 10:00 A.M. and 2:00 P.M., and Tuesday June 29, 2021, at 10:00 A.M. and 2:00 P.M., and June 30, 2021, at 10 A.M., to be streamed live through the Board's website (www.nyc.gov/bsa), with remote public participation, on the following matters:

SPECIAL ORDER CALENDAR

467-58-BZIII

APPLICANT – Walter T. Gorman, P.E., P.C., for (GTY-CPG) Leasing, Inc., owner; Global Partners LP, lessee.
SUBJECT – Application December 24, 2020 – Extension of Term (§11-411) of a previously approved variance permitting the operation of an Automotive Service Station (UG 16B) which expired on December 14, 2019, Waiver of the Board's Rules of Practice and Procedures. R3-2, R4B and R3X zoning districts.
PREMISES AFFECTED – 172-11 Northern Boulevard, Block 5363, Lot 1, Borough of Queens.
COMMUNITY BOARD # 7Q

81-74-BZIV

APPLICANT – Gerald J. Caliendo, RA, AIA, for 57 Avenue Market Inc., owner.
SUBJECT – Application August 4, 2020 – Extension of Time to Obtain a Certificate of Occupancy for a previously approved variance (§72-21) which permitted the operation of a supermarket (UG 6) which expired on July 23, 2020. C1-2/R6A & R6B zoning district.
PREMISES AFFECTED – 97-27 57th Avenue, Block 1906, Lot 1, Borough of Queens.
COMMUNITY BOARD #4Q

42-09-BZIII

APPLICANT – Sheldon Lobel, P.C., for Arrow Linen Supply Co., Inc., owner.
SUBJECT – Application June 5, 2020 – Extension of Term of a previously approved variance (expired July 12, 1992) which permitted the extension of a legal non-conforming commercial laundry use (Arrow Linen Supply) within a residential zoning district which expired on August 11, 2019; Extension of Time to Obtain a Certificate of Occupancy which expired on February 11, 2010; Waiver of the Board's Rules. R5B zoning district.
PREMISES AFFECTED – 441-467 Prospect Avenue, Block 1113, Lot(s) 61,73, Borough of Brooklyn,
COMMUNITY BOARD #3BK

2017-240-BZ

APPLICANT – Troutman Pepper LLC, for 310 Lenox Avenue LLC & RM 310 Lenox LLC., owner.
SUBJECT – Application February 12, 2021 – Extension of Term of a previously approved Special Permit (§73-244) permitting an eating and drinking establishment without restrictions and no limitation on entertainment and dancing (UG 12A) (Red Rooster Harlem Restaurant located on the cellar level which expires on expiring March 27, 2021. C4-4A (Special 125th Street District).
PREMISES AFFECTED – 310 Lenox Avenue, Block 1723, Lot 69, Borough of Manhattan.
COMMUNITY BOARD # 10M

APPEAL CALENDAR

2021-11-BZY

APPLICANT – Kenneth K. Loweinstein, for 559 Development, LLC, owner.
SUBJECT – Application January 21, 2021 – Extension of Time to Complete Construction and Obtain a Certificate of Occupancy (§11-332) for a period of two years from December 20, 2020.
PREMISES AFFECTED – 38-59 11th Street, Block 00473, Lot 559, Borough of Queens.
COMMUNITY BOARD #2Q

Margery Perlmutter, Chair/Commissioner

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**PUBLIC HEARINGS
MONDAY-TUESDAY MORNING
MAY 10-11, 2021, 10:00 A.M.**

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

SPECIAL ORDER CALENDAR

2016-4340-BZ

APPLICANT – Law Office of Vincent L. Petraro, PLLC, for Flushing Holding, LLC, owner.

SUBJECT – Application November 25, 2020 – Amendment of a previously approved Special Permit (§73-66) to permit the construction of a new building in excess of the height limits established under ZR §61-21. The amendment seeks to increase the height of the building contrary to the previous approval. C4-2 zoning district.

PREMISES AFFECTED – 131-02 40th Road, Block 5066, Lot 150, Borough of Queens.

COMMUNITY BOARD #7Q

ACTION OF THE BOARD – Application granted.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta5
Negative:.....0

THE RESOLUTION –

The decisions of the Department of Buildings, dated November 4, 2020, acting on Application Nos. 421374845, 421374881, and 421405642, read in pertinent part: “Herewith propose increased building height contrary to the original BSA approval (Calendar No 2016-4340-BZ) granted as per ZR 73-66 for building height exceeding the maximum height limitation by the flight obstruction map of LaGuardia Airport as per ZR 61-20.”

This is an application for an amendment to a special permit, previously granted under Z.R. §§ 73-66 and 73-03, to allow a height increase for the development of three buildings that would not comply with height restrictions applicable near major airports (Z.R. § 61-20).

A public hearing was held on this application on February 22, 2021, after due notice by publication in *The City Record*, with continued hearings on March 22, 2021, and April 26, 2021, and then to decision on May 10, 2021.

Vice-Chair Chanda performed an inspection of the Premises and surrounding neighborhood, and Community Board 7, Queens, recommends approval of this application.

I.

The Premises are 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. With 116,157 square feet of lot area, the Premises are improved with three buildings under construction.

The Board has exercised jurisdiction over the Premises since February 13, 2017, when, under the subject calendar number, the Board granted a special permit to allow the construction of buildings that would exceed height limits applicable near major airports on condition that the maximum height of all buildings, including all appurtenances, be 228 feet AMSL or 216 feet AGL; that all structures be marked and lighted in accordance with FAA Advisory that all structures 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, be reported immediately so a Notice to Airmen (“NOTAM”) can be issued and reported against as soon as normal operation is restored; that temporary construction equipment 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 require separate notice to the FAA; 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 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, 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; and that substantial construction be completed in accordance with Z.R. § 73-70.

II.

The applicant now proposes to develop three buildings with a total of 557,528 square feet of floor area (4.8 FAR) (including 282,262 square feet of residential floor area, 1,500 square feet of community facility floor area, and 273,766 square feet of commercial floor area) (the “Proposed Buildings”).

The Proposed Buildings would not have their highest points exceed 240 feet NAVD88 at the following six points: Aeronautical Study No. 2020-AEA-33-OE—Hotel Northeast (40-45-19.96N, 73-50-12.39W); Aeronautical Study No. 2020-AEA-34-OE—Hotel North (40-45-20.17N, 73-50-13.44W); Aeronautical Study No. 2020-AEA-35-OE—Hotel Northwest (40-45-19.63N, 73-50-13.63W); Aeronautical Study No. 2020-AEA-36-OE—Hotel Southeast (40-45-19.51N, 73-50-12.06W); Aeronautical Study No. 2020-AEA-37-OE—Hotel Southwest (40-45-18.90N, 73-50-13.10W); and Aeronautical Study No. 2018-AEA-14987-OE—Hotel Center (40-45-19.59N, 73-50-12.93W).

And the Proposed Buildings would not have their

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highest points exceed 243 feet at ten other points: Aeronautical Study No. 2020-AEA-38-OE—South Tower Center—Southwest (40-45-17.90N, 73-50-15.18W); Aeronautical Study No. 2020-AEA-39-OE—South Tower Northwest (40-45-18.43N, 73-50-15.58W); Aeronautical Study No. 2020-AEA-40-OE—South Tower Northeast (40-45-19.01N, 73-50-14.22W); Aeronautical Study No. 2020-AEA-45-OE—South Tower Southeast (40-45-18.47N, 73-50-13.82W); Aeronautical Study No. 2018-AEA-14904-OE—South Tower Center (40-45-18.43N, 73-50-14.77W); Aeronautical Study No. 2020-AEA-41-OE—North Tower Southeast (40-45-19.83N, 73-50-14.65W); Aeronautical Study No. 2020-AEA-42-OE—North Tower Southwest (40-45-20.13N, 73-50-16.16W); Aeronautical Study No. 2020-AEA-43-OE—North Tower Northwest (40-45-20.73N, 73-50-15.96W); Aeronautical Study No. 2020-AEA-44-OE—North Tower Northwest (40-45-20.43N, 73-50-14.45W); and Aeronautical Study No. 2018-AEA-14909-OE—North Tower Center (40-45-20.29N, 73-50-15.36W).

The Proposed Buildings reflect height increases from those previously approved by the Board and could not be constructed as of right because the Premises are located within a “flight obstruction area” for La Guardia Airport and because the Proposed Buildings would penetrate the allowable heights ranging from 172 feet NAVD88 to 215 feet NAVD88. Z.R. § 61-20.

III.

The applicant submits that these proposed height increases are consistent with the Board’s required findings. For instance, this application has been “refer[red] . . . 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.” Z.R. § 73-66.

Having reviewed application materials for construction of the Proposed Buildings, the Federal Aviation Administration issued Determinations of No Hazard to Air Navigation to the above study points (the “FAA No Hazard Determinations”), which the applicant submitted to the record along with a concurring determination by the Port Authority of New York and New Jersey.

Accordingly, the record reflects, and the Board acknowledges, that the Federal Aviation Administration has again issued a satisfactory report that the Proposed Buildings “will [not] constitute a danger to the safety of air passengers or disrupt established airways” and that that the Proposed Buildings—as increased in height—“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 Buildings, to other *buildings* in the vicinity or to the safety of air passengers, and would not disrupt established airways.” Z.R. § 73-66.

The applicant maintains that the advantages to the community from construction of the Proposed Buildings outweigh any disadvantages. The applicant notes that there would be no hazards associated with the increased height to be authorized by this application, as reflected in the FAA

No Hazard Determinations.

The applicant also studied building heights in the vicinity, finding numerous buildings similar in height to the Proposed Buildings, and submits that the built environment in the surrounding area has not materially changed since the Board’s original grant.

The Board notes that its review herein is limited to the request for an increase in height above that allowed as of right. Additionally, all conditions contained in the FAA No Hazard Determination have been adopted and incorporated into the Board’s grant herein, so any act violating the FAA No Hazard Determination further constitutes a violation of this decision and the Zoning Resolution.

Accordingly, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantages to the community at large from amending this special permit is outweighed by the advantages to be derived by the community. Z.R. § 73-03(a).

Based on the foregoing, the Board finds that, with this amendment, the evidence in the record continues to support the findings required to be made under Z.R. §§ 73-66 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 amend the resolution, dated February 5, 1991, as amended through March 19, 2002, so that as amended this portion of the resolution shall read: “to *permit* a height increase for the development of three buildings that would not comply with height restrictions applicable near major airports (Z.R. § 61-20); *on condition* that all work, operations, and site conditions shall conform to drawings filed with this application marked “Received April 6, 2021”—fifteen (15) sheets; and *on further condition*:

THAT the buildings shall not have their highest points—including appurtenances—exceed 240 feet NAVD88 and 243 feet NAVD88, as illustrated on the Board-approved drawings;

THAT all conditions imposed by the Federal Aviation Administration in its Determinations of No Hazard to Air Navigation—under Aeronautical Study Nos. 2020-AEA-33-OE (40-45-19.96N, 73-50-12.39W), 2020-AEA-34-OE (40-45-20.17N, 73-50-13.44W), 2020-AEA-35-OE (40-45-19.63N, 73-50-13.63W), 2020-AEA-36-OE (40-45-19.51N, 73-50-12.06W), 2020-AEA-37-OE (40-45-18.90N, 73-50-13.10W), 2018-AEA-14987-OE (40-45-19.59N, 73-50-12.93W), 2020-AEA-38-OE (40-45-17.90N, 73-50-15.18W), 2020-AEA-39-OE (40-45-18.43N, 73-50-15.58W), (40-45-19.01N, 73-50-14.22W), 2020-AEA-45-OE (40-45-18.47N, 73-50-13.82W), 2018-AEA-14904-OE (40-45-18.43N, 73-50-14.77W), 2020-AEA-41-OE (40-45-19.83N, 73-50-14.65W), 2020-AEA-42-OE (40-45-20.13N, 73-50-16.16W), 2020-AEA-43-OE (40-45-20.73N, 73-50-15.96W), 2020-AEA-44-OE (40-45-20.43N, 73-50-14.45W), and 2018-AEA-14909-OE (40-45-20.29N, 73-50-15.36W)—shall be followed;

THAT all structures shall be marked and lighted in accordance with FAA Advisory that all structures shall be

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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 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 shall be e-filed with the FAA at least 60-90 days prior to exceeding the greatest structure AGL height to prevent construction delays;

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. 2016-4340-BZ”), shall be obtained within four years and an additional six months, in light of the current state of emergency declared to exist within the City of New York resulting from an outbreak of novel corona virus disease, by November 10, 2025;

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 10, 2021.

599-76-BZII

APPLICANT – Eric Palatnik, PC, for Jeffrey Mink, owner.
SUBJECT – Application March 3, 2020 – Amendment and Extension of Term of a previously approved Variance (72-21) which permitted the operation of a two-story (UG 17) accessory storage and shipping building (FM Brush Company) which expired on December 21, 2016. The amendment seeks to amend the Board’s condition of term to re-instate the variance; Waiver of the Board’s Rules of Practice and Procedures. R4-1 zoning district.
PREMISES AFFECTED – 72-02 72nd Place, Block 03664, Lot 7, Borough of Queens.

COMMUNITY BOARD #5Q

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 28-29, 2021, at 10 A.M. for decision, hearing closed.

282-79-BZ

APPLICANT – David L Businelli, for 1745 Forest Avenue Corp., Anthony DiLeo, President, owner; 1745 Operating LLC, lessee.

SUBJECT – Application June 11, 2019 – Amendment to a condition of term for a previously approved Variance (§72-21) which permitted an accessory off-site parking facility accessory to an eating and drinking establishment located on the opposite side of the street which expired on July 24, 2009; Waiver of the Board’s rules. R3A zoning district.

PREMISES AFFECTED – 840 Richmond Avenue, Block 1147, Lot(s) 1, Borough of Staten Island.

COMMUNITY BOARD #1SI

ACTION OF THE BOARD – Laid over to June 28-29, 2021, at 10 A.M., for continued hearing.

105-81-BZ

APPLICANT – David L. Businelli, for 235 Forest Associates, owner; George Sieghardt, lessee.

SUBJECT – Application October 2, 2019 – Extension of Term of a previously approved Variance (§72-21) which permitted the operation of a commercial office building which expired on August 10, 2012; Amendment for signage, Waiver of the Board’s Rules. R3A zoning district.

PREMISES AFFECTED – 235 Forest Avenue, Block 130, Lot(s) 44, Borough of Staten Island.

COMMUNITY BOARD #5SI

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 28-29, 2021, at 10 A.M. for decision, hearing closed.

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274-00-BZ

APPLICANT – Troutman Sanders LLP c/o Jeremiah H. Candreva, Zumpano Patricios & Popok Land Holdings, LLC owners.

SUBJECT – Application January 22, 2021 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of office use (UG 6) contrary to underlying use regulations which expired on February 27, 2021; Extension of Time to Obtain a Certificate of Occupancy which expired on October 22, 2020; Waiver of the Board’s Rules of Practice and Procedures. R10, Murray Hill Historic District.

PREMISES AFFECTED – 134 East 38th Street, Block 893, Lot(s) 271, Borough of Staten Island.

COMMUNITY BOARD #6M

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 May 24-25, 2021, at 10 A.M. for decision, hearing closed.

21-10-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Aquilla Realty Company, Inc., owner; Burger Brother Hutch Restaurant Associates LP dba Burger King, lessee.

SUBJECT – Application September 14, 2020 – Extension of Term of a previously approved Special Permit (§73-243) which permitted the operation of an accessory drive-through to an eating and drinking establishment which expired on September 14, 2020; Extension of Time to Obtain a Certificate of Occupancy which expired on February 13, 2020; Waiver of the Board’s Rules of Practice and Procedures. C1-2/R4A zoning district.

PREMISES AFFECTED – 2801 Roebbling Avenue, Block 5386, Lot 0001, Borough of Bronx.

COMMUNITY BOARD #10BX

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 28-29, 2021, at 10 A.M. for decision, hearing closed.

2017-204-BZ

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

SUBJECT – Application March 3, 2021 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) to permit the enlargement of a non-conforming Automotive Repair Facility (UG 16B) contrary to ZR §52-22 which expired on March 27, 2019. R4A zoning district.

PREMISES AFFECTED – 124-14 20th Avenue, Block

04169, Lot 21, Borough of Queens.

COMMUNITY BOARD #7Q

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 May 24-25, 2021, at 10 A.M. for decision, hearing closed.

APPEALS CALENDAR

2019-68-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Kings Loop Realty LLC, owner.

SUBJECT – Application March 29, 2019 – Proposed construction of a one-story warehouse building (UG 16) on site not fronting on a mapped street contrary to General City Law §36. M3-1 Special South Richmond.

PREMISES AFFECTED – 235 Industrial Loop, Block 7206, Lot 314, Borough of Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Application granted on condition.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta5
Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings, dated February 17, 2019, acting on Alteration Type New Building Application No. 520363240, reads in pertinent part:

“1. 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.”

This is an application under General City Law § 36 to permit, in an M3-1 zoning district, in the Special South Richmond Development District, the construction of a building that does not front on a mapped street.

A public hearing was held on this application on March 24, 2020, after due notice by publication in *The City Record*, with continued hearings on June 2, 2020 and March 23, 2021, and then to decision on May 10, 2021. Vice-Chair Chanda, Commissioner Ottley-Brown, and Commissioner Scibetta performed inspections of the Premises and surrounding neighborhood. Community Board 3, Staten Island, recommends approval of this application.

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The Premises are located on the east side of Industrial Loop, 1,798 feet north of the intersection of Industrial Loop and Arthur Kill Road, within an M3-1 zoning district and in the Special South Richmond Development District, on Staten Island. With approximately 425 feet of frontage on Industrial Loop, 150 feet of depth, and 60,247 square feet of lot area, the Premises are currently used as a parking lot with storage of trucks, construction vehicles, and trailers.

The Board has exercised jurisdiction over the Premises since October 17, 2017, when, under BSA Cal. No. 2016-4263-A, the Board granted an appeal under General City Law § 36 to permit the construction of two-story building not fronting on a mapped street and to be used as a warehouse and office on condition that all construction substantially conform to the drawings filed with the appeal; a certificate of occupancy be obtained within four years, by October 17, 2021; the approval be limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings; 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 plans or configurations not related to the relief granted.

The applicant represents that no construction proceeded pursuant to the prior grant and now proposes to construct a one-story warehouse building (Use Group 16) with 37,233 square feet of floor area (0.61 FAR), seventeen accessory parking spaces, and three loading berths. The applicant represents that the proposed building will comply and conform to all requirements of the underlying zoning district and the Special South Richmond Development District. The applicant states that the proposed building would front on both Industrial Loop and Derick Court, both of which are currently existing, paved, and improved two-way roads. Both Industrial Loop and Derick Court are paved and improved to varying widths between 34 feet and 40 feet.

Over the course of hearings, the Board raised questions about the nature of the pending and proposed tax lot merger; the conditions for the maintenance of Derick Court and Industrial Loop; and sidewalk continuity along Derick Court.

In response, the applicant submitted an updated tax map displaying a single tax and zoning lot; the two recorded declarations pertaining to the members of the Arthur Kill Association and their responsibility for the maintenance of the egress and sewer on Derick Court and Industrial Loop; a master plan showing the internal sanitary, domestic, and fire connections for the proposed site and surrounding areas; and revised plans which show a slight extension of a proposed curb and permits the retention of an existing utility pole at the subject site while maintaining access and maneuverability at the subject site and adjoining properties and is in line with the neighborhood character.

By letter dated March 16, 2021, the Fire Department states that the Bureau of Operations and Fire Prevention conducted an inspection of the Premises to determine

compliance with the New York City Fire Code and Construction Code. Based upon the inspections, numerous violation orders were issued and confiscation of hazardous materials throughout the development. After compliance was met for these violation orders, the Fire Department hereby releases its "Letter of No Objection" for the foregoing application. The proposed development will be provided with a fire suppression system (sprinkler) throughout. There is an existing hydrant, located on Industrial Loop for a distance of less than 250 feet. In addition to the filing with the Fire Department, the applicant is also required to call the Bureau of Facilities Management, Plant Operations Engineering office to schedule an appointment to evaluate the plans for any municipal fire alarm box requirements. To expedite their review, applicant should provide a survey of all fire alarm facilities (alarm boxes and FDNY manholes) within a two block radius of the development. If no boxes exist within 1,000 feet of the site, applicant should indicate all utilities poles with their I.D. numbers. It is further understood that the applicant must comply with all legal requirements, including those set forth in the New York City Fire Code and the New York City Construction Code. The Bureau of Fire Prevention will continue to inspect these Premises and enforce all applicable rules and regulations. Based on the foregoing, the Fire Department has no remaining objections to this application.

By letter dated March 11, 2021, the Department of Environmental Protection ("DEP") states that based on its review of DEP maps, there are no sewers in Industrial Loop at the Premises. There is an 8" diameter (dia.) private water main in Industrial Loop to the North of Arthur Kill Road. No existing water mains or sewers are crossing the privately owned referenced 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 Premises. The proposed sanitary and storm will be discharged as per the certified Site Connection Proposal (SCP) # 12224, Phase 49 of 62. It is anticipated that the water connection, connected to the 8" dia. Water main in Industrial Loop, and the proposed sanitary and storm discharge will be maintained by the owner and will not be maintained by the City of New York. Based on the above, the Department of Environment Protection has no objection to this application.

Accordingly, 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 January 10, 2019, acting on New Building Application No. 520363240, under the powers vested in the Board by Section 36 of the General City Law, to *permit* the construction of a building 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 April 1, 2019" - one (1) sheet; and *on further condition*:

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THAT the Premises shall be fully sprinklered, which shall be designed and installed in accordance with the New York City Building Code;

THAT the development shall be provided with a fire suppression system (sprinkler) throughout;

THAT there be an existing fire hydrant located within 250 feet of the Premises;

THAT in addition to the filing with the Fire Department, the applicant is also required to call the Bureau of Facilities Management, Plant Operations Engineering office to schedule an appointment to evaluate the plans for any municipal fire alarm box requirements. To expedite their review, applicant should provide a survey of all fire alarm facilities (alarm boxes and FDNY manholes) within a two-block radius of the development. If no boxes exist within 1,000 feet of the site, applicant should indicate all utilities poles with their I.D. numbers;

THAT the applicant must comply with all legal requirements, including those set forth in the New York City Fire Code and the New York City Construction Code;

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. 2019-68-A”), shall be obtained within four years and an additional six months in light of the current state of emergency declared to exist within the City of New York resulting from an outbreak of novel corona virus disease, by November 20, 2025;

THAT the Department of Buildings must ensure that the Board-approved plans comply to the maximum extent feasible with all applicable zoning regulations as if the unimproved street were not mapped;

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 10, 2021.

2019-195-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for CAM LLC, owner.

SUBJECT – Application July 22, 2019 – Proposed development of a one-story warehouse (UG 16) not fronting on a mapped street contrary to General City Law §36. M3-1 Special South Richmond District.

PREMISES AFFECTED – 191 Industrial Loop, Block 7206, Lot 299, Borough of Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Application granted.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated June 21, 2019, acting on DOB Application No. 520375576, reads in pertinent part: “The street giving access to proposed building is not duly placed on the official map of the City of New York therefore: (A) No Certificate of Occupancy can be issued pursuant to Article 3, Section 36 of the General City Law. (B) Proposed construction does not have at least 8% of the total perimeter of building(s) fronting directly upon a legally mapped street or frontage space contrary to Sec. 502.1 of the 2014 NYC Building Code.”

This is an application requesting waiver of the General City Law § 36 requirement that the proposed manufacturing warehouse building be accessed from a legally mapped street and to instead allow the proposed building to be accessed from an existing unmapped street.

I.

A public hearing was held on this application on April 21, 2020, after due notice by publication in *The City Record*, with continued hearings on June 15, 2020, and March 23, 2021, and then to decision on May 10, 2021. Vice-Chair Chanda and Commissioner Ottley-Brown performed inspections of the Premises and surrounding area. Community Board 3, Staten Island, recommends approval of this application.

II.

The Premises are located on the east side of Industrial loop, an unmapped but improved and open privately owned street, between Derick Court and Arthur Kill Road. Located in an M3-1 zoning district and in the Special South Richmond Development District, the Premises have approximately 104 feet of frontage along Industrial Loop, 153 feet of depth, 15,865 square feet of lot area, and are currently vacant but used for parking commercial vehicles.

III.

The General City Law provides that municipalities “may establish an official map of the city” that is “deemed to be final and conclusive with respect to the location and width of streets, highways, drainage systems and the location of parks shown thereon” in order “to conserve and promote the public health, safety and general welfare.”

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General City Law § 26. Under Section 198 of the New York City Charter, the City Map serves this purpose within the City of New York.

Consistent with this framework, Section 36(2) of the General City Law (emphasis added) provides, in pertinent 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 *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 make any reasonable exception and issue the certificate of occupancy subject to conditions that will protect any future street or highway layout. Any such decision shall be subject to review under the provisions of article seventy-eight of the civil practice law and rules.

This provision vests the Board with the authority, under certain circumstances, to “make any reasonable exception” to the requirement that “any building” issued a certificate of occupancy have “access” to “a street or highway . . . duly placed on the official map or plan.” *Id.*

To make such exception, the Board requires an applicant to affirmatively demonstrate the findings set forth in General City Law § 36(2): that both enforcing the mapped-street access requirement “would entail practical difficulty or unnecessary hardship” and that “the circumstances of the case do not require the structure to be related to existing or proposed streets or highways.” General City Law § 36(2).

IV.

The applicant proposes to develop the Premises with a one-story, warehouse building (Use Group 16) with 9,060 square feet of floor area (0.57 FAR) and one loading berth,

and the applicant represents that the proposed building would be in conformance with applicable zoning regulations of the M3-1 district and Special South Richmond Development District. The proposed building would be accessed by Industrial Loop, which is not laid out on the City Map. Accordingly, the applicant requests that exceptions be made to the General City Law and the New York City Building Code.

First, the applicant notes that Industrial Loop is a built street that is open and in use, but it privately owned and is not a final mapped street. Industrial Loop is paved and improved adjacent to the Premises to a width of 34 feet in front of the Premises and currently provides access to commercial and manufacturing uses, as well as other vacant lots.

The applicant states that, as the subject lot is only accessible from the unmapped Industrial Loop, the requirement that the Premises be accessible from a street duly placed on the official City Map results in practical difficulty and unnecessary hardship in development of the subject lot and that denial of the requested relief would bar development of the Premises. The applicant argues that, without the use of Industrial Loop, access to the Premises would not be possible and the proposed building need not be related to any existing mapped streets or highways.

At hearing, the Board requested that, in the absence of a Builders Pavement Plan, the applicant amend the plans to provide sidewalk continuity at the Premises. In response, the applicant modified the drawings to provide additional details with respect to the property between the curb line and lot line and proposes a curb consistent with the roadway boundaries within the Industrial Loop development and adjacent lots.

The Fire Department states, by letter dated March 16, 2021, that an inspection of the entire development was conducted by members of Fire Operations and Fire Prevention to determine compliance with the New York City Fire Code and Construction Code. Based on the inspections, numerous violation orders were issued and hazardous materials throughout the development were confiscated. After compliance was met for these violation orders, the Fire Department has no objection to the application. The proposed development will be provided with a fire suppression system (sprinkler) throughout. There is an existing fire hydrant located on Industrial Loop for a distance of less than 250 feet. In addition to filing with the Fire Department, the applicant is required to call the Bureau of Facilities Management Plant Operations Engineering Office to schedule an appointment to evaluate plans for any municipal fire alarm box requirements. To expedite review, provide a survey of all fire alarm facilities (alarm boxes and FDNY manholes) within a two-block radius of the development. If no boxes exist within 1000 feet of the Premises, indicate all utility poles with their ID numbers. It is further understood that all legal requirements, including those set forth in the New York City Fire Code and the New York City Construction Code must be complied with by the applicant. Based on the foregoing, the Fire Department has

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no objection to the application, as the Bureau of Fire Prevention will continue to inspect the Premises and enforce all applicable rules and regulations.

The Department of Environmental Protection (“DEP”) states, by letter dated March 30, 2021, that based on the DEP maps, there are no sewers in Industrial Loop at the above referenced location. There is an 8" diameter private water main in Industrial Loop to the north of Arthur Kill Road. No existing water mains or sewers are crossing the privately owned referenced 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 above referenced location. The proposed sanitary and storm will be discharged as per the Site Connection Proposal (SCP) # 17677, Phase 36. It is anticipated that the water connection, connected to the 8" diameter water main in Industrial Loop, and the proposed sanitary and storm discharge will be maintained by the owner and will not be maintained by the City of New York. Based on the above, DEP has no objections to the application.

Accordingly, 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 June 21, 2019, acting on DOB Application No. 520375576, under the powers vested in the Board by Section 36 of the General City Law, to *permit* the construction of a building 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 “March 17, 2021”—One (1) sheet; and *on further condition*:

THAT the applicant shall call the Bureau of Facilities Management Plant Operations Engineering Office to schedule an appointment to evaluate plans for any municipal fire alarm box requirements, provide a survey of all fire alarm facilities (alarm boxes and FDNY manholes) within a two-block radius of the development and, if no boxes exist within 1000 feet of the Premises, indicate all utility poles with their ID numbers;

THAT the proposed sanitary and storm discharge shall be maintained by the owner and will not be maintained by the City of New York;

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. 2019-195-A”), shall be obtained within four years and an additional six months in light of the current state of emergency declared to exist within the City of New York resulting from an outbreak of novel coronavirus disease, by November 19, 2025;

THAT the Department of Buildings must ensure that the Board-approved plans comply to the maximum extent feasible with all applicable zoning regulations as if the unimproved street were not mapped;

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 10, 2021.

2020-78-A & 2020-79-A

APPLICANT – Terminus Group, LLC, for John Barbieri, owner.

SUBJECT – Application October 8, 2020 – Common Law Vesting to allow for the reinstatement of alteration permits to obtain a Certificate of Occupancy under the former R3-2 zoning regulations.

PREMISES AFFECTED – 90 & 92 Elm Street, Block 00158, Lot(s) 0081, 0082. Borough of Staten Island.

COMMUNITY BOARD #1SI

ACTION OF THE BOARD – Application granted.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

This is an application, based on the common-law doctrine of vested rights, to establish the right to obtain certificates of occupancy and to renew building permits lawfully issued by the Department of Buildings, acting on Alteration Type I Application Nos. 500219961 and 500219970 (the “Alteration Applications”), before the effective date of an amendment to the Zoning Resolution, which have lapsed as a result of such amendment.

A public hearing was held on this application on March 9, 2021, after due notice by publication in *The City Record*, with a continued hearing on April 27, 2021, and then to decision on May 10, 2021. Community Board 1, Staten Island, recommends approval of this application.

I.

The Premises are contiguous tax lots located on the west side of Elm Street, between Henderson Avenue and Richmond Terrace, within an R3A zoning district and in a Lower Density Growth Management Area, on Staten Island. With approximately 31 feet of frontage (tax lot 81) and 26 feet of frontage (tax lot 82) along Elm Street, and 6,559 square feet of lot area, the Premises are occupied by two, two-family semi-detached buildings (the “Residences”).

The Board notes that Department of Building (“DOB”) Alteration Type I permits 500219961 and 500219970 (the “Permits”), which authorized the alteration of an existing two-family detached home into two, two-

MINUTES

family semi-detached homes were issued on January 24, 1997. By letter dated April 7, 2021, DOB states that the Permits were lawfully issued, authorizing the alteration into the Residences.

However, on December 3, 2003 (the “Effective Date”), the City Council voted to adopt the Northeast North Shore Rezoning, which rezoned the Premises from an R3-2 zoning district to an R3A zoning district. The Permits lapsed by operation of law on the Rezoning Date because the plans did not comply with the new R3A zoning district regulations.

Further, on August 12, 2004, the City adopted Lower Density Growth Management Area regulations, which required two-family semi-detached homes in R3-1, R3-2 and R4-1 zones to be situated on a lot that has a minimum lot width of 33 feet and lot area of 3,135 square feet.

II.

“Under New York law, a property owner has no right to an existing land-use benefit unless that right has ‘vested.’ In New York, a vested right can be acquired when, pursuant to a legally issued permit, the landowner demonstrates a commitment to the purpose for which the permit was granted by effecting substantial changes and incurring substantial expenses to further the development. *Town of Orangetown v. Magee*, 88 N.Y.2d 41, 47, 643 N.Y.S.2d 21, 665 N.E.2d 1061 (1996). In order to gain the vested right, the landowner’s actions relying on a valid permit must be so substantial that the municipal action results in serious loss rendering the improvements essentially valueless,” *Cine SK8, Inc. v. Town of Henrietta*, 507 F.3d 778, 784 (2d Cir. 2007) (internal quotation marks omitted); *see also Zahra v. Town of Southold*, 48 F.3d 674, 681 (2d Cir. 1995) (recognizing a “protectible ‘property interest’ in a benefit that affects land use—i.e. a building permit, certificate of occupancy, zoning variance, excavation permit or business license”).

Notwithstanding this general framework, “there is no fixed formula which measures the content of all the circumstances whereby a party is said to possess a vested right,” *Estate of Kadin v. Bennett*, 163 A.D.2d 308, 309 (N.Y. App. Div. 1990) (internal quotation marks omitted).

A.

First, as noted above, the record shows that the owner of the Premises obtained lawfully issued permits to construct the Residences in accordance with the Alteration Applications before the Effective Date.

B.

Second, the applicant submitted evidence that, in accordance with the Permits authorizing work associated with the Alteration Applications, the owner has effected substantial construction to further development of the Residences.

In particular, the applicant submits that all construction was completed in late 1997, and the Premises has been occupied and used as two, two-family semi-detached residences since 1998, well before the rezoning in 2003 or the text amendment in 2004. The applicant submitted an architect’s letter stating that the current

conditions of the Premises conform to the approved DOB plans. Further, an affidavit by the owner attests to construction being completed while the permits were still active in 1997. Accordingly, the record reflects that, in accordance with the building permits authorizing work associated with the Alteration Applications, the owner has effected substantial construction to further development of the Residences.

C.

Third, the applicant submitted evidence that, prior to the Effective Date, the owner expended approximately \$130,000 to convert the Premises to its existing use, comprised of \$40,000 in soft costs and \$90,000 in construction costs. Accordingly, the record reflects that the owner has incurred substantial expenses to further development of the Residences.

D.

Fourth, the applicant submitted evidence that, if the right to obtain certificates of occupancy for the Residences were denied, the owner would suffer serious loss—that is, substantial economic harm.

In particular, the applicant submits that alteration of the Premises to comply with applicable zoning regulations will require converting the Residences back to a two-family detached residence. This would result in a reduction in occupancy from four rentable units to two, displacing the current Section 8 low-income tenants during the time of construction, and resulting in a 50% loss in rental income, as current rental income for all four units at the site is \$6,600 per month. The applicant submitted an appraisal report concluding that the value of each structure is \$525,000 for 90 Elm Street and \$548,000 for 92 Elm Street, a total of \$1,073,000, and states that the value of the Premises as a two-family detached structure is \$716,000, representing a loss of \$357,000 from the existing semi-detached homes.

Further, the applicant estimates that the cost to convert the Premises back to a two-family detached building would be \$102,475 and \$20,300 respectively, for a total of \$122,774 in overall costs. None of the prior costs associated with converting the building to two, two-family semi-detached homes, approximately \$130,000, can be re-used if the structure needed to be converted back to a two-family detached home.

Because of the substantial nature of the financial losses pertaining to redesigning the Residences to comply with current zoning regulations, it is unnecessary for the Board to determine the full extent of the economic harm that would be inflicted were common-law vested rights denied herein.

Accordingly, the record reflects that, if the right to obtain certificates of occupancy for the Residences were denied, the owner would suffer serious loss in the form of substantial economic harm.

III.

Based on the foregoing, the Board finds that the evidence in the record supports the establishment of a right to obtain certificates of occupancy for the Residences, based

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on the common-law doctrine of vested rights, and that the applicant has substantiated a basis to warrant renewal of building permits authorizing work associated with obtaining certificates of occupancy under the Alteration Applications.

Nothing herein shall inhibit any tolling applicable by virtue of any executive order related to the current state of emergency declared to exist within the City of New York resulting from an outbreak of novel coronavirus disease.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *grant* this application, based on the common-law doctrine of vested rights, to *establish* the right to obtain certificates of occupancy and to *renew* building permits lawfully issued by the Department of Buildings, acting on Alteration Type I Application Nos. 500219961 and 500219970, before the effective date of amendments to the Zoning Resolution, which have lapsed as a result of such amendments, as well as all related permits for various work types, either already issued or necessary to complete construction and obtain certificates of occupancy, for four years and an additional six months, in light of the current state of emergency declared to exist within the City of New York resulting from an outbreak of novel coronavirus disease, expiring November 19, 2025, or such later date as may be allowed by applicable tolling.

Adopted by the Board of Standards and Appeals, May 10, 2021.

2018-68-A thru 2018-90-A

APPLICANT – Sanna & Loccisano Architects, P.C., for Rubicon SGA, LLC, owner.

SUBJECT – Application May 14, 2018 – 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.

PREMISES AFFECTED – 90, 84, 78, 72, 66, 60, 54, 48, 42, 36, 37, 43, 49, 55, 61, 67, 73, 79, 85, 91, 97, 103, 96 Santina Drive, Block 6517, Tentative Lots, 76, 80, 81, 82, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, Borough of Staten Island.

COMMUNITY BOARD #5SI

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 September 13-14, 2021, at 10 A.M. for decision, hearing closed.

2018-178-A

APPLICANT – Rampulla Associates Architects, LLP, for Sushanta Mukherjee, owner.

SUBJECT – Application November 15, 2018 – Proposed construction of a new two-story detached home not fronting on a mapped street contrary to General City Law § 36. R1-I, NA-1 zoning district.

PREMISES AFFECTED – 2 Oaktree Way aka 300 Ocean Terrace, Block 864, Lot 1 (Ten.3), 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 22-23, 2021, at 10 A.M. for decision, hearing closed.

2018-188-A & 2018-189-A

APPLICANT – Sheldon Lobel, P.C., for 3861 Realty LLC, owner.

SUBJECT – Application November 21, 2018 – Proposed construction of two two-story, single-family detached residential buildings seeking waivers of General City Law § 35, which are partially within the bed of a mapped but unbuilt portion of Clover Place. R1-2 zoning district.

PREMISES AFFECTED – 194-28 & 194-32 Dunton Avenue, Block 10509, Lot 160, Lot 61, Borough of Queens.

COMMUNITY BOARD #8Q

ACTION OF THE BOARD – Laid over to October 4-5, 2021, at 10:00 A.M. for continued hearing.

2019-190-A

APPLICANT – Sheldon Lobel, P.C., for 40-17 28th Avenue LLC, owner.

SUBJECT – Application July 15, 2019 – Appeal of a New York City Department of Buildings determination dated June 14, 2019, that parking garage with 150 parking spaces or less do not require reservoir spaces at this location and that ZR 36-521 does not require commissioner approval for parking garage layouts between 200 and 300 square feet per space if the applicant certifies and states on the Certificate of Occupancy that the garage will be fully attended. C2-2/R5 zoning district.

PREMISES AFFECTED – 40-17 28th Avenue a/k/a 25-92 41st Street, Block 684, Lot 1, Borough of Queens.

COMMUNITY BOARD #1Q

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 October 4-5, 2021, at 10 A.M. for decision, hearing closed.

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2019-255-A

APPLICANT – Shmuel D. Flaum, for Mendy Samuel Blau, owner.

SUBJECT – Application September 5, 2019 – Proposed enlargement of an existing single-family home with a portion located within the bed of a mapped street contrary to General City Law §36 and within the street widening line contrary to General City Law §35. R3X zoning district.

PREMISES AFFECTED – 621 Alonzo Road, Block 15510, Lot 0011, Borough of Queens.

COMMUNITY BOARD #14Q

ACTION OF THE BOARD – Laid over to July 22-23, 2021, at 10 A.M., for postponed Hearing.

2019-276-A

APPLICANT – Pryor Cashman LLP, for Bill Lecomplex, owner.

SUBJECT – Application October 16, 2019 – Proposed enlargement of an existing two-story with cellar single-family home located on the bed of a mapped street contrary to General City Law §35. R1-2 zoning district.

PREMISES AFFECTED – 15 Stuart Lane, Block 8103, Lot 62, Borough of Queens.

COMMUNITY BOARD #11Q

ACTION OF THE BOARD – Laid over to July 22-23, 2012, at 10 A.M., for adjourned hearing.

ZONING CALENDAR

2019-196-BZ

APPLICANT – Eric Palatnik, P.C., for Jane Goldberg, owner.

SUBJECT – Application July 22, 2019 – Special Permit (§73-36) to permit the legalization of a physical culture establishment (*La Casa Day Spa*) contrary to ZR §42-10. M1-5M zoning district.

PREMISES AFFECTED – 41 East 20th Street, Block 849, Lot 29, Borough of Manhattan.

COMMUNITY BOARD #5M

ACTION OF THE BOARD – Application withdrawn without prejudice.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta5
Negative:0

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated June 25, 2019, acting on DOB Application No. 123900467, reads in pertinent part:

“A Physical Culture Establishment is not allowed as-of-right in an M1-5M zoning district. Obtain NYC Board of Standards and Appeals (BSA)

approval.”

This is an application under Z.R. §§ 73-36 and 73-03 to legalize, on a site located within an M1-5M zoning district, the operation of physical culture establishment (“PCE”) on the second floor of an existing three-story, mixed-used commercial and residential building.

A public hearing was held on this application on June 16, 2020, after due notice by publication in *The City Record*, and then to decision on May 10, 2021. Vice-Chair Chanda performed inspections of the Premises and surrounding neighborhood. Community Board 5, Manhattan, waived recommendation of this application. The Board received one letter of support for this application.

The Premises are located on the northeast side of East 20th Street, within an M1-5M, in Manhattan. With approximately 25 feet of frontage on East 20th Street, 92 feet of depth, 2,300 square feet of lot area, the Premises are occupied by an existing three-story, mixed-use commercial and residential building.

The Board has exercised jurisdiction over the Premises since February 11, 1997, when, under BSA Cal. No. 31-96-BZ, the Board granted a special permit, pursuant to Z.R. § 73-36, to permit the legalization of a PCE (“La Casa Day Spa”) on the second floor of the Premises on condition that all work substantially conform to drawings as they apply to the objection noted and 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; all individuals practicing massage at the Premises possess valid New York State licenses for such practice which licenses be prominently displayed; this special permit be limited to a term of ten years from March 1993, to expire on February 11, 2003; the above conditions appear on the certificate of occupancy; the development, as approved, is 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 year of the grant, by February 11, 1998.

On October 21, 2003, under BSA Cal. No. 31-96-BZ, the Board waived its Rules of Practice and Procedures and amended the resolution to extend the term of the variance for 10 years, from February 11, 2003, to expire on February 11, 2013, on condition that all work substantially conform to drawings as they apply to objections noted and 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; all individuals practicing massages at the Premises hold valid New York State Licenses for such practice which licenses be prominently displayed; 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 is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; the Department of

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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.

The previously issued permit having expired, the applicant seeks to re-establish the PCE with a new term of 10 years. The applicant states that the hours of operation would be as follows: Monday through Sunday, 10:30 a.m. to 6:30 p.m. The applicant represents that the PCE continues to occupy 2,186 square feet of floor area on the second floor with therapeutic and cosmetic treatments, herbal wraps, isolation/immersion, and saunas.

The applicant states that the PCE is not equipped with fire safety protection measures because neither a fire alarm system or a sprinkler system is required for this occupancy and population.

By correspondence dated June 9, 2020, the Fire Department states that the Premises do not nor are required to have a fire suppression or fire alarm system. Based upon the foregoing, the Fire Department has no objection to the application, and the Bureau of Fire Prevention will continue to inspect these Premises and enforce all applicable rules and regulations.

At hearing, the Board expressed concerns regarding general lack of clarity within the applicant's submission to the Board centering on the Statement of Facts, which wanders between requesting an extension of term and a new PCE permit; fails to explain the place of an attached architect's letter with regard to how ADA access would work at the proposed space; and does not discuss, if, based on the age of the PCE, it had achieved a complying non-conforming use with regard to ADA access.

The Board posed these questions and requested that the applicant respond to them in its next submission.

However, by correspondence, dated April 19, 2021, the applicant requested to withdraw the application without prejudice.

Therefore, it is Resolved, that this application is hereby *withdrawn* without prejudice.

Adopted by the Board of Standards and Appeals, May 10, 2021.

2016-4463-BZ

APPLICANT – Law Office of Jay Goldstein, for The AM Foundation c/o Arthur Meisels, owner; Mosdos Satmar BP, lessee.

SUBJECT – Application December 8, 2016 – Variance (§72-21) to permit the construction of a Use Group 3 school (Mosdos Satmar BP) contrary to Use (§42-00 and §77-11), Floor Area/Floor Area Ratio (§43-122, §24-11 and §77-22), Lot Coverage (§24-11 and §77-24), Height, Setbacks and Sky Exposure Plane (§43-43) and §24-521), Front Yard (§24-34 and §77-27), Side Yard (§24-35 and §77-27), Rear Yard (§24-36 and §77-27), Side Yard Setback (§24-551 and §77-28) and Required Yard Along District Boundary (§43-301) regulations. ZR 73-19 to permit a school in an M1-1

ZD. M1-1/R5B zoning district.

PREMISES AFFECTED – 6202 14th Avenue (1372-1384 62nd St., 1370 62nd St, 6210 14th Avenue) Block 5733, Lot(s) 35, 36, 42, Borough of Brooklyn.

COMMUNITY BOARD #10BK

ACTION OF THE BOARD – Laid over to June 28-29, 2021, at 10 A.M. for adjourned hearing.

2017-145-BZ

APPLICANT – Mango & Lacoviello, LLP, for 59th Street Associates, owner; Tracy Anderson Mind and Body, LLC, lessee.

SUBJECT – Application May 10, 2017 – Special Permit (§73-36) to permit a physical culture establishment (Tracy Anderson Method) in the cellar, ground floor and ground floor mezzanine of floor of an existing building. C2-8, C1-5 and R8B zoning district.

PREMISES AFFECTED – 241 East 59th Street, Block 01414, Lot 17, Borough of Manhattan.

COMMUNITY BOARD #8M

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 14-15, 2021, at 10 A.M. for decision, hearing closed.

2019-24-BZ

APPLICANT – Eric Palatnik, P.C., for Crystal Bay Imports, LTD, owner.

SUBJECT – Application January 31, 2019 – Special Permit (§73-49) to permit accessory parking on the roof of an under-construction DOB-approved Use Group 9A automotive sales use establishment contrary to ZR §36-11. C2-2/R4 zoning district.

PREMISES AFFECTED – 2721 Nostrand Avenue, Block 7666, Lot 20, Borough of Brooklyn.

COMMUNITY BOARD #18BK

ACTION OF THE BOARD – Laid over to June 28-29, 2021, at 10 A.M. for continued hearing.

2019-91-BZ

APPLICANT – Michio Sanga, for Umer I. Chaudhry, owner.

SUBJECT – Application May 13, 2019 – Variance (§72-21) to permit the development of a two-family residence contrary to ZR §23-142 (floor area ratio); ZR §23-22 (density); ZR §23-45 (front yard); ZR §23-461 (side yard); and ZR §25-22 (parking). R3X zoning district.

PREMISES AFFECTED – 97-09 24th Avenue, Block 1091, Lot 0041, Borough of Queens.

COMMUNITY BOARD #3Q

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda,

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Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta5
Negative:.....0

ACTION OF THE BOARD – Laid over to May 24-25, 2021, at 10 A.M. for decision, hearing closed.

2019-92-BZ

APPLICANT – Michio Sanga, for Summer. Chaudhry, owner.

SUBJECT – Application May 13, 2019 – Variance (§72-21) to permit the development of a two-family residence contrary to ZR 22-12 (Use); ZR §23-142 (floor area ratio); ZR §23-22 (density); ZR §23-461 (side yard); ZR 23-47 (rear yard); and ZR §§25-22 & 25-621 (parking). R3X zoning district.

PREMISES AFFECTED – 23-39 98th Street, Block 1092, Lot 0062, Borough of Queens.

COMMUNITY BOARD #3Q

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 May 24-25, 2021, at 10 A.M. for decision, hearing closed.

2019-265-BZ & 603-71-A

APPLICANT – Sheldon Lobel, P.C., for Faith Community Church International Inc., owner.

SUBJECT – Application September 12, 2019 – Variance (72-21) to permit the conversion and enlargement of a one-story plus mezzanine House of Worship (UG 4) Faith Community Church) contrary to ZR 24-34 & 104-461 (front yards) and ZR 24-35 & 107-464 (side yards). C1-1/R2 Special South Richmond District.

PREMISES AFFECTED – 35 Giffords Lane, Block 4624, Lot 20, Borough of Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Laid over to September 13-14, 2021, at 10:00 A.M. for continued hearing.

2020-45-BZ & 127-15-BZ

APPLICANT – Goldman Harris LLC, for Queens Theater Owner LLC, owner.

SUBJECT – Application May 22, 2020 – Variance (ZR §72-21) to permit the construction of a 16-story mixed-use building contrary to Residential FAR (ZR §23-151), Commercial FAR (ZR §33-121), and Total FAR (ZR §35-311(d)); Open Space and Open Space Ratio (ZR §23-151) and (ZR §35-32), permitted obstruction in the rear yard (ZR §24-339(b)(3) and ZR §33-23(b)(3)), Density (ZR §23-22), location of eating and drinking establishment above the ground floor (ZR §32-421), and contrary to maximum height for new buildings in the Airport Approach District

(ZR §61-21); Amendment of a previously approved Special Permit (ZR §73-66) for the construction of a building in excess of the height limits in the Airport Approach District (ZR §61-21). R6 (C2-2) Zoning District.

PREMISES AFFECTED – 135-35 Northern Boulevard, Block 4958, Lot 38, Borough of Queens.

COMMUNITY BOARD #7Q

ACTION OF THE BOARD – Laid over to July 22-23, 2021, at 10 A.M. for adjourned hearing.

PUBLIC HEARINGS
MONDAY-TUESDAY AFTERNOON
MAY 10-11, 2021, 2:00 P.M.

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

ZONING CALENDAR

2017-269-BZ

APPLICANT – David L. Businelli, R.A., for Grasmere Avenue LLC, owner; Auto Pro Collision Inc., lessee.

SUBJECT – Application – Variance (§72-21) to permit the legalization of a one-story enlargement of an existing non-conforming Automotive Repair Facility (UG 16B) contrary to ZR §22-10. R3-2 zoning district.

PREMISES AFFECTED – 65 Grasmere Avenue, Block 03163, Lot 0001, Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Laid over to October 4-5, 2021, at 10 A.M. for postponed hearing.

2020-84-BZ

APPLICANT – Goldman Harris II LLC, for Institute for Community Living Inc., owner.

SUBJECT – Application October 28, 2020 – Variance (§72-21) to permit the development of income restricted supportive and affordable housing building contrary to floor area (§23-153) and density (§23-22). Special Permit (§73-623) seeking waivers of height, setback (§23-662(a)) and rear yard (§23-471 and §23-52) regulations for a Quality Housing Building. R6 zoning district.

PREMISES AFFECTED – 161 Emerson Place, Block 1909, Lot 0001, Borough of Brooklyn.

COMMUNITY BOARD #2BK

ACTION OF THE BOARD – Laid over to September 13-14, 2021, at 10 A.M. for continued hearing.

Carlo Costanza, Executive Director

BULLETIN

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June 4, 2021

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HEARINGS HELD -	TELECONFERENCE PUBLIC HEARINGS
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2021-31-BZ

65 East 83rd Street, Block 1495, Lot(s)0032, Borough of **Manhattan, Community Board: 8**. Variance (§72-21) to permit the expansion of existing school (Loyola School) contrary to ZR §§77-24 & 24-11 (lot coverage). R10 zoning district, R8 zoning district, C5-1 zoning district, Special Park Improvement District, Special Madison Avenue Preservation District, Park Avenue Historic District. R10/PI, R8B, C5-1/MP district.

2021-32-BZ

1471 East 26th Street, Block 7680, Lot(s)0018, Borough of **Brooklyn, Community Board: 14**. Special Permit (§73-622) to permit the enlargement of an existing home contrary to ZR §23-141 (FAR and OSR); ZR §23-47 (rear yard) and ZR §23-461(a) (side 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

TELECONFERENCE PUBLIC HEARINGS JULY 22-23, 2021, MONDAY-TUESDAY 10:00 A.M. and 2:00 P.M.

NOTICE IS HEREBY GIVEN of teleconference public hearings, Monday, July 22, 2021, at 10:00 A.M. and 2:00 P.M., and Tuesday July 23, 2021, at 10:00 A.M. and 2:00 P.M., to be streamed live through the Board's website (www.nyc.gov/bsa), with remote public participation, on the following matters:

SPECIAL ORDER CALENDAR

490-72-BZ

APPLICANT – Gerald J. Caliendo, RA, AIA, for Eran Gohari, owner

SUBJECT – Application August 5, 2020 – Extension of Time to Obtain a Certificate of Occupancy of a previously approved variance (§72-21) which permitted the operation of a commercial bank (UG 6) which expired on February 5, 2020; Waiver of the Board's Rules of Practice of Procedures. R4 zoning district.

PREMISES AFFECTED – 4200 Baychester Avenue, Block 5023, Lot 29, Borough of Bronx.

COMMUNITY BOARD #12BX

220-14-BZII thru 221-14-BZII

APPLICANT – Hirschen Singer & Epstein LLP, for Post Industrial Thinking LLC, owner.

SUBJECT – Application January 7, 2021 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) to permit the construction of two 3-story single family residences which expired on January 12, 2020; Waiver of the Board's Rules of Practice and Procedures. M1-1 zoning district.

PREMISES AFFECTED – 8-10 Underhill Avenue, Block 1122, Lot 37, Borough of Brooklyn.

COMMUNITY BOARD #8BK

2017-286-BZII

APPLICANT – Eric Palatnik, P.C., for Ditmars 31st Street Associates LLC, owner.

SUBJECT – Application December 18, 2020 – Amendment of a previously approved Special Permit (§73-36) which permitted the operation of a Physical Culture Establishment (*The Rock Health & Fitness*) to be located within the cellar level of a proposed three-story retail building. The Amendment seeks to permit the enlargement of the facility to include the first floor. C4-2A/R5D zoning district.

PREMISES AFFECTED – 22-06 31st Street, Block 844, Lot 40, Borough of Queens.

COMMUNITY BOARD #1Q

APPEAL CALENDAR

2019-255-A

APPLICANT – Shmuel D. Flaum, for Mendy Samuel Blau, owner.

SUBJECT – Application September 5, 2019 – Proposed enlargement of an existing single-family home with a portion located within the bed of a mapped street contrary to General City Law §36 and within the street widening line contrary to General City Law §35. R3X zoning district.

PREMISES AFFECTED – 621 Alonzo Road, Queens - Block 15510, Lot 0011

COMMUNITY BOARD #14Q

Margery Perlmutter, Chair/Commissioner

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**PUBLIC HEARINGS
MONDAY-TUESDAY MORNING
MAY 24-25, 2021, 10:00 A.M.**

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

Absent: Commissioner Ottley-Brown.

SPECIAL ORDER CALENDAR

207-68-BZ

APPLICANT – Gerald J. Caliendo, RA, AIA for Steve Green/Deerfield Meadows Inc., owner.

SUBJECT – Application September 24, 2018 – Extension of Term of a previously approved Variance (§72-21) which permitted the use manufacture and storage of paper vacuum bags (UG’s 16 & 17), with accessory parking, which expired on June 18, 2013; Waiver of the Board’s Rules. R3-2 zoning district.

PREMISES AFFECTED – 115-58 Dunkirk Street, westerly side of Dunkirk Street, 80 feet north of Newburg Street. Block 10315, Lot 134, Borough of Queens.

COMMUNITY BOARD #12Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE –

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

Negative:.....0

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

THE RESOLUTION –

This is an application for a waiver of the Board’s Rules of Practice and Procedure and an extension of term of a variance, previously granted by the Board pursuant to Z.R. § 72-21, which permitted the use, manufacture, and storage of paper vacuum bags (Use Group “UG” 16 and 17) with accessory parking and expired on June 18, 2013.

A public hearing was held on this application on February 4, 2020, after due notice by publication in *The City Record*, with continued hearings on June 29, 2020, September 14, 2020, December 14, 2020, February 8, 2021, and March 22, 2021, and then to decision on May 24, 2021. Vice-Chair Chanda and Commissioner Ottley-Brown performed an inspection of the Premises and surrounding neighborhood. Community Board 12, Queens, recommends approval of this application.

The Premises are located on the west side of Dunkirk Street, within an R3-2 zoning district, in Queens. With approximately 160 feet of frontage along Dunkirk Street Street, 163 feet of depth, 31,925 square feet of lot area, the Premises are occupied by an existing one-story, manufacturing building.

The Board has exercised jurisdiction over the Premises since June 18, 1968, when, under the subject calendar number, the Board granted a variance, pursuant to Z.R. § 72-21, to permit, in an R3-2 district, the change in

occupancy of an existing one-story building from a bowling establishment to a factory with accessory storage and accessory parking, for a term of ten years, on condition that the uses be limited to the manufacture and storage of paper bags for vacuum cleaners; the hours of operation be limited to those between 8 a.m. and 5:30 p.m. on weekdays only ; signs conform to the provisions for a C1 district; all work substantially conform to drawings filed with the application; all laws, rules, and regulations applicable be complied with; and all work be substantially completed within one year from the date of the resolution, by June 18, 1968.

On July 23, 1968, under the subject calendar number, the Board amended the variance to state that the uses be limited to the manufacture and storage of paper bags for vacuum cleaners and accessory vacuum and floor polishing accessories, excluding the use of any volatile or odorous substances, on condition that the hours of operation be limited to those between 8 a.m. and midnight on weekdays and 8 a.m. to 5:30 p.m. on Saturdays; and other than as herein amended the resolution be complied with in all respects.

On May 16, 1978, under the subject calendar number, the Board further amended the variance to extend the term for ten years, to expire on June 18, 1978, on condition that other than as herein amended the resolution be complied with in all respects; and a new certificate of occupancy be obtained within one year from the date of the amended resolution, by May 16, 1978.

On January 24, 1989, under the subject calendar number, the Board further amended the variance to extend the term for five years, to expire on June 18, 1988, to legalize the change in use of the Premises from manufacture and storage of vacuum cleaner bags (UG 17) to bulk reupholstering of furniture (UG 17) and storage of cable television wire (UG 16) on condition that the hours of operations be limited to 8:00 a.m. to midnight on weekdays, and from 8:00 a.m. to 5:30 p.m. on Saturdays, to 8:00 a.m. to 6:00 p.m. on Saturdays; all work substantially conform to the drawings as submitted with the application; all doors and windows be closed at all times during working hours; the fences and gates be maintained and repaired when necessary; the building be maintained clean and free of graffiti at all times; there be no storage or work of any kind in the open area; the open area be maintained clean and free of debris at all times; the sidewalk, curb, and curb cuts on Dunkirk Street be maintained and repaired when required; there be no more than 20 gallons of paint and no more than 3 gallons of adhesive stored on the Premises at any time and that such paint and adhesive be stored in a properly ventilated steel cabinet; the gates be locked after business hours; all loading and unloading to be done within the buildings; and the missing ceiling tiles in the bathrooms be restore and be maintained and replaced when necessary; other than as herein amended the resolution be complied with in all respects; and a new certificate of occupancy be obtained within one year from the date of the amended resolution, by January 24, 1990.

On December 6, 1994 under the subject calendar

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number, the Board waived its Rules of Practice and Procedures and further amended the variance to permit a change in occupancy from storage of cable television wire (UG 16) to general storage (UG 16) in the rear portion of the existing one-story building and extend the term of the variance for ten years, to expire on June 18, 2003, on condition that all lights be directed downward and away from adjacent residential uses; all fencing be installed and 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 herein amended the resolution be complied with in all respects; and a new certificate of occupancy be obtained within one year from the date of the amended resolution, by December 6, 1995.

On January 6, 2004 under the subject calendar number, the Board further amended the variance to extend the term for ten years, to expire on June 18, 2013, on condition that all work substantially conform to drawings filed with the application; the Premises be maintained free of debris and graffiti; any graffiti located on the Premises be removed within 48 hours; fencing contain full slats and be 100 percent opaque; the UG 16 – Storage be limited to the rear portion of the Premises; upon expiration of the term of this variance, if the applicant/owner returns to the Board of Standards and Appeals for an extension, the applicant will submit with the application a financial study examining the feasibility of residential use of the Premises; the above conditions and all conditions from prior resolutions appear on the certificate of occupancy; a new certificate of occupancy be obtained within one year of this resolution, by January 6, 2004; 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 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.

The term of the variance having expired, the applicant now seeks an extension of term and extension of time to obtain a certificate of occupancy. Because this application was filed within 30 days after the expiration of the term, the applicant requests a waiver, pursuant to § 1-14.2 of the Board's Rules of Practice and Procedures (the Board's Rules), of § 1-07.3(b)(3)(ii), of the Board's Rules to permit the filing of this application.

Over the course of hearings, the Board expressed concern over the conditions of the Premises, specifically usage of the parking lot for activities other than parking including storage, the condition and nature of the fencing material at the Premises, the applicant's failure to erect signage describing the proper usage for the areas on the Premises, the depth and height of the landscaping, and the debris at the Premises.

In response, the applicant submitted a lease addendum to be incorporated into any future lease agreements, which states, in part:

Parking Lot Usage

The Tenant acknowledges and agrees that Tenant's use of the parking lot and its use by its employees, agents and contractors shall be solely and exclusively for the parking of vehicles. The Tenant acknowledges and agrees that under no circumstances will the parking lot be used for any open storage of any items or any other purpose other than the parking of vehicles. The Tenant also agrees to comply with all applicable laws, rules, regulations, and legal requirements pertaining to the lawful use of the parking lot. The Tenant acknowledges and agrees that any breach of the foregoing provisions of this Article shall constitute a breach of this Lease, an Event of Default and shall entitle the Landlord to all remedies available under this Lease, including but not limited to Declaration of Default, a termination of the Lease, commencement of summary proceedings and attorneys' fees and costs for enforcement of same.

Additionally, the applicant submitted photographs illustrating that new metal chain link gates with 100 percent opaque screening material had been installed at the entry of the parking area and the fencing to the perimeter of the side lot had been repaired; signs stating "Parking only. No Storage" had been erected at the entry gate of the parking area, with plans demonstrating that additional signs would be placed on the building and inside the parking area; landscaping planted and concrete curb installed in the planting bed; and a clean and storage free side yard.

The Fire Department states, by letter dated January 29, 2020, that the Fire Department, Bureau of Fire Prevention has reviewed the plans submitted with this application. According to Fire Department records, these Premises have a sprinkler system and a sprinkler alarm system that has been tested, and permits are current. A permit for the use and storage of compressed gas has expired, and the unit responsible for the issuance of permits for compressed gas, has been notified and will conduct the required inspection. The Bureau of Fire Prevention will continue to inspect these Premises and enforce all applicable rules and regulations.

Based upon its review of the record, the Board has determined that the requested rule waiver, extension of term, and extension of time to obtain a certificate of occupancy are appropriate with certain conditions as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *wave* its Rules of Practice and Procedures and *amend* the resolution, dated January 6, 2004, so that as amended this portion of the resolution shall read: "to extend the term of the variance for ten years, to expire on June 8, 2023; *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked 'Received January 25, 2021 - Fifteen (15) sheets'; and *on further condition*:

THAT the term of this grant shall be limited to ten years, expiring June 18, 2023;

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THAT no open storage in parking area shall be permitted;

THAT no trash storage in parking area shall be permitted, and all trash shall only be stored inside the building until pickup;

THAT parking surfaces, building exterior, fencing, and landscaping shall be maintained in good condition and repaired or replaced as necessary to ensure such maintenance;

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

THAT the building roof shall be kept clear of all debris and maintained;

THAT planting shall be installed to comply with approved plans and maintained to ensure a dense visual and acoustical buffer between the subject use and adjacent residential use;

THAT no parking shall be permitted on the sidewalk;

THAT any storage in the side yard will void the special permit;

THAT in the future, planting shall be added along the perimeter to ensure additional buffering for any new residential development;

THAT the gate to parking shall be locked after business hours;

THAT the applicant must obtain Department of Parks approval to install street trees as shown on the plan;

THAT use of the parking lot and its use by employees, agents and contractors shall be solely and exclusively for the parking of vehicles;

THAT under no circumstances shall the parking lot be used for any open storage of any items or any other purpose other than the parking of vehicles;

THAT use of the parking lot shall comply with all applicable laws, rules, regulations, and legal requirements pertaining to the lawful use of parking lots;

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. 207-68-BZ'), shall be obtained within two years and an additional six months, in light of the current state of emergency declared to exist within the City of New York resulting from an outbreak of novel coronavirus disease, by December 8, 2023;

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."

Adopted by the Board of Standards and Appeals, May 24, 2021.

274-00-BZ

APPLICANT – Troutman Sanders LLP c/o Jeremiah H. Candreva, Zumpano Patricios & Popok Land Holdings, LLC owners.

SUBJECT – Application January 22, 2021 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of office use (UG 6) contrary to underlying use regulations which expired on February 27, 2021; Extension of Time to Obtain a Certificate of Occupancy which expired on October 22, 2020; Waiver of the Board's Rules of Practice and Procedures. R10, Murray Hill Historic District.

PREMISES AFFECTED – 134 East 38th Street, Block 893, Lot(s) 271, Borough of Staten Island.

COMMUNITY BOARD #6M

ACTION OF THE BOARD – Application granted.

THE VOTE –

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

Negative:.....0

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

THE RESOLUTION –

This is an application for a waiver of the Board's Rules of Practice and Procedures, an extension of time to obtain a certificate of occupancy, which expired on October 22, 2020, and extension of term of a previously approved variance, previously granted under Z.R. § 11-411, which permitted office occupancy (Use Group ("UG") 6) and expired on February 27, 2021.

A public hearing was held on this application on May 10, 2021, after due notice by publication in *The City Record*, and then to decision on May 24, 2021. Community Board 6, Manhattan, waives its recommendation of this application.

The Premises are located on the south side of East 38th Street, between Park Avenue and Lexington Avenue, within an R10 zoning district and in the Murray Hill Historic District, in Manhattan. With approximately 20 feet of frontage along East 38th Street, 25 feet of depth, and 499 square feet of lot area, the Premises are occupied by an existing four-story plus cellar commercial office building.

The Board has exercised jurisdiction over the Premises, and adjacent lots comprising 130-136 East 38th Street, since October 27, 1953, when, under BSA Cal. No. 479-52-BZ, the Board granted a variance to legalize the use of the site as business use (offices) and caretaker's apartment in a residence use district on condition that in all other respects the building and occupancy comply with all laws, rules and regulations applicable thereto other than as modified the same day under BSA Cal. No. 480-52-A; the variance continue only so long as the building be maintained with exterior planting and for the present occupancy of the building then under lease; there be no cooking in the cellar except in the cellar of the most easterly building at the corner of East 38th Street and Lexington Avenue, marked "kitchen to be used by caretaker" on plans; the ceiling of such cellar be fire-retarded; there be a doorway opening

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from the caretaker's apartment on the fifth floor of such corner building to the adjoining roof for exit purposes only; that any steps necessary to adjust the grade to the roof be constructed and maintained; and, all permits required be obtained and all work completed within six months, by April 27, 1954, and a certificate of occupancy be obtained.

On October 27, 1953, under BSA Cal. No. 480-52-A, as to 130-136 East 38th Street, the Board granted an appeal of the decision of the Borough Superintendent, dated June 4, 1952, on condition that the stairways throughout continue to be enclosed with existing partitions; all doors leading to exits be arranged to swing in the direction of exit; there be compliance as to Objection 7; as to Objection 9, there be compliance except that the one kitchen in the most easterly building may be permitted to be continued under the requirements of the resolution adopted the same day under BSA Cal. No. 479-52-BZ; as to Objection 11, no portion of any floor be loaded with record files or other equipment beyond the existing capacity of 40 pounds per superficial foot; the requirements of the resolution adopted the same day under Cal. No. 479-52-BZ be complied with; and, the building not be increased in height or area and a certificate of occupancy be obtained.

On April 27, 1954, under BSA Cal. No. 479-52-BZ, the Board amended the resolution to extend the time to obtain permits and complete the work on condition that, in view of the statement by the applicant that plans have been approved by the Borough Superintendent but no work had been started, all permits be obtained and all work completed within one year, by April 27, 1955.

On May 18, 1954, under BSA Cal. No. 479-52-BZ, the Board further amended the resolution such that the requirement that there be a doorway opening from the caretaker's apartment on the fifth floor of such corner building to the adjoining roof "for exit purposes only" may be modified, on condition that the stairway exits be constructed and maintained as indicated on revised plans filed with the application; a 20-inch iron ladder be constructed against the westerly wall to roof with a scuttle from the top floor to such roof as an additional means of exit; and, in all other respects, the resolution be complied with in all respects.

On December 18, 1956, under BSA Cal. No. 479-52-BZ, the Board further amended the resolution to extend the term for three years, to expire on December 18, 1959, on condition that other than as amended the resolution be complied with in all respects.

On March 8, 1966, under BSA Cal. No. 479-52-BZ, the Board further amended the resolution to extend the term for five years, to expire on March 8, 1971, on condition that other than as amended the resolution be complied with in all respects and a certificate of occupancy be obtained.

On June 5, 1973, under BSA Cal. No. 479-52-BZ, the Board further amended the resolution by adding that the Premises may be used by a single tenant as an accounting office with a maximum occupancy of 15 persons, substantially as shown on revised drawings filed with the application; the variance may continue for a term of five (5)

years, to expire on June 5, 1978, on condition that other than as amended the resolution be complied with in all respects and a new certificate of occupancy be obtained.

On June 5, 1973, under BSA Cal. No. 480-52-A, the Board amended the resolution such that the building must comply with the requirements of the resolution adopted the same day under BSA Cal. No. 479-52-BZ.

On September 11, 1979, under BSA Cal. No. 479-52-BZ, the Board further amended the resolution to extend the term for five (5) years, to expire on September 11, 1984, on condition that other than as amended the resolution be complied with in all respects, and a new certificate of occupancy be obtained within one year, by September 11, 1980.

On March 19, 1985, under BSA Cal. No. 479-52-BZ, the Board amended the resolution, pursuant to Z.R. §§ 11-411, 11-412 and 11-413, to extend the term for ten years, to expire on September 11, 1994, and to remove the condition in reference to the caretaker's apartment and change the occupancy from accounting office to general offices, on condition that signs be limited to one identification plaque located at front entrance and the size of the plaque be limited to two square feet, and occupancy of the building be limited to no more than 20 persons; other than as amended the resolution be complied with in all respects; and, a new certificate of occupancy be obtained within one year, by March 19, 1986.

On February 27, 2001, under the subject calendar number, the Board granted a variance, under Z.R. § 11-411, to re-establish office use occupancy (UG 6) on condition that all work substantially conform to plans as they apply to the objection, filed with the application; the term of the variance be limited to ten years, to expire on February 27, 2011; signage be provided in accordance with BSA-approved plans; 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.

On October 22, 2019, under the subject calendar number, the Board waived its Rules of Practice and Procedure and amended the resolution to extend the term of the variance for ten years, expiring February 27, 2021, on condition that all work and site conditions conform to drawings filed with the application; the term of the variance expire on February 27, 2021; smoke detectors be extended and installed into the building office spaces; the conditions appear on the certificate of occupancy; a certificate of occupancy, also indicating the approval and calendar number ("BSA Cal. No. 274-00-BZ"), be obtained within one year, by October 22, 2020; 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 objections cited and filed by the Department of Buildings; the approved plans be considered approved only for the portions related to the specific relief granted; and, the Department of Buildings 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.

The time to obtain a certificate of occupancy and the term of the variance having expired, the applicant now seeks an extension.

Because this application was filed within one year before the expiration of the term of the variance, and more than 30 days after the expiration of time to obtain a certificate of occupancy, the applicant requests a waiver, pursuant to § 1-14.2 of the Board's Rules of Practice and Procedures (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.

The applicant represents that, despite diligent efforts to comply, the required smoke detectors to be extended and installed into the building office spaces have not yet been completed and, as a result, the applicant has not been able to obtain a certificate of occupancy. Further, on or about March 23, 2021, the Fire Department approved the applicant's plans for the installation of the above-noted smoke detectors ("FDNY Approved Plans"). On or about April 8, 2021, the applicant's fire code consultant completed the installation of such smoke detectors, all in compliance with the FDNY Approved Plans. The Fire Department scheduled its inspection of the Premises and the installation of the requisite smoke detectors for May 20, 2021.

The Fire Department states, by correspondence dated May 6, 2021, that a review of Fire Department records indicates that plans have been filed for the fire alarm system have been filed and approved by the Fire Department. An inspection is scheduled for May 21, 2021. Based on the foregoing, the Fire Department has no objection to the application and the Bureau of Fire Prevention will continue to inspect the Premises and enforce all applicable rules and regulations.

Based upon its review of the record, the Board has determined that the requested extension of time is appropriate with certain conditions as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *waive* its Rules of Practice and Procedures and *amends* the resolution, dated February 27, 2001, as amended through October 22, 2019, so that as amended this portion of the resolution shall read: "to extend the term of the variance for ten years, to expire on February 27, 2031, and to extend the time obtain a certificate of occupancy for one year and six months, by December 1, 2022, *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked "Received January 22, 2021"—Five (5) sheets; and *on further condition*:

THAT the term of the variance shall be for ten years, to expire on February 27, 2031;

THAT smoke detectors shall be extended and installed into the building office spaces; the conditions appear on the certificate of occupancy;

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. 274-00-BZ"), shall be obtained within one year and an additional six months, in light of the current state of emergency declared to exist within the City of New York resulting from an outbreak of novel coronavirus disease, by December 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 24, 2021.

CORRECTION: This resolution adopted on May 24, 2021, under Calendar No. 395-04-BZ, is hereby corrected to read as follows:

395-04-BZIV

APPLICANT – Moshe M. Friedman, P.E., for Congregation Imrei Yehudah, owner; Rabbi Meyer Unschorfer, lessee.

SUBJECT – Application May 21, 2020 – Extension of Time to Complete Construction of a previously approved variance (§72-21) for the construction of a UG4 synagogue which expired on June 5, 2016; waiver of the Rules. R5 zoning district.

PREMISES AFFECTED – 1232 54th Street, Block 5676, Lot(s) 0017, Borough of Brooklyn.

COMMUNITY BOARD #12BK

ACTION OF THE BOARD – Application granted.

THE VOTE –

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

Negative:.....0

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

THE RESOLUTION –

This is an application for a waiver of the Board's Rules of Practice and Procedures and extension of time to complete construction and obtain a certificate of occupancy pursuant to a previously approved variance, previously granted under Z.R. § 72-21, which permitted the construction of a Use Group ("UG") 4 house of worship and expired on June 5, 2016.

A public hearing was held on this application on February 8, 2021, after due notice by publication in *The City Record*, with a continued hearing on April 12, 2021, and then to decision on May 24, 2021.

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The Premises are located on the west side of 54th Street, between 12th Avenue and New Utrecht Avenue, within an R5 zoning district, in Queens. With approximately 24 feet of frontage along 54th Street, 100 feet of depth, and 2,379 square feet of lot area, the Premises are occupied by an existing detached, two-story, two-family dwelling that will be demolished to facilitate the development of the house of worship.

The Board has exercised jurisdiction over the Premises since November 1, 2005, when, under the subject calendar number, the Board granted a variance, under Z.R. § 72-21, to permit the proposed construction of a new house of worship (synagogue and rectory, including a rabbi's apartment and a sexton's apartment) (UG 4), contrary to Z.R. §§ 24-11, 24-521, 24-35(a), 24-34 and 25-31, on condition that any and all work substantially conform to drawings as they apply to the objections, filed with the application; use of the second and third floors be restricted to Rabbi's apartments – rectory (UG 4), as indicated on the BSA-approved plans; the condition be reflected on the certificate of occupancy; the bulk parameters of the proposed building be as reflected on the BSA-approved plans; the exhaust vent be routed to the roof and not to the rear yard, as indicated on the BSA-approved plans; the windows at the rear of the first floor be opaque, as indicated on the BSA-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 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.

On April 17, 2007, under the subject calendar number, the Board amended the variance to permit modifications to the approved plans for a one- and three-story synagogue building, now a one- and four-story building, on condition that all work and site conditions comply with drawings filed with the application and on further condition that the following be the bulk parameters of the building and the yard dimensions: a total floor area of 6,422.61 square feet (2.70 FAR), four stories, a height of 41'-1", a 5'-0" front yard, a 30'-0" rear yard above the first floor, and a lot coverage of 65 percent, all as illustrated on the BSA-approved plans.

On June 5, 2012, under the subject calendar number, the Board waived its Rules of Practice and Procedures and further amended the variance to permit minor changes to the interior layout of the Premises and extend the time to complete construction and obtain a certificate of occupancy for a term of four years, to expire on June 5, 2016, on condition that the use and operation of the Premises comply with the BSA-approved plans associated with the prior grant and substantial construction be completed and a certificate of occupancy obtained by June 5, 2016.

The time to complete construction and obtain a

certificate of occupancy having expired, the applicant now seeks an extension of time.

Because this application was filed more than two years after the expiration of the time to complete construction, and more than 30 days after the expiration of time to obtain a certificate of occupancy, the applicant requests a waiver, pursuant to § 1-14.2 of the Board's Rules of Practice and Procedures (the Board's Rules), of §§ 1-07.3(c)(3) and 1-07.3(d)(2), of the Board's Rules to permit the filing of this application.

The applicant represents that construction of the house of worship has been further delayed by religious restrictions on the removal of living fruit trees on the property and financial difficulties that have limited the Congregations access to funds for construction.

At hearing, the Board directed the applicant to demonstrate compliance with the previously approved plans, including the location of a dry-trash room and opaqueing of the first-floor windows. In response, the applicant amended the plans to show the trash storage area and included notes on the plans for the window requirements. The applicant further provided a waste management plan providing a refrigerated waste disposal compactor with compacted capacity of 240 liters and a divided trash can for recyclables, and committing to store trash inside of the building with trash pickups occurring at least twice per week.

Based upon its review of the record, the Board has determined that the requested extension of time is appropriate with certain conditions as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *amends* the resolution, dated November 1, 2005, as amended through June 5, 2012, so that as amended this portion of the resolution shall read: "to extend the time to complete construction and obtain a certificate of occupancy for four years year, by May 24, 2025, *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked "Received May 24, 2021"—Eleven (11) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building and the yard dimensions: a total floor area of 6,422.61 square feet (2.70 FAR), four stories, a height of 41'-1", a 5'-0" front yard, a 30'-0" rear yard above the first floor, and a lot coverage of 65 percent, all as illustrated on the BSA-approved plans;

THAT substantial construction shall be completed, as determined by an inspection by the Department of Buildings, by May 24, 2025;

THAT trash shall be stored inside of the building and trash pickups shall occur at least twice per week;

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. 395-04-BZ"), shall be obtained within four years, by May 24, 2025;

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 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 24, 2021.

2017-240-BZ

APPLICANT – Troutman Pepper LLC, for 310 Lenox Avenue LLC & RM 310 Lenox LLC., owner.

SUBJECT – Application February 12, 2021 – Extension of Term of a previously approved Special Permit (§73-244) permitting an eating and drinking establishment without restrictions and no limitation on entertainment and dancing (UG 12A) (Red Rooster Harlem Restaurant located on the cellar level which expires on expiring March 27, 2021. 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.

THE VOTE –

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

Negative:.....0

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

THE RESOLUTION –

This is an application for a waiver of the Board’s Rules of Practice and Procedures and an extension of time to obtain a certificate of occupancy, pursuant to a previously approved variance, under Z.R. § 72-21, which permitted the enlargement of a non-complying, non-conforming one-story commercial building used as an automotive service station (Use Group (“UG”) 16) and expired on March 27, 2019.

A public hearing was held on this application on May 10, 2021, after due notice by publication in *The City Record*, and then to decision on May 24, 2021. Vice-Chair Chanda performed an inspection of the Premises and surrounding area.

The Premises are located on the southwest corner of 20th Avenue and 125th Street, within an R4A zoning district, in Queens. With approximately 100 feet of frontage along 20th Avenue, 30 feet of frontage along 125th Street, and 2,997 square feet of lot area, the Premises are occupied by a one-story commercial building used as an automotive service station (UG 16).

The Board has exercised jurisdiction over the Premises since March 27, 2018, when, under the subject calendar number, the Board granted a variance, under Z.R. § 72-21, to permit the enlargement of a non-complying, non-conforming one-story commercial building used as an

automotive service station (UG 16) that does not comply with zoning regulations for use, floor area, front yards, side yards, and green front yards, contrary to Z.R. §§ 22-00, 52-00, 23-141, 23-45, 23-46, and 23-451, on condition that all work, operations, and site conditions conform to plans filed with the application; the bulk parameters of the Premises be as follows: floor area be a maximum of 2,579 square feet (0.86 FAR); front yards have minimum depths of 1.3 feet along 20th Avenue and 1.7 feet along 125th Street; side yards have minimum depths of 0.7 feet to the south and 1 foot to the west, as indicated on the Board-approved plans; the trash enclosure be relocated within the boundaries of the Premises; the sidewalk adjacent to the Premises 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 (“DDC”); the conditions appear on the certificate of occupancy; a certificate of occupancy be obtained within one year, by March 27, 2019; the approval be limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings; 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 plans or configurations not related to the relief granted.

The time to obtain a certificate of occupancy having expired, the applicant now seeks an extension. Because this application was filed more than 30 days after the expiration of time to obtain a certificate of occupancy, the applicant requests a waiver, pursuant to § 1-14.2 of the Board’s Rules of Practice and Procedures (the Board’s Rules), of § 1-07.3(d)(2), of the Board’s Rules to permit the filing of this application.

The applicant represents that there have been delays in obtaining a certificate of occupancy due to conditions relating to DDC Sewer project SE807, referencing that DDC will relocate the trash enclosure within the boundaries of the Premises, and the DDC replacement of the sidewalk as part of the new sewer and water main installation under SE807. Due to uncertainty associated with the timeline of SE807, the applicant seeks a two-year extension.

Based upon its review of the record, the Board has determined that the requested extension of time is appropriate with certain conditions as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *wave* its Rules of Practice and Procedures and *amends* the resolution, dated March 27, 2018, so that as amended this portion of the resolution shall read: “to extend the time obtain a certificate of occupancy for two years, by May 24, 2023, *on condition*:

THAT the bulk parameters of the Premises 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

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plans;

THAT the trash enclosure shall be relocated within the boundaries of the Premises;

THAT the sidewalk adjacent to the Premises 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, also indicating this approval and calendar number (“BSA Cal. No. 2017-204-BZ”), shall be obtained within two years, by May 24, 2023;

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 24, 2021.

55-45-BZ

APPLICANT – Carl A. Sulfaro, Esq., for John Passarella, owner; Kingsland Service Station, LLC, lessee.

SUBJECT – Application March 25, 2019 – Extension of Term (§11-411) of a previously approved variance permitting the operation of an Automotive Service Station (UG 16B) (Spirit) with accessory automotive repair which expired on February 27, 2019. C2-4/R6B zoning district. PREMISES AFFECTED – 63 Kingsland Avenue (f/k/a 51-61 Kingsland Avenue), Block 2866, Lot 40, Borough of Brooklyn.

COMMUNITY BOARD #3BK

ACTION OF THE BOARD – Laid over to June 28-29, 2021, at 10 A.M., for deferred decision.

378-45-BZ

APPLICANT – Davidoff Hatcher & Citron, LLP, for Leemilts Petroleum, Inc., owner; Atlantis GRC Realty LLC, lessee.

SUBJECT – Application December 28, 2018 – Amendment (§11-412) of a previously approved variance permitting the operation of an Automotive Service Station (UG 16B) seeking to permit a change in the configuration of existing gasoline pumps, the addition of a canopy and the conversion of an accessory lubricatorium to an accessory convenience store with a drive-through. C2-3/R5D zoning district.

PREMISES AFFECTED – 116-60 Sutphin Boulevard, Block 12008, Lot(s) 0034, Borough of Queens.

COMMUNITY BOARD #12Q

ACTION OF THE BOARD – Laid over to July 22-23, 2021, at 10 A.M. for adjourned hearing.

523-58-BZ

APPLICANT – Glen V. Cutrona, AIA, for Yehuda LLC, owner; Farmers Mini Mart Inc., lessee.

SUBJECT – Application August 26, 2019 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of an automotive service station (UG 16B) which expired on May 7, 2014; Waiver of the Board’s Rules. C1-3/R5D zoning district.

PREMISES AFFECTED – 117-30 Farmers Boulevard, Block 12448, Lot 0031, Borough of Queens,

COMMUNITY BOARD #12Q

ACTION OF THE BOARD – Laid over to July 22-23, 2021, at 10 A.M. for continued hearing.

516-75-BZIII

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Equinox SC Upper East Side, Inc., owner.

SUBJECT – Application November 16, 2020 – Extension of Term of a previously approved Variance (§72-21) which permit the operation of a physical culture establishment (Equinox) which expired on October 17, 2020. C8-4 zoning district.

PREMISES AFFECTED – 330 East 61st Street, Block 1345, Lot(s) 16, 37, Borough of Manhattan.

COMMUNITY BOARD #8M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Sheta, and Commissioner Scibetta.....4
Negative:.....0
Absent: Commissioner Ottley-Brown.....1

ACTION OF THE BOARD – Laid over to June 28-29, 2021, at 10 A.M. for decision, hearing closed.

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 October 18-19, 2021, at 10 A.M. for continued hearing.

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90-91-BZ

APPLICANT – Sheldon Lobel, P.C., for 630-636 City Island Avenue Realty Corp., owner.

SUBJECT – Application July 20, 2018 – Amendment of a previously approved Variance (§72-21) which permitted the enlargement of a legal non-conforming uses with parking located within a two-story mixed-use commercial and residential building contrary to district use regulations. The amendment proposes to occupy a 1,576 square foot retail store with a new eating and drinking establishment, divide an existing residential dwelling into two dwelling units and allow 35 accessory attended parking spaces in the rear; Extension of Term which expired on June 21, 2014; Waiver of the Rules. R3A Special City Island District.

PREMISES AFFECTED – 630-636 City Island Avenue, Block 5636, Lot 19, Borough of Bronx.

COMMUNITY BOARD #10BX

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

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

ACTION OF THE BOARD – Laid over to October 18-19, 2021, at 10 A.M. for decision, hearing closed.

42-97-BZ

APPLICANT – Law Offices of Marvin Mitzner LLC, for NDC Elmhurst, LLC, owner.

SUBJECT – Application October 18, 2019 – Extension of Term of a previously approved Variance (§72-21) which permitted the construction and use of a one-story and cellar retail drug store (UG 6) which expired on March 3, 2018; Amendment to permit the elimination of a term since the use is now permitted with the exception of a portion located in a R6B zoning district; Waiver of the Board’s Rules. C1-3 and R6B zoning districts.

PREMISES AFFECTED – 93-20 Astoria Boulevard, Block 1367, Lot 48, Borough of Queens.

COMMUNITY BOARD #3Q

ACTION OF THE BOARD – Laid over to June 28-29, 2021, at 10 A.M. for adjourned hearing.

114-07-BZ

APPLICANT – Eric Palatnik, P.C., for Sullivan Mountain Real Estate, LLC, owner.

SUBJECT – Application March 18, 2019 – Amendment of a previously approved Special Permit (§73-19) which permitted the operation of a day-care center (Kiddie Academy) (UG3). The amendment seeks an enlargement to the existing day care facility, a modification in the approved floor area, a change in the number of parking spaces, as well as request to permit a proposed outdoor play area on the roof. M1-1/R2A zoning district.

PREMISES AFFECTED – 7-05 152nd Street, Block 4531, Lot 35, Borough of Queens.

COMMUNITY BOARD #7Q

ACTION OF THE BOARD – Laid over to July 22-23, 2021, 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 September 17, 2020 – Amendment of a previously approved Variance (§72-21) which permitted the operation of a physical cultural establishment (Harbor Fitness Park Slope). The amendment seeks to legalize the enlargement of the establishment at the first floor; Extension of Time to Obtain a Certificate of Occupancy which expired on July 16, 2020. C4-3A/R6B zoning district.

PREMISES AFFECTED – 550 Fifth Avenue, Block 10417, Lot 7501, Borough of Brooklyn.

COMMUNITY BOARD #6BK

ACTION OF THE BOARD – Laid over to December 6-7, 2021, at 10 A.M. for postponed hearing.

2017-289-BZ and 252-06-BZ

APPLICANT – Sheldon Lobel, P.C., for HP Walter Avenue Housing Development Fund Co. Inc., owner.

SUBJECT - Extension of Time to complete construction of a previously approved Variance (§72-21) and 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). Extension of Time to complete construction for the companion amendment of a variance under BSA Cal. No. 252-06-BZ.

PREMISES AFFECTED – 1761 Walton Avenue, Block 2850, Lot(s) 34,38,63, Borough of Bronx.

COMMUNITY BOARD #5X

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

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

ACTION OF THE BOARD – Laid over to June 14-15, 2021, at 10 A.M. for decision, hearing closed.

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APPEALS CALENDAR

2020-49-A

APPLICANT – Law Office of Marvin B. Mitzner LLC, for 38-30 28th Street LLC, owner.

SUBJECT – Application June 8, 2020 – Extension of time to complete construction and obtain a Certificate of Occupancy of a previously granted common law vested right to construct an 8-story hotel, which expired on October 7, 2018.

PREMISES AFFECTED – 38-30 28th Street, Block 00386, Lot 0027, Borough of Queens.

COMMUNITY BOARD #1Q

ACTION OF THE BOARD – Application granted.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Sheta, and Commissioner Scibetta4

Negative:.....0

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

THE RESOLUTION –

This is an application, based on the common-law doctrine of vested rights, to establish the right to obtain a certificate of occupancy and to renew building permits lawfully issued by the Department of Buildings, acting on Alteration Type I Application No. 402232534, which was issued on July 16, 2007 (the “Permit”), authorizing the development of an eight-story hotel building pursuant to M1-3D zoning district regulations, before the effective date of an amendment to the Zoning Resolution, which have lapsed as a result of such amendment.

A public hearing was held on this application on February 9, 2021, after due notice by publication in *The City Record*, with a continued hearing on April 12, 2021, and then to decision on May 24, 2021. Vice-Chair Chanda and Commissioner Ottley-Brown performed inspections of the Premises and surrounding area.

I.

The Premises are located on the west side of 28th Street between 38th Avenue and 39th Avenue, within an M1-2/R5B zoning district and in the Special Long Island City Mixed Use District, in Queens. With approximately 25 feet of frontage along 28th Street, 98 feet of depth, and 2,450 square feet of lot area, the Premises are under construction of an eight-story, 16-room hotel building with a floor area of 12,250 square feet (5.0 FAR) (the “Building”).

A.

The Board notes that the Permit, which authorized the development of an eight-story hotel building pursuant to M1-3D zoning district regulations was issued on July 16, 2007.

However, on October 7, 2008 (the “Effective Date”), the City Council voted to adopt the Dutch Kills Rezoning, which rezoned the Premises from an M1-3D zoning district to an M1-2/R5B zoning district. The Board notes that as of October 7, 2008, the Permit had been obtained and 100 percent of the foundation had been completed; as such, per Z.R. § 11-331, the right to continue construction vested and the applicant had until October 7, 2010 to complete

construction and obtain a certificate of occupancy; however, as of that date, construction had not been completed and a certificate of occupancy had not been obtained and within 30 days after that date, an application to the Board to extend the time to complete construction pursuant to Z.R. § 11-332 had not been filed.

B.

On June 5, 2012, under BSA Cal. No. 19-12-A, the Board recognized a common law vested rights permitting reinstatement of Alteration Permit No. 402232534-01-AL, as well as all related permits for various work types, either already issued or necessary to complete construction and obtain a certificate of occupancy for the Building, for two years, to expire June 5, 2014.

On October 7, 2014, under BSA Cal. No. 19-12-A, the Board extended the time to complete construction and obtain a certificate of occupancy for two years, to expire on October 7, 2016, on condition that DEP approval for the backflow preventer be obtained prior to DOB’s issuance of the Permit and DOB ensure compliance with all 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.

On June 20, 2017, under BSA Cal. No. 19-12-A, the Board further extended the time to complete construction and obtain a certificate of occupancy under the Permit for two years, to expire on October 7, 2018, on condition that construction be completed and a certificate of occupancy be obtained by October 7, 2018; all conditions from prior resolutions not specifically waived by the Board remain in effect; 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 plans or configurations not related to the relief granted.

II.

“Under New York law, a property owner has no right to an existing land-use benefit unless that right has ‘vested.’ In New York, a vested right can be acquired when, pursuant to a legally issued permit, the landowner demonstrates a commitment to the purpose for which the permit was granted by effecting substantial changes and incurring substantial expenses to further the development. *Town of Orangetown v. Magee*, 88 N.Y.2d 41, 47, 643 N.Y.S.2d 21, 665 N.E.2d 1061 (1996). In order to gain the vested right, the landowner’s actions relying on a valid permit must be so substantial that the municipal action results in serious loss rendering the improvements essentially valueless,” *Cine SK8, Inc. v. Town of Henrietta*, 507 F.3d 778, 784 (2d Cir. 2007) (internal quotation marks omitted); *see also Zahra v. Town of Southold*, 48 F.3d 674, 681 (2d Cir. 1995) (recognizing a “protectible ‘property interest’ in a benefit that affects land use—i.e. a building permit, certificate of occupancy, zoning variance, excavation permit or business license”).

Notwithstanding this general framework, “there is no fixed formula which measures the content of all the

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circumstances whereby a party is said to possess a vested right,” *Estate of Kadin v. Bennett*, 163 A.D.2d 308, 309 (N.Y. App. Div. 1990) (internal quotation marks omitted).

A.

First, as noted above, the record shows that the owner of the Premises obtained lawfully issued permits to construct the Building in accordance with the Permit before the Effective Date.

B.

Second, the applicant submitted evidence that, in accordance with the Permits authorizing work associated with the Permit, the owner has effected substantial construction to further development of the Building.

In particular, the applicant submits that construction has continued to proceed and submitted photographs demonstrating an enclosed building. The applicant submits that remaining work on the Building includes construction of the elevator, electricity, roofing, and fire system. Accordingly, the record reflects that, in accordance with the building permits authorizing work associated with the Permit, the owner has effected substantial construction to further development of the Building.

C.

Third, the record reflects that the owner had paid or contractually incurred \$2,873,030.07 for the work performed at the site as of the two year anniversary of the Effective Date. The applicant submits that the owner had spent \$4.6 million before 2014, \$899,000 from 2014 to 2017, and has spent an additional \$535,690 to finish the project since the Board’s 2017 extension. This work includes hard and soft costs regarding permit, engineer, and architect fees, taxes, insurance, and costs for work associated with the fire system, elevator, roofing, and electricity. Accordingly, the record reflects that the owner has incurred substantial expenses to further development of the Building.

D.

Fourth, the applicant submitted evidence that, if the right to obtain a certificate of occupancy for the Building were denied, the owner would suffer serious loss—that is, substantial economic harm.

In particular, the applicant submits that if the right to obtain a certificate of occupancy is denied and construction of the Building cannot be completed, the owner would face serious loss in the amount of \$6,034,690. The record reflects that if the owner is not permitted to vest under the former M1-3D zoning, the floor area would decrease from the proposed 12,250 square feet (5.0 FAR) to a maximum realizable floor area of 4,900 square feet (2.0 FAR), representing a loss of 7,350 square feet of floor area, and the street wall height would have to be reduced from its current height of approximately 80 feet to a maximum street wall height of 60 feet. Further, to comply with the M1-2/R5B (LIC) district parameters, the owner would have to demolish the top five floors, which would eliminate 12 of the 16 proposed hotel rooms.

Because of the substantial nature of the financial losses pertaining to redesigning the Building to comply with

current zoning regulations, it is unnecessary for the Board to determine the full extent of the economic harm that would be inflicted were common-law vested rights denied herein.

Accordingly, the record reflects that, if the right to obtain a certificate of occupancy for the Building were denied, the owner would suffer serious loss in the form of substantial economic harm.

III.

Based on the foregoing, the Board finds that the evidence in the record supports the establishment of a right to obtain a certificate of occupancy for the Building, based on the common-law doctrine of vested rights, and that the applicant has substantiated a basis to warrant renewal of building permits authorizing work associated with obtaining a certificate of occupancy under the Permit.

Nothing herein shall inhibit any tolling applicable by virtue of any executive order related to the current state of emergency declared to exist within the City of New York resulting from an outbreak of novel coronavirus disease.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby grant this application, based on the common-law doctrine of vested rights, to establish the right to obtain a certificate of occupancy and to renew building permits lawfully issued by the Department of Buildings, acting on Alteration Type I Application No. 402232534, before the effective date of an amendment to the Zoning Resolution, which have lapsed as a result of such amendment, as well as all related permits for various work types, either already issued or necessary to complete construction and obtain a certificate of occupancy, for four years, expiring October 7, 2022, or such later date as maybe allowed by applicable tolling.

Adopted by the Board of Standards and Appeals, May 24, 2021.

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 October 4-5, 2021, at 10 A.M., for deferred decision.

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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 04699, Lot 22, Borough of Queens.

COMMUNITY BOARD #7Q

ACTION OF THE BOARD – Laid over to October 4-5, 2021, at 10 A.M., for deferred decision.

2020-34-A

APPLICANT – Goldner Architects by Davis Iszard, RA, for Vlad Tsirkin, CFO, 45 John NY, LLC, owner.

SUBJECT – Application April 10, 2020 – Application requesting a variance of the Multiple Dwelling Law to existing HACA multiple dwelling to be partially converted to a hotel. An existing inner court supplying legal light and air to apartments does not meet the size requirements for hotels. C6-4 Lower Manhattan Special Purpose District.

PREMISES AFFECTED – 45 John Street, Block 00078, Lot 28, Borough of Manhattan.

COMMUNITY BOARD #1M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Sheta, and Commissioner Scibetta4

Negative:.....0

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

ACTION OF THE BOARD – Laid over to June 28-29, 2021, at 10 A.M. for decision, hearing closed.

2021-11-BZY

APPLICANT – Kenneth K. Loweinstein, for 559 Development, LLC, owner.

SUBJECT – Application January 21, 2021 – Extension of Time to Complete Construction and Obtain a Certificate of Occupancy (§11-332) for a period of two years from December 20, 2020.

PREMISES AFFECTED – 38-59 11th Street, Block 00473, Lot 559, Borough of Queens.

COMMUNITY BOARD #2Q

ACTION OF THE BOARD – Laid over to June 28-29, 2021, at 10 A.M. for postponed hearing.

ZONING CALENDAR

2019-30-BZ

CEQR #19-BSA-088K

APPLICANT – Eric Palatnik, P.C., for Georgy Reyderman, owner.

SUBJECT – Application November 19, 2019 – Special Permit (§73-622) to permit the enlargement of an existing single-family home, contrary to rear yard requirements (ZR §23-47) and side yard (ZR §23-461). R4 zoning district.

PREMISES AFFECTED – 2705 East 28th Street, Block 8791, Lot 120, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Sheta, and Commissioner Scibetta4

Negative:.....0

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

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated January 9, 2019, acting on Alteration Type 1 Application No. 301603389, reads in pertinent part:

“Existing building in an R4 zoning district is contrary to the ZR 23-47 rear yard and ZR 23-461 side yard requirements and must be referred to the Board of Standards and Appeals for a Special Permit pursuant to ZR 73-622.”

This is an application under Z.R. §§ 73-622 and 73-03 to permit, in an R4 zoning district, the legalization of an enlargement of an existing single-family, two-story with cellar and attic residence that does not comply with zoning regulations for rear yard requirements (Z.R. § 23-47) and side yard (Z.R. § 23-461).

A public hearing was held on this application on November 19, 2019, after due notice by publication in *The City Record*, with continued hearings on April 6, 2020 and April 13, 2021, and then to decision on May 24, 2021. Vice-Chair Chanda and Commissioner Ottley-Brown performed an inspection of the Premises and surrounding neighborhood.

The Premises are located on the east side of East 28th Street, between Voorhies Avenue and Shore Parkway, within an R4 zoning district, in Brooklyn. With approximately 20 feet of frontage along East 28th Street, 80 feet of depth, and 1,600 square feet of lot area, the Premises are occupied by an existing two-story with cellar and attic, single-family detached residence.

The Board notes that its determination herein is subject to and guided by, inter alia, Z.R. §§ 73-01 through 73-04. As a threshold matter, the Board notes that the Premises are within the boundaries of a designated area in which the subject special permit is available. The Board notes further that this application seeks to enlarge an existing detached single-family residence, as contemplated in Z.R. § 73-622.

The existing single-family residence is a two-story, with cellar and attic, single-family, detached building with

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additions of 12'-5 1/2" by 14'-3 1/2" extension in the first floor rear yard; 12'-6" by 14'-31/2" extension in the rear yard of the second floor; attic; open porch at the first floor, a balcony at the second floor; a new roofed area; and a one car concrete paved parking pad. The applicant requests the legalization of an enlargement to the residence's side yard and rear yard non-compliances by increasing the floor area from approximately 2,044 square feet to 2,141 square feet (720.6 square feet on the first floor, 776.9 square feet on the second floor, and 643.5 square feet in the attic) with 1.338 FAR, 49% lot coverage, a rear yard of 22.5' at the first floor and above, and side yards measuring 2.92' and 0.71'.

At the Premises, a rear yard with a depth of not less than 30 feet is required, pursuant to Z.R. § 23-47, and two side yards totaling 13 feet in width with each side yard measuring at least 5 feet in width are required pursuant to Z.R. § 23-461.

The applicant represents that the proposed single-family residence as enlarged is consistent with the built character of the neighborhood. In support of this contention, the applicant surveyed single- and two-family residences within 400 feet of the Premises and with the same relevant bulk regulations (the "Study Area"), finding that of the 98 qualifying residences, 57 residences (58 percent) have at least one side yard measuring less than 5 feet in width and 11 residences (11 percent) have side yards totaling less than 4 feet in width. The applicant further surveyed the subject block and found that at within that Study Area, of the qualifying 20 residences, 9 residences (45 percent) have a rear yard measuring less than 30 feet, and 2 (10 percent) have rear yards measuring less than 23 feet.

Based upon its review of the record and inspections of the Premises 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.

At hearings, the Board requested that the applicant provide a copy of the audit objections from DOB resolved by the plan examiner and a survey illustrating the correct base plane elevation and building height. In response to questions from the Board at hearing about the massing of the proposed building, the applicant submitted an affidavit from the architect of record, stating that a copy of the DOB objections resolved by the plan examiner does not exist, and the architect only has a set of plans accepted by the plan examiner.

The Board notes, however, that this application is only being considered with respect to the above objection for rear yards and side yards, so the Department of Buildings must ensure compliance with all other applicable provisions of the Zoning Resolution.

The applicant also submitted a survey in NAVD88, clarifying that within flood hazard areas as per Z.R. § 64-131, the height of the building must be measured from flood resistant construction elevation.

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. The proposed modification of bulk regulations will not interfere with any pending public improvement project.

The project is classified as a Type II action pursuant to 6 NYCRR Part 617.5, as noted in CEQR Checklist No. 19BSA088K.

The Board finds that the evidence in the record supports the findings required to be made under Z.R. §§ 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 make each and every one of the required findings under Z.R. §§ 73-622 and 73-03 to *permit* the enlargement of an existing two-story with cellar and attic, single-family, detached residence that does not comply with zoning regulations for rear yard and side yard, contrary to Z.R. §§ 23-47 and 23-461; *on condition* that all work and site conditions shall conform to drawings filed with this application marked "March 28, 2021"- Nine (9) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: side yards measuring 2.92' and 0.71', and a rear yard measuring 22.5' at the first floor and above, as illustrated on the Board-approved plans;

THAT the Building received a permit based on self-certified plans that did not comply with zoning regulations and subsequently received violations for construction that was not consistent with the DOB-approved plans; the Board of Standards and Appeals makes no representation on the building's compliance with anything other than the specific points listed here, and, in particular, takes no position on whether the building complies with front yard, lot coverage, balcony, or parking regulations; this grant relies on the architect's representation that the site is in a predominantly built up and can use the 1.35 FAR and Z.R. § 23-145, even with a non-complying front yard; no waiver of FAR has been granted by the Board of Standards and Appeals;

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. 2019-30-BZ"), shall be obtained within four years and an additional six months, in light of the current state of emergency declared to exist within the City of New York resulting from an outbreak of novel coronavirus disease, by December 8, 2025;

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, May 24, 2021.

2019-38-BZ

CEQR #19-BSA-096Q

APPLICANT – Sheldon Lobel, P.C., for Peabody Real Estate Co., Inc., owner; CoreBalFit, Inc., lessee.

SUBJECT – Application February 28, 2019 – Special Permit (§73-36) to permit the operation of a Physical Culture Establishment (*CoreBalFit*) to be located on the 1st floor of an existing building contrary to ZR §42-10. M1-1 zoning districts.

PREMISES AFFECTED – 222-34 96th Avenue, Block 10812, Lot 0091, Borough of Queens.

COMMUNITY BOARD #13Q

ACTION OF THE BOARD – Application granted.

THE VOTE –

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

Negative:.....0

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

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated April 23, 2021, acting on DOB Alteration Type I Application No. 421688935, reads in pertinent part:

“Proposed Physical Culture Establishment is not permitted as-of-right in an M1-1 Zoning District per ZR Section 42-10, and therefore requires a special permit from the Board of Standards and Appeals pursuant to ZR Section 73-36.”

This is an application under Z.R. §§ 73-36 and 73-03 to legalize, on a site located within a M1-1 zoning district, the operation of a physical culture establishment (“PCE”) on a portion of the first floor of an existing one-story, with cellar, commercial and manufacturing building, contrary to Z.R. § 42-10.

A public hearing was held on this application on April 27, 2021, after due notice by publication in *The City Record*, and then to decision on May 25, 2021. Community Board 13, Queens, and the Queens Borough President recommend approval of this application. The Board received one form letter in support of this application, and two form letters in objection to this application and citing concerns over traffic and parking.

The Premises are bounded by 96th Avenue to the north, 222nd Street to the west, the LIRR Right of Way to the south, and 225th Street to the east, within a M1-1 zoning district, in Queens. With approximately 468 feet of frontage along 96th Avenue, 201 feet of frontage along 222nd Street, and 113,117 square feet of lot area, the Premises are occupied by an existing one-story, with cellar, commercial and manufacturing building.

The Board notes that its determination is subject to and guided by Z.R. § 73-03. The Board notes that pursuant to Z.R. § 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. 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.

The applicant represents that the PCE occupies 3,303 square feet of floor area on a portion of the first floor with fitness area and exercise equipment, restrooms and showers, sauna, office, and reception area. The PCE began operation in April 2019, continues to operate as “CoreBalFit,” and operates daily, 6:00 a.m. to 10:00 p.m.

The applicant represents that PCE use will neither impair the essential character nor the future use or development of the surrounding area because PCE use is consistent with the character of the area, containing eating and drinking establishments and retail stores. The applicant submits that the PCE contains facilities for classes, instruction and programs for physical improvement. The Board finds that the subject PCE use is consistent with those eligible pursuant to Z.R. § 73-36(a)(2) for the issuance of the special permit. 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.

The applicant submits that adverse noise and vibration impacts from PCE use at the Premises are not anticipated because the building is used primarily for manufacturing purposes, and the PCE is the only use at the Premises after 5:00 p.m.

The applicant states that a sprinkler system is maintained within the PCE. The Fire Department states, by letter dated February 19, 2021, that the proposed occupant load as per plans submitted to the Board is for 150 persons at the first floor. A Public Assembly application (PA#Q00428894) has been filed with the Department of Buildings. The Premises are protected by a fire suppression system (sprinkler). No fire alarm system is required for the Premises or use. Based on the foregoing, the Fire Department has no objection to the application, as the Bureau of Fire Prevention will continue to inspect the Premises and enforce all applicable rules and regulations.

Accordingly, 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. In addition, the Board finds that the operation of the PCE will not interfere with any public improvement project.

The project is classified as a Type II action pursuant to

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6 NYCRR Part 617.5. The Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 19-BSA-096Q, dated May 24, 2021.

Therefore, the Board has determined that the evidence in the record supports the requisite findings for the special permit pursuant to Z.R. §§ 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 Z.R. §§ 73-36 and 73-03 to *legalize*, on a site located within a M1-1 zoning district, the operation of a physical culture establishment on a portion of the first floor of an existing one-story, with cellar, commercial and manufacturing building, contrary to Z.R. §42-10, *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked “Received May 25, 2021”—Eight (8) sheets; and *on further condition*:

THAT this grant shall be limited to a term of ten years, expiring April 1, 2029;

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

THAT minimum three-foot-wide exit pathways shall be maintained leading to the required exits and that pathways shall be maintained unobstructed, including from any equipment;

THAT accessibility shall be provided pursuant to the standards set forth in applicable accessibility laws, including but not limited to Chapter 11 of the NYC Building Code, the 2009 American National Standards Institute (ANSI) A117.1 and Title III of the Americans with Disabilities Act, as reviewed and approved by DOB;

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. 2019-38-BZ”), shall be obtained within one year and an additional six months, in light of the current state of emergency declared to exist within the City of New York resulting from an outbreak of novel corona virus disease, by November 28, 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;

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

25, 2021.

2019-91-BZ

CEQR #19-BSA-130Q

APPLICANT – Michio Sanga, for Umer I. Chaudhry, owner.

SUBJECT – Application May 13, 2019 – Variance (§72-21) to permit the development of a two-family residence contrary to ZR §23-142 (floor area ratio); ZR §23-22 (density); ZR §23-45 (front yard); ZR §23-461 (side yard); and ZR §25-22 (parking). R3X zoning district.

PREMISES AFFECTED – 97-09 24th Avenue, Block 1091, Lot 0041, Borough of Queens.

COMMUNITY BOARD #3Q

ACTION OF THE BOARD – Application granted.

THE VOTE –

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

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

THE RESOLUTION –

I.

The decision of the Department of Buildings (“DOB”), dated April 29, 2019, acting on New Building Application No. 421644000, reads in pertinent part:

#1 Proposed FAR is contrary to the ZR 23-142.

#2 Proposed density is contrary to the ZR 23-22.

#3 Proposed front yard is contrary to the ZR 23-45.

#4 Proposed side yard is contrary to the ZR 23-461.

#5 Proposed number of parking spaces is contrary to the ZR 25-22.

This is an application for a variance, pursuant to Z.R. § 72-21, to allow, within an R3X zoning district, the construction of a two-story, with cellar, single-family semi-detached residence that does not comply with the zoning requirements for floor area (Z.R. § 23-142), density (Z.R. § 23-22), front yards (Z.R. § 23-45), side yards (Z.R. § 23-461), and parking spaces (Z.R. § 25-22).

A public hearing was held on this application on February 23, 2021, after due notice by publication in *The City Record*, with a continued hearing on May 11, 2021, and then to decision on May 24, 2021. Vice-Chair Chanda performed an inspection of the Premises and surrounding neighborhood. Community Board 3, Queens, recommends denial of this application citing concerns over a lack of proposed off-street parking and potential negative impacts to the light and air of adjacent properties. The Board received two form letters in objection to this application raising concerns that the subject lot is too small for residential development.

II.

The Premises are located on the north side of 24th Avenue, between 97th Street and 98th Street, within an R3X zoning district, in Queens. With approximately 20 feet of frontage along 24th Avenue, 100 feet of depth, and 2,000

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square feet of lot area, the Premises are currently vacant.

The applicant initially proposed to construct a two-story, with cellar, two-family detached residence (0.99 FAR) with 4'-6" of front yard depth, two side yards with widths of 0'-6" and 4'-2", and no parking spaces. Over the course of hearings, and in response to Board and community concerns, the applicant revised the project and proposes to construct a two-story, with cellar, single-family semi-detached residence that does not comply with zoning requirements for floor area (Z.R. § 23-142), side yards (Z.R. § 23-461), and front yard planting (Z.R. § 23-451).

The proposed single-family semi-detached residence would have 0.81 FAR (approximately 832 square feet of floor area on the first floor and 784 square feet of floor area on the second floor), a front yard with 18 feet of depth, one side yard with a width of 4 feet, with 7'-6" between buildings containing residences, 12% of front yard planting and one parking space.

In the subject R3X zoning district, the Zoning Resolution does not permit semi-detached residences, *see* Z.R. § 22-00, permits a maximum of 0.5 FAR, with an increase up to 20 percent provided that any such increase in floor area is located directly under a sloping roof, *see* Z.R. § 23-142, requires two side yards with a minimum of ten feet of total side yard width and eight feet between buildings containing residences, *see* Z.R. § 23-461, and a minimum of 25% of front yard planting, *see* Z.R. § 23-451. Accordingly, the applicant seeks the relief requested herein.

III.

The Zoning Resolution vests the Board with wide discretion to "vary or modify [its] provision[s] so that the spirit of the law shall be observed, public safety secured and substantial justice done," Z.R. § 72-21.

In accordance with Z.R. § 72-21(a), the applicant submits that there are unique physical conditions inherent in the Premises—namely, the 20-foot narrowness of the lot, four-foot-wide easement, its vacancy, and history of ownership separate and apart from adjacent tax lots—that 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. The applicant submits that the narrow width lot width, coupled with a four-foot easement at the eastern lot line of the Premises, make compliance with floor area and yard requirements impracticable and would result in an infeasible and uninhabitable dwelling.

In support of this contention, the applicant surveyed properties within 400 feet of the Premises and within comparable zoning requirements (the "Study Area") finding that the Premises is the only vacant site with a lot width of 20 feet that is impacted by the use group (detached dwellings), FAR, side yard and planting requirements. The applicant states that the Premises have remained vacant, separate, and apart from all adjacent lots, since at least 1959. Within the Study Area, there are study area all 33 residences with 20 feet or less in lot width. These 33 residences are improved without side yards except for 3 lots. The widths of the buildings in these 33 lots range from 14 feet to 20 feet

and 30 of these lots (91 percent) are improved with residential buildings that have widths greater than 16 feet.

The applicant also submitted as-of-right drawings demonstrating that strict conformance with Z.R. §§ 23-142, 23-461, and 23-451 would result in an impracticable and uninhabitable dwelling. As to side yard requirements, the applicant submits that the existing residence located to the west of the Premises is on the western lot line and the existing residence located to the east of the Premises is 3'-6" from the eastern lot line, thus a complying residence would need to provide western side yard measuring 8'-0" wide and eastern side yard measuring 4'-6" wide, resulting in a house with a width of 7'-6", which would not be viable.

The applicant represents that, given the size of the lot, the maximum FAR of 0.5 would result in a single-family residence with a maximum of 1,000 square feet of floor area, and small inefficient floor plates of 500 square feet. The applicant's as-of-right plan illustrates that this narrow building would have two stories with a single dwelling unit and 895 square feet of floor area (0.45). As such, a side yard waiver to allow for a new home with a width of 16 feet and a floor area waiver to allow for a new home with a floor area of 1,616 square feet (0.81 FAR) are sought, to provide a floor plate that results in a habitable home compliant with underlying zoning regulations. To provide compliant parking, the applicant proposes a ramp leading to a cellar parking space and existing easement driveway, which prohibits a front yard planting area in compliance with zoning regulations.

Accordingly, 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.

In accordance with Z.R. § 72-21(b), the applicant submits and the Board concurs that, because this application proposes a single-family residence, no showing need be made with respect to realizing a reasonable return.

In accordance with Z.R. § 72-21(c), the applicant represents that the requested variance would not alter the essential character of the neighborhood, impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare. Specifically, the applicant states that surrounding area is characterized by single- or two-family detached and semi-detached residences and the proposed bulk is compatible with nearby residential development and the height complies with zoning regulations.

The applicant represents that the average floor area of the 42 single-family homes within the Study Area is 1,505 square feet (FAR 0.65). The floor area for the 19 homes improved on lots 2,000 square feet or less ranges from 1,125 square feet to 2,160 square feet. The average floor area of 16 of these lots (84 percent) is 1,767 square feet (FAR 0.95), and greater than that proposed (1,616 square feet).

Accordingly, the Board finds that the proposed variance will not alter the essential character of the neighborhood or district in which the Premises are located;

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will not substantially impair the appropriate use or development of adjacent property; and will not be detrimental to the public welfare.

In accordance with Z.R. § 72-21(d), the applicant represents that the above practical difficulties or unnecessary hardship have not been created by the applicant or by a predecessor in title.

Accordingly, the Board finds that the above practical difficulties or unnecessary hardship have not been created by the applicant or by a predecessor in title.

In accordance with Z.R. § 72-21(e), the applicant states that the variance request is the minimum necessary to develop a residence at the Premises. The applicant revised the proposal to reduce the density, from a two- to single-family residence, floor area, from 1,971 square feet to 1,616 square feet, and to provide a compliant front yard and parking, and submits that all other bulk requirements will be in full compliance with the Zoning Resolution. Accordingly, the Board finds that the proposed variance is the minimum necessary to afford relief within the intent and purposes of the Zoning Resolution.

The project is classified as a Type II action pursuant to 6 NYCRR Part 617.5 and the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 19-BSA-130Q, dated May 24, 2021.

Based on the foregoing, the Board finds that the evidence in the record supports the findings required to be made under Z.R. § 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 makes each and every one of the required findings under Z.R. § 72-21 to *permit*, the construction of a two-story, with cellar, single-family semi-detached residence that does not comply with the zoning requirements for FAR (Z.R. § 23-142), side yards (Z.R. § 23-461) and front yard planting (Z.R. § 23-451), *on condition* that all work and site conditions shall conform to drawings filed with this application marked “Received April 26, 2021”—Twelve (12) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: a maximum of 0.81 FAR (approximately 832 square feet of floor area on the first floor and 784 square feet of floor area on the second floor), one side yard with a minimum width of 4 feet, with a minimum of 7'-6" between buildings containing residences, a minimum of 12% of front yard planting, and one parking space in the cellar, all as shown on Board-approved plans;

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. 2019-91-BZ), shall be obtained within four years and an additional six months, in light of the current state of emergency declared to exist within the City of New York resulting from an outbreak of novel coronavirus disease, by December 11, 2025;

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 24, 2021.

2019-92-BZ

CEQR #19-BSA-131Q

APPLICANT – Michio Sanga, for Summer. Chaudhry, owner.

SUBJECT – Application May 13, 2019 – Variance (§72-21) to permit the development of a two-family residence contrary to ZR 22-12 (Use); ZR §23-142 (floor area ratio); ZR §23-22 (density); ZR §23-461 (side yard); ZR 23-47 (rear yard); and ZR §§25-22 & 25-621 (parking). R3X zoning district.

PREMISES AFFECTED – 23-39 98th Street, Block 1092, Lot 0062, Borough of Queens.

COMMUNITY BOARD #3Q

ACTION OF THE BOARD – Application granted.

THE VOTE –

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

Negative:.....0

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

THE RESOLUTION –

I.

The decision of the Department of Buildings (“DOB”), dated April 29, 2019, acting on New Building Application No. 421646758, reads in pertinent part:

#1 Proposed use group is contrary to the ZR 22-12.

#2 Proposed FAR is contrary to the ZR 23-142.

#3 Proposed density is contrary to the ZR 23-22.

#4 Proposed side yard is contrary to the ZR 23-461.

#5 Proposed rear yard is contrary to the ZR 23-47.

#6 Proposed parking is contrary to the ZR 25-22 and 25-621(a).

This is an application for a variance, pursuant to Z.R. § 72-21, to allow, within an R3X zoning district, the construction of a two-story, with cellar, single-family semi-detached residence that does not comply with the zoning requirements for floor area (Z.R. § 23-142) and side yards (Z.R. § 23-461).

A public hearing was held on this application on February 23, 2021, after due notice by publication in *The City Record*, with a continued hearing on May 11, 2021, and then to decision on May 24, 2021. Vice-Chair Chanda

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performed an inspection of the Premises and surrounding neighborhood. Community Board 3, Queens, recommends denial of this application citing concerns that the proposed building would be out of character with the neighborhood and inconsistent with the existing residences. The Board received one form letter in support, and four letters in objection to this application raising concerns over the impact of construction to nearby residences and potential negative impacts to privacy and natural light.

II.

The Premises are located on the east side of 98th Street, between 23rd Avenue and 24th Avenue, within an R3X zoning district, in Queens. With approximately 20 feet of frontage along 98th Street, 98 feet of depth, and 1,950 square feet of lot area, the Premises are currently vacant.

The applicant initially proposed to construct a two-story, with cellar, two-family attached residence (0.99 FAR) with no side yards, one, front yard-parking space, and a rear yard with a depth of 27'-6". Over the course of hearings, and in response to Board and community concerns, the applicant revised the project and proposes to construct a two-story, with cellar, single-family detached residence that does not comply with zoning requirements for floor area (Z.R. § 23-142) and side yards (Z.R. § 23-461).

The proposed single-family detached residence would have 0.81 FAR (approximately 792 square feet of floor area on each the first and second floors), two side yards with widths of one foot and three feet, a complying 30-foot rear yard, and one parking space in the cellar. In the subject R3X zoning district, the Zoning Resolution permits a maximum of 0.5 FAR, with an increase up to 20 percent provided that any such increase in floor area is located directly under a sloping roof, *see* Z.R. § 23-142, requires two side yards with a minimum of ten feet of total side yard width and eight feet between buildings containing residences, *see* Z.R. § 23-461. Accordingly, the applicant seeks the relief requested herein.

III.

The Zoning Resolution vests the Board with wide discretion to "vary or modify [its] provision[s] so that the spirit of the law shall be observed, public safety secured and substantial justice done," Z.R. § 72-21.

In accordance with Z.R. § 72-21(a), the applicant submits that there are unique physical conditions inherent in the Premises—namely, the 20-foot narrowness of the lot, its vacancy, and history of ownership separate and apart from adjacent tax lots—that 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. The applicant submits that the narrow width lot width makes compliance with floor area and side yard requirements impracticable and would result in an infeasible and uninhabitable dwelling.

In support of this contention, the applicant surveyed properties within 400 feet of the Premises and within comparable zoning requirements (the "Study Area") finding that the Premises is the only vacant site with a lot width of 20 feet that is uniquely impacted by the FAR and side yard

requirements. The applicant states that the Premises has remained vacant since 1951. Within the Study Area, there are study area 14 homes with 20'-0" or less in lot width and are occupied by residential buildings ranging from 14'-0" to 20'-0"; 11 of these lots (79 percent) are improved with residential buildings that have a building width greater than 16'-0".

The applicant also submitted as-of-right drawings demonstrating that strict conformance with Z.R. §§ 23-142 and 23-461 would result in an impracticable and uninhabitable dwelling. The applicant's as-of-right plan demonstrates a two-story single-family residence with 975 square feet of floor area (0.5 FAR).

The applicant represents that, given the size of the lot, the maximum FAR of 0.5 would result in a single-family residence with small inefficient floor plates of 488 square feet, therefore a side yard waiver to allow for a new home with a width of 16 feet and a floor area waiver to allow for a new home with a floor area of 1,584 square feet (0.81 FAR) are sought, to provide a floor plate that results in a habitable home compliant with underlying zoning regulations. The 20-foot-wide lot is further restrained by its side yard requirements, whereby providing a complying side yard of ten feet would result in an uninhabitable ten-foot-wide building, with 8'-10" of interior space given the widths of walls. To provide compliant parking, the applicant proposes a ramp leading to a cellar parking space.

Accordingly, 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.

In accordance with Z.R. § 72-21(b), the applicant submits and the Board concurs that, because this application proposes a single-family residence, no showing need be made with respect to realizing a reasonable return.

In accordance with Z.R. § 72-21(c), the applicant represents that the requested variance would not alter the essential character of the neighborhood, impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare. Specifically, the applicant states that surrounding area is characterized by single- or two-family detached and semi-detached residences and the proposed bulk is compatible with nearby residential development and the height complies with zoning regulations.

The applicant represents that the average floor area of the 33 single-family homes within the Study Area is 1,412 square feet (FAR 0.52). The floor area for the 10 homes improved on lots 2,000 square feet or less ranges from 1,044 square feet to 1,824 square feet, half of which have floor areas greater than the proposed 1,584 square feet.

Accordingly, the Board finds that the proposed variance will not alter the essential character of the neighborhood or district in which the Premises are located; will not substantially impair the appropriate use or development of adjacent property; and will not be detrimental to the public welfare.

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In accordance with Z.R. § 72-21(d), the applicant represents that the above practical difficulties or unnecessary hardship have not been created by the applicant or by a predecessor in title. The applicant submits that the Premises has existed in its current configuration, separate and apart from all adjacent lots, except that from 1970 until around 2011 the subject lot was in common ownership with the adjacent lot 60. In around 2011, the subject lot became the subject of a New York City lien, presumably for failure to pay property taxes, and was acquired from the City of New York at an auction in 2014.

The Board finds, as it did under *32-41 101st Street, Queens*, BSA Cal. No. 127-14-BZ (June 23, 2015), that the purchase of a tax lot at City auction, thus severed from adjacent parcels, is an intervening event not created by the applicant. Accordingly, the Board finds that the above practical difficulties or unnecessary hardship have not been created by the applicant or by a predecessor in title.

In accordance with Z.R. § 72-21(e), the applicant states that the variance request is the minimum necessary to develop a residence at the Premises. The applicant revised the proposal, from an attached residence to a detached residence, to reduce the density, from a two- to single-family residence, floor area, from 1,930 square feet to 1,584 square feet, and provide parking and a compliant rear yard, and submits that all other bulk requirements will be in full compliance with the Zoning Resolution. Accordingly, the Board finds that the proposed variance is the minimum necessary to afford relief within the intent and purposes of the Zoning Resolution.

The project is classified as a Type II action pursuant to 6 NYCRR Part 617.5 and the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 19-BSA-131Q, dated May 24, 2021.

Based on the foregoing, the Board finds that the evidence in the record supports the findings required to be made under Z.R. § 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 makes each and every one of the required findings under Z.R. § 72-21 to *permit*, the construction of a two-story, with cellar, single-family detached residence that does not comply with the zoning requirements for FAR (Z.R. § 23-142) and side yards (Z.R. § 23-461), *on condition* that all work and site conditions shall conform to drawings filed with this application marked “Received April 26, 2021”—Twelve (12) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: a maximum of 0.81 FAR (approximately 792 square feet of floor area on each the first and second floors), two side yards with minimum widths of one foot and three feet, and one parking space in the cellar, all as shown on Board-approved plans;

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. 2019-92-BZ), shall be obtained within four years and an additional six months, in light of the current state of emergency declared to exist within the City of New York resulting from an outbreak of novel coronavirus disease, by December 11, 2025;

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 24, 2021.

2019-16-BZ

APPLICANT – Pryor Cashman LLP, for McDonald’s Corp., owner.

SUBJECT – Application January 22, 2019 – Special Permit (§73-243) to permit an accessory drive-through to a proposed eating and drinking establishment (UG 6) (McDonald’s) contrary to ZR §32-15. C1-2/R3-1 and R2A zoning districts.

PREMISES AFFECTED – 250-01 Northern Boulevard, Block 8129, Lot 1, Borough of Queens.

COMMUNITY BOARD #11Q

ACTION OF THE BOARD – Laid over to June 28-29, 2021, at 10 A.M. for deferred decision.

2020-42-BZ

APPLICANT – Eric Palatnik, PC, for Dmitry and Marianna Gorelik, owner.

SUBJECT – Application May 13, 2020 – Special Permit (§73-622) to permit the enlargement of an existing one-family dwelling. R3-1 zoning district.

PREMISES AFFECTED – 155 Girard Street, Block 8750, Lot 0383, Borough of Brooklyn.

COMMUNITY BOARD #15BK

THE VOTE TO CLOSE HEARING –

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

Negative:..... 0

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

ACTION OF THE BOARD – Laid over to June 28-29, 2021, at 10 A.M. for decision, hearing closed.

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2020-70-BZ

APPLICANT – Law Office of Lyra J. Altman, for The Albert Dweck Irri Trust FBO Morris Dweck, owner.

SUBJECT – Application September 11, 2020 – Special Permit (§73-622) to permit the enlargement of a single-family residences into one single-family residence. R4-1 zoning district.

PREMISES AFFECTED – 1903 Homecrest Avenue, Block 7291, Lot 0168, Borough of Brooklyn.

COMMUNITY BOARD #15BK

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

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

ACTION OF THE BOARD – Laid over to June 28-29, 2021, at 10 A.M. for decision, hearing closed.

2020-75-BZ

APPLICANT – Eric Palatnik, P.C., for 474 Associates, Inc., owner.

SUBJECT – Application September 22, 2020 – Special Permit (§73-36) to permit the legalization of a physical cultural establishment (Spa 7) located in the third floor an existing building contrary to ZR §42-10. M1-6 zoning district.

PREMISES AFFECTED – 474 7th Avenue, Block 00785, Lot 0043, Borough of Manhattan.

COMMUNITY BOARD #5M

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

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

ACTION OF THE BOARD – Laid over to June 28-29, 2021, at 10 A.M. for decision, hearing closed.

2020-80-BZ

APPLICANT – Eric Palatnik, P.C., for 459 Lexington Associates, Inc., owner; Spa 45, lessee.

SUBJECT – Application October 8, 2020 – Special Permit (§73-36) to permit the operation of a Physical Culture Establishment (Spa 45) contrary to ZR §32-10. C5-3 Special Midtown Purpose District.

PREMISES AFFECTED – 459 Lexington Avenue, Block 1300, Lot 0023, Borough of Manhattan.

COMMUNITY BOARD #6M

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

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

ACTION OF THE BOARD – Laid over to June 28-29, 2021, at 10 A.M. for decision, hearing closed.

2020-87-BZ

APPLICANT – Eric Palatnik, PC., for 30 West 32nd Street, owner; NY Spa 32 Inc., lessee.

SUBJECT – Application November 13, 2020 – Special Permit (§73-36) to permit the operation of a physical culture establishment (Spa 32) contrary to ZR §32-10. C6-4 zoning district.

PREMISES AFFECTED – 30 West 32nd Street, Block 00833, Lot 0061, Borough of Manhattan.

COMMUNITY BOARD #5M

ACTION OF THE BOARD – Laid over to September 13-14, 2021, at 10 A.M. for continued hearing.

PUBLIC HEARINGS

MONDAY-TUESDAY AFTERNOON

MAY 24-25, 2021, 2:00 P.M.

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

Absent: Commissioner Ottley-Brown.

ZONING CALENDAR

2019-179-BZ

APPLICANT – Eric Palatnik, P.C., for Lee Yuen Fung Trading Co., Inc., owner.

SUBJECT – Application June 20, 2019 – Variance (§72-21) to permit the development of a twelve (12) story mixed-use building containing commercial use at the ground floor and twelve residential condominium units above contrary to ZR §42-00. M1-6 zoning district.

PREMISES AFFECTED – 118 West 28th Street, Block 00803, Lot 0051, Borough of Manhattan.

COMMUNITY BOARD #5M

ACTION OF THE BOARD – Laid over to October 18-19, 2021, at 10 A.M. for postponed hearing.

2019-257-BZ

APPLICANT – Sheldon Lobel, P.C., for 179 Tenants Corp., owner.

SUBJECT – Application September 6, 2019 – Special Permit (§73-621) to permit a 390 square foot enlargement of an existing super’s apartment contrary to ZR §§12-10 & 23-152. C1-5/R10A & R10A zoning districts.

PREMISES AFFECTED – 179 East 79th Street, Block 1508, Lot 0031, Borough of Manhattan.

COMMUNITY BOARD # 8M

ACTION OF THE BOARD – Laid over to July 22-23, 2021, at 10 A.M. for continued hearing.

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2019-258-A

APPLICANT – Sheldon Lobel, P.C., for 179 Tenants Corp., owner.

SUBJECT – Application September 6, 2019 – Request to permit a 390 square foot enlargement of an existing super’s apartment contrary Multiple Dwelling Law (MDL) and Housing and Maintenance Code (HMC). C1-5/R10A & R10A zoning districts.

PREMISES AFFECTED – 179 East 79th Street, Block 1508, Lot 0031, Borough of Manhattan.

COMMUNITY BOARD # 8M

ACTION OF THE BOARD – Laid over to July 22-23, 2021, at 10 A.M. for continued hearing.

2019-275-BZ

APPLICANT – Sheldon Lobel, P.C., for Northern Star Textile Corporation, owner; Krav Maga NYC, LLC d/b/a Fit Hit, lessee.

SUBJECT – Application October 16, 2019 – Special Permit (§73-36) to permit the operation of a Physical Cultural Establishment (Fit Hit) located in the cellar and ground floor of an existing building contrary to ZR §42-10. M1-6 zoning district.

PREMISES AFFECTED – 122 West 27th Street, Block 00802, Lot 0056, Borough of Manhattan.

COMMUNITY BOARD #5M

THE VOTE TO CLOSE HEARING –

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

Negative:.....0

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

ACTION OF THE BOARD – Laid over to June 28-29, 2021, at 10 A.M. for decision, hearing closed.

2020-43-BZ

APPLICANT – Law Office of Christopher Wright PLLC, for Zan Optics Products Inc., owner.

SUBJECT – Application May 21, 2020 – Variance (§72-21) to permit the legalization of 2 residential units on the 2nd and 3rd floors of an existing 3 story building contrary to ZR §42-10. M1-2 zoning district.

PREMISES AFFECTED – 982 39th Street, Block 5583, Lot 0068, Borough of Brooklyn.

COMMUNITY BOARD #12BK

ACTION OF THE BOARD – Laid over to September 13-14, 2021, at 10 A.M. for continued hearing.

Carlo Costanza, Executive Director

BULLETIN

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June 25, 2021

DIRECTORY

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18-09-BZIV	250 West 54 th Street, Manhattan
2017-261-BZ	527 East New York Avenue, Brooklyn
2019-299-BZ	82-01 to 82-13 Queens Boulevard, Queens
2019-69-A & 2019-70-A	341 & 343 Mallory Avenue, Staten Island
2017-145-BZ	241 East 59 th Street, Manhattan
2019-269-BZ	3425 Rombouts Avenue, Bronx
2019-271-BZ	37 Mansion Avenue, Staten Island
2020-29-BZ	146-65 Springfield Boulevard, Queens
2017-21-BZ	34-38 38 th Street, Queens
2017-262-BZ	18 Stanwix Street, Brooklyn
2019-162-BZ	3336-3338 Bedford Avenue, Brooklyn
2019-173-BZ	187-01 Hillside Avenue, Queens
2019-192-BZ	16 Harrison Place, Brooklyn
2020-76-BZ	8902 5 th Avenue (8902-8906 5 th Avenue, 442-452 89 th Street), Brooklyn

Afternoon Calendar259

Affecting Calendar Numbers:

2019-206-BZ	51-22 Roosevelt Avenue, Queens
2019-277-BZ	81-04 166th Street, Queens
2020-33-BZ	437 88 th Street, Brooklyn
2021-12-BZ	250 Westervelt Avenue, Staten Island

DOCKETS

New Case Filed Up to June 14-15, 2021

2021-33-BZ

36-63 Main Street, Block 4977, Lot(s) 0001, Borough of **Queens, Community Board: 7**. Special Permit (§73-44) to permit the reduction of required accessory off-street parking spaces for ambulatory diagnostic and treatment health care facility use (UG 4A). C4-3 zoning district. C4-3 district.

2021-34-BZ

233-15 Hillside Avenue, Block 7934, Lot(s) 0001, Borough of **Queens, Community Board: 13**. Special Permit (§73-243) to allow an eating and drinking establishment with an existing accessory drive-through facility. C1-3 zoning district. R3-2/C1-3 district.

2021-35-BZ

957 Grand Street, Block 2924, Lot(s) 0046, Borough of **Brooklyn, Community Board: 1**. Variance (§72-21) to permit the development of a residential building contrary to ZR §42-00. M1-1 zoning district within an Industrial Business Zone (IBZ). M1-1 district.

2021-36-BZ

244 Gansevoort Boulevard, Block 00761, Lot(s) 0045, Borough of **Staten Island, Community Board: 2**. Variance (§72-21) to permit the development of a two-family detached home (UG 2) contrary to ZR §23-461(a) (side yard). Proposed construction of a two-family building located within the bed of a mapped street, contrary to General City Law Section 35 and waiver of 72-01-(g). R3X Zoning District, Lower Density Growth Management Area. R3X district.

2021-37-BZ

220 East 86th Street, Block 1531, Lot(s) 0038, Borough of **Manhattan, Community Board: 8**. Special Permit (§73-36) to permit the operation of a physical cultural establishment (Orangetheory Fitness) on the first floor and mezzanine of an existing four-story mixed commercial and residential building contrary to ZR §32-10. C2-8A zoning district. C2-8A and R8B district.

2021-38-BZ

707 Shepherd Avenue, Block 4453, Lot(s) 0064, Borough of **Brooklyn, Community Board: 5**. Variance (§72-21) to permit the development of a residential building contrary to ZR §23-48 (side yards for existing narrow lots) and ZR §25-23 (required parking). R5 zoning district. R5 district.

2021-39-BZ

183-01 Horace Harding Expressway, Block 7067, Lot(s) 0011, Borough of **Queens, Community Board: 11**. Application Filed in Error. C1-2/R3-1 district.

2021-42-BZ

2901 Avenue L, Block 7629, Lot(s) 6 and 10, Borough of **Brooklyn, Community Board: 14**. Variance (§72-21) to permit the development of a school (UG 3) (Yeshiva Ohr Shraga D'Veletzky) contrary to floor area ratio (ZR § 24-111), lot coverage (ZR § 24-11), wall height (ZR § 24-521), front yards (ZR § 24-34), side yards (ZR § 24-35), protrusion into the required sky exposure plane and the required setback (ZR § 24-521), protrusion into the required side setback (ZR § 24-551) and parking (ZR § 25-31). 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

**HYBRID PUBLIC HEARINGS
SEPTEMBER 13-14, 2021, MONDAY-TUESDAY
10:00 A.M. and 2:00 P.M.**

NOTICE IS HEREBY GIVEN of hybrid public hearings on Monday, September 13, 2021, at 10:00 A.M., and Tuesday, September 14, 2021, at 10:00 A.M. to be held remotely and in person on the first floor of 22 Reade Street in Manhattan, which has an occupancy limit of 10 people and potential overflow space available in the building for a few additional people; COVID-19 safety protocols are in effect in the building; all meeting attendees will be required to practice physical distancing, and all attendees over the age of two who are medically able to tolerate a face covering will be required to wear a face covering, regardless of vaccination status; please do not attend this meeting if: ▪ you have experienced any symptoms of COVID-19 within the past 10 days (a fever of 100.0 degrees Fahrenheit or greater, a new cough, new loss of taste or smell, or shortness of breath); ▪ you have tested positive for COVID-19 within the past 10 days; ▪ you have been in close contact (within 6 feet for at least 10 minutes over a 24-hour period) with anyone while they had COVID-19 within the past 10 days and are required to quarantine under existing CDC guidance (you have not had COVID-19 within the past 3 months, and you are not fully vaccinated);

FURTHERMORE, to accommodate social distancing and address ongoing health concerns, members of the public are strongly encouraged to participate in the hearing remotely; the public hearing will be streamed live through the Board's website (www.nyc.gov/bsa), with remote public participation strongly encouraged, on the following matters:

SPECIAL ORDER CALENDAR

132-58-BZ

APPLICANT – Nasir J. Khanzada, for Maria Barone, owner; Swaranjit Singh, lessee.
SUBJECT – Application July 6, 2020 – 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 20, 2020; Waiver of the Board's Rules of Practice and Procedures. C1-2/R3-2 zoning district. Community Board 7, Queens.
PREMISES AFFECTED – 17-45/17-55 Francis Lewis Boulevard, Block 4747, Lot(s) 31, 41, Borough of Queens.
COMMUNITY BOARD #7Q

758-84-BZ

APPLICANT – David L. Businelli, for Gina Sgarlato Benfante, owner.
SUBJECT – Application January 7, 2021 – Extension of Term of a variance (§72-21) permitted the operation of two-story and cellar commercial building contrary to use regulations which expired on July 2, 2020; Waiver of the Board's Rules of Practice and Procedures. R3X zoning district
PREMISES AFFECTED – 1444 Clove Road, Block 658, Lot 20, Borough of Staten Island.
COMMUNITY BOARD #1SI

129-92-BZ

APPLICANT – Akerman LLP, for Whitestone Plaza Associates Inc., owner.
SUBJECT – Application December 11, 2020 – Extension of Term of a previously approved Variance (§72-21) which permitted the use of Automobile Laundry (UG 16B) which expired on October 19, 2013; Waiver of the Board's Rules of Practice and Procedure. C1-2/R3-2 zoning district.
PREMISES AFFECTED – 150-55 Cross Island Parkway, Block 4697, Lot(s) 31, Borough of Queens.
COMMUNITY BOARD #7Q

61-12-BZII

APPLICANT – Sheppard Mullin Richter & Hampton LLP, for 101 H 216 Lafayette LLC, owner.
SUBJECT – Application November 23, 2020 – Amendment of a previously approved Variance (§72-21) to permit a UG 6 restaurant in a portion of the cellar and first floor, contrary to use regulations (§42-10). The amendment seeks to extend the variance to the entire first floor; Extension of Time to Complete Construction which expired on February 26, 2017; Waiver of the Board's Rules of Practice and Procedure. M1-5B zoning district.
PREMISES AFFECTED – 216 Lafayette Street, Block 482, Lot 28, Borough of Manhattan.
COMMUNITY BOARD #2M

Margery Perlmutter, Chair/Commissioner

MINUTES

**PUBLIC HEARINGS
MONDAY-TUESDAY MORNING
JUNE 14-15, 2021, 10:00 A.M.**

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

SPECIAL ORDER CALENDAR

315-90-BZIII

APPLICANT – Vassalotti Associates Architects, LLP for Hills Fuels, LLC, owner.

SUBJECT – Application May 21, 2020 – Extension of Term (§11-411) for the continued operation of an Automotive Service Station (BP Amoco) with accessory convenience store which expires on January 25, 2021. C2-2/R4 zoning district.

PREMISES AFFECTED – 82-06 Astoria Boulevard, Block 1094, Lot 0001, Borough of Queens.

COMMUNITY BOARD #3Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

This is an application for an extension of term of a previously approved variance, previously granted under Z.R. § 11-411, which permitted the operation of the Premises as an automotive service station with accessory convenience store and expired on January 25, 2021.

A public hearing was held on this application on February 8, 2021, after due notice by publication in *The City Record*, with a continued hearing on April 26, 2021, and then to decision on June 14, 2021. Vice-Chair Chanda performed an inspection of the Premises and surrounding area. Community Board 3, Queens, recommends approval of this application.

The Premises are located on the southeast corner of Astoria Boulevard and 82nd Street, within a C2-3 (R4) zoning district, in Queens. With approximately 95 feet of frontage along Astoria Boulevard, 100 feet of frontage along 82nd Street, and 8,522 square feet of lot area, the Premises are occupied by an existing automotive service station and one-story building (approximately 1,152 square feet of floor area) with accessory convenience store.

The Board has exercised jurisdiction over the Premises since January 29, 1957, when, under BSA Cal. No. 725-56-BZ, the Board granted a variance, for a term of 15 years, to permit the Premises to be occupied as a proposed gasoline service station and accessory uses on condition that the uses then on the Premises be removed and the Premises be levelled substantially to the grade of Astoria Boulevard

and be arranged as indicated on plans filed with the application; the accessory building be located where shown on Board-approved plans; there be no windows in the accessory building facing the adjoining premises to the south; the accessory building be arranged as shown on Board-approved plans; there be no cellar under the accessory building; the toilet room doors be rearranged so as not to be contiguous; on the southerly lot line from the accessory building to 82nd Street and returning along 82nd Street, where shown, there be a masonry wall not less than 5'-6" in height of masonry agreeing with the accessory building; a similar wall be constructed from the accessory building on the easterly lot line of the adjoining premises on lot 6 to the street building line of Astoria Boulevard; such wall may be reduced to four feet in height within ten feet of the street line; curb cuts be restricted to two curb cuts to Astoria Boulevard, each 30 feet in width, where shown, and one curb cut to 82nd Street of similar width, with no portion of any curb cut nearer than five feet to the street building line of Astoria Boulevard; at the intersection there be erected a block of concrete extending for a distance of five feet from the intersection in either direction and not less than 12 inches in height; sidewalks and curbing abutting the Premises be reconstructed or repaired to the satisfaction of the Borough President; signs be restricted to permanent signs attached to the façade of the accessory building facing Astoria Boulevard and the illuminated globes of the pumps, excluding all roof signs and temporary signs but permitting the erection at the intersection of one post standard for supporting a sign, which may be illuminated, advertising only the brand of gasoline on sale, and permitting such sign to extend at right angles to Astoria Boulevard for a distance of not more than four feet beyond the building line; the number of gasoline storage tanks not exceed 12 550-gallon approved tanks; under Section 7e there may be minor repairs with hand tools only for adjustments maintained solely within the accessory building and, under Section 7e, there may be parking of cars awaiting service in spaces where parking will not interfere with the servicing of the station; under Section 7A such curb cuts and show windows as are deemed by the Borough Superintendent to be contrary thereto are permitted; and, all permits be obtained, including a certificate of occupancy, and all work completed within the requirements of Section 22A of the Zoning Resolution.

On July 5, 1972, and April 6, 1982, under BSA Cal. No. 725-56-BZ, the Board amended the variance to extend the term for periods of ten years, the latter of which to expire on January 29, 1982, and on condition that the station be maintained clean and free of debris at all times and be operated in such a fashion so as to minimize traffic congestion; other than as amended the resolution be complied with in all respects; and, a new certificate of occupancy be obtained within one year, by April 6, 1983.

On April 28, 1992, under the subject calendar number, the Board granted an application, under Z.R. §§ 11-411 and 11-412, to permit reconstruction of the existing automotive service station and the addition of an accessory food market on condition that all work substantially conform to drawings

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filed with the application; landscaping and street trees be installed and maintained in accordance with BSA-approved plans; all site lighting be directed downward and away from adjacent residential uses; electromagnetic strokes installed as part of the hardware assembly of the main entrance door of the accessory food market in no way restrict egress from the Premises; the term be limited to ten years; the conditions appear on the certificate of occupancy; in accordance with the Conditional Negative Declaration: “the applicant shall implement a Department of Environmental Protection’s Division of Hazardous Materials Program (DEP/DHMP)—approved soil gas, soil, and groundwater sampling protocol. In addition, the applicant must agree to complete any remedial actions that are determined to be necessary based on the testing results. No sampling, site grading, excavation, demolition, building construction and/or remediation may begin prior to DEP/DHMP written approval of the sampling protocol”; 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 in accordance with Z.R. § 73-30.

On November 21, 1995, under the subject calendar number, the Board amended the resolution to permit an enlargement in the size of the existing accessory retail convenience store on condition that street trees and landscaping be planted and replaced, as necessary in accordance with BSA-approved plans; the Premises be maintained in substantial compliance with the proposed drawing submitted with the application; other than as amended the resolution be complied with in all respects, and substantial construction be completed within one year, by November 21, 1996.

On March 13, 2001, under the subject calendar number, the Board waived its Rules of Practice and Procedures and further amended the resolution to extend the term of the variance for ten years, to expire March 13, 2011, on condition that the Premises be maintained free of debris and graffiti; all landscaping be provided and maintained in accordance with BSA-approved plans; all signs be maintained in accordance with BSA-approved plans; the conditions appear on the certificate of occupancy and the premises be maintained in substantial compliance with the proposed drawings submitted with the application; other than as amended the resolution above cited be complied with in all respects, and, substantial construction be completed and a new certificate of occupancy obtained within two years from the date of this amended resolution.

On January 25, 2011, under the subject calendar number, the Board waived its Rules of Practice and Procedures and further amended the resolution to extend the term for ten years, to expire on January 25, 2021, and to grant an extension of time to obtain a certificate of occupancy to January 25, 2012, on condition that all use and operations substantially conform to drawings filed with the application; the term of the grant expire on January 25,

2021; a certificate of occupancy be obtained by January 25, 2012; all conditions from prior resolutions not specifically waived by the Board remain in effect; 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.

The term of the variance having expired, the applicant now seeks an extension.

The applicant represents that the Premises continues to be maintained clean and free of debris and graffiti, all lighting complies with the illumination plan, and fencing, trash enclosures, landscaping, and signs are maintained in accordance with the approved plans.

Over the course of hearings, the Board expressed concerns regarding the condition of the Premises, specifically that the trash enclosure was not properly maintained and the Premises lacked an adequate trash pickup program.

In response, the applicant provided photographic evidence demonstrating painting of the trash enclosure and states that the trash dumpster pickup occurs once per week.

The Fire Department states, by letter dated February 8, 2021, that a review of records indicates that the subject automotive service station is current with Fire Department permits with respect to the storage of combustible liquids, leak detection equipment, underground storage tanks, and the fire-suppression (dry-chemical) system. Based on the foregoing, the Fire Department has no objection to the application and the Bureau of Fire Prevention will continue to inspect the Premises and enforce all applicable rules and regulations.

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 *amend* the resolution, dated April 28, 1992, as amended through January 25, 2011, so that as amended this portion of the resolution shall read: “to extend the term of the variance for ten years, to expire on January 25, 2031, *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked “Received April 6, 2021”—Four (4) sheets; and *on further condition*:

THAT the term of the variance shall be for ten years, to expire on January 25, 2031;

THAT trash shall be picked up at a frequency necessary to prevent the overflow of trash receptacles;

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. 315-90-BZ”), shall be obtained within one year and an additional six months, in light of the current state of emergency declared to exist within the City of New York resulting from an outbreak of novel coronavirus disease, by December 21, 2022;

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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 14, 2021.

2017-289-BZ and 252-06-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 – Application granted.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta5
Negative:0

THE RESOLUTION –

This is an application for a waiver of the Board’s Rules of Practice and Procedures and an extension of time to complete construction and obtain a certificate of occupancy, pursuant to a special permit, under Z.R. §§ 73-623 and 73-03, and variance, under Z.R. § 72-21, which permitted the development of a 14-story plus cellar, mixed-use residential and community-facility building that does not comply with zoning regulations for window-wall distance and height and will expire on December 4, 2022.

A public hearing was held on this application on May 24, 2021, after due notice by publication in *The City Record*, and then to decision on June 14, 2021.

The Premises are 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. With approximately 125 feet of frontage along Walton Avenue, 140 feet of frontage along Townsend Avenue, 100 feet of frontage along East 175th Street, and 26,500 square feet of lot area, the Premises are occupied by an existing four-story community-facility building to be developed with a 14-story plus cellar, mixed-use residential and community-facility building.

The Board has exercised jurisdiction over the Premises since January 9, 2007, when, under BSA Cal. No. 252-06-BZ, the Board granted a variance, under Z.R. § 72-21, to permit the construction of a four-story community center facility (Use Group 4), which is contrary to Z.R. §§ 24-33 and 24-382, on condition that any and all work substantially conform to drawings as they apply to the objections, filed with the application; the total floor area not exceed 41,985 square feet (1.58 FAR), as illustrated on the BSA-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 shall 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.

On December 4, 2018, under the subject calendar number, the Board granted a special permit, under Z.R. §§ 73-623 and 73-03, to permit the development of a 14-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 Z.R. §§ 23-711 and 23-662, and amended the resolution, dated January 9, 2007, under BSA Cal. No. 252-06-BZ, to permit modifications to the design of the previously approved gymnasium building, on condition that all work and site conditions conform to drawings filed with the application; the bulk parameters of the building 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; an (E) designation (No. E-508) has been placed on the subject site for hazardous materials; the HVAC utilize natural gas; a minimum of 50 percent of dwelling units in the building remain income-restricted housing units for the life of the building; there be no lighting on the roof of the building except as necessary for security; access to the roof of the building be closed at dusk; the conditions appear on the certificate of occupancy; a certificate of occupancy, also indicating the approval and calendar numbers (“BSA Cal. Nos. 2017-289-BZ and 252-06-BZ”), be obtained within four years, by December 4, 2022; a restrictive declaration shall be recorded against the property (City Register File No. 2019000014545) prior to the issuance of the Board’s resolution and substantially conform to the form and substance of the following:

THIS DECLARATION OF RESTRICTIVE

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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 (“Z.R.”) (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 Z.R. § 23-711 (distance of legally required windows) and Z.R. § 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 Z.R. § 12-10) are “income-restricted

housing units” (as defined by Z.R. § 12-10) or at least 50 percent of its total floor area is a “long-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 Z.R. § 12-10) in the Proposed Building must remain as “income-restricted housing units” (as defined by Z.R. § 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;

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

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the approval be limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings; the approved drawings be considered approved only for the portions related to the specific relief granted; and, the Department of Buildings must 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.

The time to complete construction and obtain a certificate of occupancy to expire, the applicant now seeks an extension.

Because this application was filed more than one year before the expiration of the time to complete construction and obtain a certificate of occupancy, the applicant requests a waiver, pursuant to § 1-14.2 of the Board's Rules of Practice and Procedures (the Board's Rules), of §§ 1-07.3(c)(2) and 1-07.3(d)(2), of the Board's Rules to permit the filing of this application.

The applicant represents that construction at the Premises under the Board's 2018 grant has not yet commenced due to funding and COVID-19 delays. The applicant demonstrated that funding was awarded to the project recently, in April 2021, and states that the construction lenders will require the applicant to secure an extension of time prior to closing on the construction loan, currently scheduled for August 2021. The applicant anticipates the start of construction in late August or early September 2021, and, while the applicant believes that construction will take approximately two years, requests a four-year extension of time to account for any future delays.

Based upon its review of the record, the Board has determined that the requested extension of time is appropriate with certain conditions as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *waive* its Rules of Practice and Procedures and *amends* the resolution, dated January 9, 2007, under BSA Cal. No. 252-06-BZ, as amended through December 4, 2018, under the subject calendar number, so that as amended this portion of the resolution shall read: "to extend the time to complete construction and obtain a certificate of occupancy for four years, by December 4, 2026, *on condition*:

THAT substantial construction shall be completed by December 4, 2026;

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 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 ("Z.R.") (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

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contrary to Z.R. § 23-711 (distance of legally required windows) and Z.R. § 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 Z.R. § 12-10) are “income-restricted housing units” (as defined by Z.R. § 12-10) or at least 50 percent of its total floor area is a “long-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 Z.R. § 12-10) in the Proposed Building must remain as “income-restricted housing units” (as defined by Z.R. § 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 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. 2017-289-BZ and 252-06-BZ”), shall be obtained by December 4, 2026;

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 14, 2021.

863-48-BZ

APPLICANT – Alfonso Duarte, for Dilip Datta, owner.
SUBJECT – Application October 29, 2018 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of an automotive repair and automotive sales establishment (UG 16B) which expired on November 25, 2018; Amendment to remove the use of automotive sales. R2 zoning district.

PREMISES AFFECTED – 259-16 Union Turnpike, Block 8876, Lot 1, Borough of Queens.

COMMUNITY BOARD #13Q

ACTION OF THE BOARD – Laid over to September 13-14, 2021, at 10 A.M. for continued hearing.

169-49-BZ

APPLICANT – Rampulla Associates Architect, LLP, for 5270 Amboy Road, LLC, owner.

SUBJECT – Application April 20, 2020 – Amendment (§11-412) to permit the enlargement of an accessory repair establishment of a previously approved variance permitting the operation of an Automotive Service Station (UG 16B). R3A Special South Richmond District within the Lower Density Growth Management Area.

PREMISES AFFECTED – 5270 Amboy Road, Block 6523, Lot 80, Borough of Staten Island.

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COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Laid over to September 13-14, 2021, at 10 A.M. for continued hearing.

803-61-BZ

APPLICANT – Eric Palatnik, P.C., for Martin Blessinger, owner; BP Products North America Inc., lessee.

SUBJECT – Application November 15, 2019 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of an automotive service station (UG 16B) which expires on July 27, 2020. C2-1/R3-2 zoning district.

PREMISES AFFECTED – 1416 Hylan Boulevard, Block 3350, Lot 30, Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Laid over to June 28-29, 2021, at 10 A.M. for continued hearing.

528-71-BZ

APPLICANT – Eric Palatnik, P.C. for PMG NE LLC, owner.

SUBJECT – Application May 29, 2018 – Amendment of a previously approved Variance (§72-21) which permitted the operation of an Automotive Service Station (UG 16B) which expired on October 3, 1982. The Amendment is filed pursuant to §1-07.3 (b)(4)(ii) of the Board’s Rules of Practice and Procedures to requests a modification of the term specified as a condition of the Board’s resolution. The application seeks to legalize modifications to signage, landscaping, site layout and the accessory

PREMISES AFFECTED – 133-40 150th Street, Block 12116, Lot 0001, Borough of Queens.

COMMUNITY BOARD # 12Q

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Shelta, and Commissioner Scibetta5
Negative:.....0

ACTION OF THE BOARD – Laid over to October 18-19, 2021, at 10 A.M., for decision, hearing closed.

758-84-BZIII

APPLICANT – David L. Businelli, for Gina Sgarlato Benfante, owner.

SUBJECT – Application January 7, 2021 – Extension of Term of a variance (§72-21) permitted the operation of two-story and cellar commercial building contrary to use regulations which expired on July 2, 2020; Waiver of the Board's Rules of Practice and Procedures. R3X zoning district.

PREMISES AFFECTED – 1444 Clove Road, Block 00658, Lot(s) 0020, Borough of Staten Island.

COMMUNITY BOARD #1SI

ACTION OF THE BOARD – Laid over to September 13-14, 2021, at 10 A.M., for postponed hearing

hearing.

122-95-BZ

APPLICANT – Capell Barnett Matalon & Schoenfeld LLC, for 152-65 Realty Company LLC, owner.

SUBJECT – Application October 1, 2019 – Extension of Term of a previously approved Variance (§72-21) which permitted a warehouse (UG 16) and trucking terminal (UG 17) with accessory offices, loading and unloading contrary to use regulations which expired on July 11, 2016; Amendment to permit a change in the hours of operation and a request to eliminate the term. C2-2/R3-1 zoning district.

PREMISES AFFECTED – 152-65 Rockaway Boulevard, Block 12278, Lot 60, Borough of Queens.

COMMUNITY BOARD #12Q

ACTION OF THE BOARD – Laid over to September 13-14, 2021, at 10 A.M., for deferred decision.

92-99-BZ, 94-99-BZ, 96-99-BZ, 98-99-BZ, 100-99-BZ, 102-99-BZ

APPLICANT – Goldman Harris LLC for Walden Terrace Inc., owner.

SUBJECT – Application June 30, 2020 – Application to extend the term of a variance allowing transient parking at the above-referenced Premises pursuant to §1-07.1(a)(2); extend the Applicant’s time to obtain Certificate of Occupancy pursuant to §1-07.1(a)(3); waiver pursuant to §1-07.3(d)(2). R7-1 Zoning District.

PREMISES AFFECTED – 98-09, 98-25, 98-41, 64th Road, 98-51, 98-33, 98-19 64th Avenue, Block 2101, Lot (s)0001, 0016, 0024, Block 2100, lot (s)0029, 0021, 0015, Borough of Queens.

COMMUNITY BOARD #6Q

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Shelta, and Commissioner Scibetta5
Negative:.....0

ACTION OF THE BOARD – Laid over to July 22-23, 2021, at 10 A.M., for decision, hearing closed.

299-99-BZ

APPLICANT – Glen V. Cutrono, AIA, for M & V LLC, owner.

SUBJECT – Application August 7, 2019 – Extension of Term (11-411) of a previously approved variance which permitted the operation of an automotive service station (UG 16B) (Getty) which will expire on July 25, 2020. C2-4/R6A zoning district.

PREMISES AFFECTED – 8-16 Malcom X Boulevard, Block 1599, Lot 40, Borough of Brooklyn.

COMMUNITY BOARD #3BK

ACTION OF THE BOARD – Laid over to October 4-5, 2021, at 10 A.M., for continued hearing.

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12-01-BZII

APPLICANT – Greenberg Traurig, LLP, for German Rodriguez, owner.

SUBJECT – Application November 2, 2020 – Amendment or Extension of Term of a previously approved Variance (§72-21) which permitted the development of a one-story commercial building (UG 6) with 93 accessory parking spaces which is set to expire on July 17, 2021. The application seeks to change to remove the Board’s condition of term. R4 zoning district.

PREMISES AFFECTED – 2829 Edson Avenue, Block 4800, Lot 0018, Borough of Bronx.

COMMUNITY BOARD #12BX

ACTION OF THE BOARD – Laid over to September 13-14, 2021, at 10 A.M., for continued hearing.

339-02-BZ

APPLICANT – Eric Palatnik, P.C., for WF Industrial III LLC, owner.

SUBJECT – Application June 1, 2021 – Amendment to modify the Board's condition of term pursuant to (§ 1-07.3(3) (ii)) of the Board's Rules of Practice and Procedures for a previously granted Variance (§72-21) which permitted warehouse and office uses contrary to underlying use regulations which expired on February 25, 2013; Amendment to legalize the addition of mezzanine increasing the degree of non-conformance; Waiver of the Board's Rules. R3-1 and R3-2 zoning districts.

PREMISES AFFECTED – 146-65 Springfield Boulevard, corner of Springfield Boulevard and 147th Avenue, Block 13363, Lot 6. Borough of Queens.

COMMUNITY BOARD #13Q

ACTION OF THE BOARD – Laid over to July 22-23, 2021, at 10 A.M., for continued hearing.

72-04-BZ

APPLICANT – Eric Palatnik, P.C, for BWAY-129th Street, Gasoline Corp., owner.

SUBJECT – Application October 18, 2019 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of an Automotive Service Station (UG 16B)(Getty) which expires on June 3, 2020. C1-2/R6 & R6 zoning district.

PREMISES AFFECTED – 141-54 Northern Boulevard, Block 5012, Lot 45, Borough of Queens.

COMMUNITY BOARD #7Q

ACTION OF THE BOARD – Laid over to September 13-14, 2021, at 10 A.M., for continued hearing.

42-08-BZ

APPLICANT – Eric Palatnik, P.C., for Grigoriy Katsura, owner.

SUBJECT – Application September 11, 2020 – Amendment of a previously approved Special Permit (§73-622) which permitted the enlargement of an existing home; Extension of Time to Complete Construction which expired on September 18, 2019; Waiver of the Board’s Rules of Practice and Procedures. R3-1 zoning district.

PREMISES AFFECTED – 182 Girard Street, Block 8749, Lot 0275, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to October 18-19, 2021, at 10 A.M., for continued hearing.

18-09-BZIV

APPLICANT – Klein Slowik PLLC, for West 54th Street LLC c/o ZAR Property, owner; Crunch LLC, lessee.

SUBJECT – Application March 29, 2021 – Extension of Time to Obtain a Certificate of Occupancy of a previously approved Special Permit (§73-36) permitting the operation of a physical culture establishment (Crunch Fitness) which expires on May 21, 2020; 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

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Shelta, and Commissioner Scibetta5
Negative:.....0

ACTION OF THE BOARD – Laid over to July 22-23, 2021, at 10 A.M., for decision, hearing closed.

2017-261-BZ

APPLICANT – Davidoff Hatcher & Citron LLP, for Congregation Chabad-In-Reach-Aliya, owners.

SUBJECT – Application September 5, 2017 – Variance (§72-21) to permit the development of a five-story and cellar house of worship (UG 4) (*Congregation Chabad-In-Reach-Aliya*) contrary to ZR §24-11 (Lot Coverage) and ZR §24-36 (Required 30 Foot Rear Yard). R6 zoning district.

PREMISES AFFECTED – 527 East New York Avenue, Block 1332, Lot 74, Borough of Brooklyn.

COMMUNITY BOARD #9BK

ACTION OF THE BOARD – Laid over to October 4-5, 2021, at 10 A.M., for adjourned hearing.

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2019-299-BZ

APPLICANT – Nasir J. Khanzada, PE, for Adelmo Cioffi, owner.

SUBJECT – Application December 2, 2019 – Reinstatement (§11-411) of a previously approved variance which permitted the operation of an automotive service station (UG 16B) which expired on December 13, 1987; Amendment to permit the conversion of automotive repair bays to accessory convenience store; Waiver of the Board’s Rules. C2-3/R6 zoning district.

PREMISES AFFECTED – 82-01 to 82-13 Queens Boulevard, Block 1542, Lot 0001, Borough of Queens.

COMMUNITY BOARD #4Q

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Shelta, and Commissioner Scibetta5
Negative:.....0

ACTION OF THE BOARD – Laid over to September 13-14, 2021, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

2019-69-A & 2019-70-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 335 Mallory LLC, lessee.

SUBJECT – Application April 3, 2019 – Proposed construction of a new two-family not fronting on a legally mapped street contrary to General City Law Section §36. R3X zoning district.

PREMISES AFFECTED – 341 & 343 Mallory Avenue, Block 3417, Lot(s) 174, 173, Borough of Staten Island.

COMMUNITY BOARD # 2SI

ACTION OF THE BOARD – Laid over to September 13-14, 2021, at 10 A.M., for continued hearing.

ZONING CALENDAR

2017-145-BZ

CEQR #17-BSA-119M

APPLICANT – Mango & Lacoviello, LLP, for 59th Street Associates, owner; Tracy Anderson Mind and Body, LLC, lessee.

SUBJECT – Application May 10, 2017 – Special Permit (§73-36) to permit a physical culture establishment (Tracy Anderson Method) in the cellar, ground floor and ground floor mezzanine of floor of an existing building. C2-8, C1-5 and R8B zoning district.

PREMISES AFFECTED – 241 East 59th Street, Block 01414, Lot 17, Borough of Manhattan.

COMMUNITY BOARD #8M

ACTION OF THE BOARD – Application granted.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta5

Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated April 11, 2017, acting on DOB Alteration Type I Application No. 122953358, reads in pertinent part:

“Proposed use as a Physical culture establishment is not permitted and is contrary to ZR 32-21. This job must be referred to the Board of Standards and Appeals for approval pursuant to ZR 73-36”

This is an application under Z.R. §§ 73-36 and 73-03 to legalize, on a site located partially within a C1-5 (R8B) zoning district and partially within an R8B zoning district and in the Special Transit Land Use District, the operation of a physical culture establishment (“PCE”) on a portion of the first floor and first floor mezzanine of an existing five-story, with cellar and mezzanine, mixed-use residential and commercial building, contrary to Z.R. § 32-10.

A public hearing was held on this application on March 9, 2021, after due notice by publication in *The City Record*, with a continued hearing on May 11, 2021, and then to decision on June 14, 2021. Community Board 8, Manhattan, recommends approval of this application. The Board received one form letter in support of this application.

The Premises are located on a through-lot on the north side of East 59th Street, between Second Avenue and Third Avenue, partially within a C1-5 (R8B) zoning district and partially within an R8B zoning district and in the Special Transit Land Use District, in Manhattan. With approximately 100 feet of frontage along East 59th Street, 13 feet of frontage along East 60th Street, 100 feet of depth, and 11,380 square feet of lot area, the Premises are occupied by an existing five-story, with cellar and mezzanine, mixed-use residential and commercial building. The PCE exists wholly within the C1-5 (R8B) portion of the Premises.

The Board notes that its determination is subject to and guided by Z.R. § 73-03. The Board notes that pursuant to Z.R. § 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. 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.

The applicant represents that the PCE occupies 4,990 square feet of floor area on the first floor with a reception area, fitness studios, and restrooms and locker rooms with showers; and 1,340 square feet of floor area on the first floor mezzanine with offices, a trainer room, and break

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room. The PCE began operation on March 1, 2017, as “Tracy Anderson Method,” with the following hours of operation: Monday, Tuesday, Thursday, and Friday, 6:00 a.m. to 7:30 p.m., Wednesday, 6:00 a.m. to 8:30 p.m., Saturday, 7:00 a.m. to 4:00 p.m., and Sunday, 8:00 a.m. to 3:00 p.m.

The applicant represents that PCE use will neither impair the essential character nor the future use or development of the surrounding area because the subject PCE use is entirely contained within an existing building and is consistent with the character of the surrounding area, which is predominantly commercial area with retail and offices comprising the majority of uses of the surrounding buildings. Further, the applicant states that the PCE does not attract significant additional traffic to the area and does not have a negative impact on the adjacent tenants or the neighborhood.

The applicant submits that the PCE contains facilities for classes, instruction and programs for physical improvement. The Board finds that the subject PCE use is consistent with those eligible pursuant to Z.R. § 73-36(a)(2) for the issuance of the special permit. 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.

The applicant submits that sound attenuation measures will be maintained to ensure that sound and vibration from PCE use does not negatively impact nearby occupied spaces. These measures include sound attenuating flooring in the fitness studios, and sound attenuating acoustical batt insulation and sheetrock in the fitness studio walls and demising wall between the PCE and adjacent tenant spaces. The applicant represents that the PCE use will produce no adverse effect on the privacy, quiet, light and air in the neighborhood because the surrounding area is comprised primarily of heavily trafficked, predominantly commercial retail and office uses and the PCE does not increase traffic to the surrounding area.

The applicant states that the PCE is equipped with an interior fire alarm system, active throughout the entire PCE space, which includes area smoke detectors, manual pull stations at each required exit, local audible and visible alarms, and connection to an FDNY-approved central station.

The Fire Department states, by letter dated March 6, 2021, that the Premises are protected by a fire suppression system (sprinkler) that was last inspected on October 31, 2017, and the permit is current. The Premises do not have a fire alarm system as stated on plans submitted. An application had been filed with the Fire Department and, to date, has not been approved. The Fire Department respectfully requests copies of the filed fire alarm drawings to determine if such system is required for the Premises and the PCE. Based on the foregoing, the Fire Department objects to the application. Upon receipt of the fire alarm plans and revised plan providing the number of persons, the Department will continue to review the requirements for a

fire alarm system.

At hearing, and upon review of the applicant’s fire alarm plans, the Fire Department concluded that the fire alarm is not required in the PCE space and directed the applicant to withdraw the fire alarm application.

The Fire Department states, by letter dated June 10, 2021, that the Premises are protected by a fire suppression system (sprinkler) and a fire alarm system is not required. Based on the foregoing, the Fire Department has no objection to the application and the Bureau of Fire Prevention will continue to inspect the Premises and enforce all applicable rules and regulations.

Accordingly, 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. In addition, the Board finds that the operation of the PCE will not interfere with any public improvement project.

The project is classified as a Type II action pursuant to 6 NYCRR Part 617.5. The Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 17-BSA-119M, dated June 14, 2021.

Therefore, the Board has determined that the evidence in the record supports the requisite findings for the special permit pursuant to Z.R. §§ 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 Z.R. §§ 73-36 and 73-03 to *legalize*, on a site located partially within a C1-5 (R8B) zoning district and partially within an R8B zoning district and in the Special Transit Land Use District, the operation of a physical culture establishment on a portion of the first floor and first floor mezzanine to an existing five-story, with cellar and mezzanine, mixed-use residential and commercial building, contrary to Z.R. § 32-10, *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked “Received June 7, 2021”—Sixteen (16) sheets; and *on further condition*:

THAT this grant shall be limited to a term of ten years, expiring June 14, 2031;

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-foot-wide exit pathways shall be maintained leading to the required exits and that pathways shall be maintained unobstructed, including from any equipment;

THAT fire safety measures shall be maintained as indicated on Board-approved plans;

THAT accessibility shall be provided pursuant to the standards set forth in applicable accessibility laws, including but not limited to Chapter 11 of the NYC Building Code,

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the 2009 American National Standards Institute (ANSI) A117.1 and Title III of the Americans with Disabilities Act, as reviewed and approved by DOB;

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. 2017-145-BZ”), shall be obtained within one year and an additional six months, in light of the current state of emergency declared to exist within the City of New York resulting from an outbreak of novel coronavirus disease, by December 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;

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 14, 2021.

2019-269-BZ

APPLICANT – Snyder & Snyder LLP on behalf of New York SMSA Limited Partnership d/b/a Verizon Wireless, for Anthony Wood Corporation, owner.

SUBJECT – Application September 24, 2019 – Special Permit (§73-30) to permit non-accessory antennas to be affixed to signs or other similar structures. M1-1 zoning district.

PREMISES AFFECTED – 3425 Rombouts Avenue, Block 5270, Lot 20, Borough of Bronx.

COMMUNITY BOARD #12BX

ACTION OF THE BOARD – Application withdrawn without prejudice.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta5
Negative:0

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated August 27, 2019, acting on Application Type Alteration 2 No. X00171348-I1, reads in pertinent part:

“In all districts, the Board of Standards and Appeals may permit non-accessory radio or television towers, provided that it finds that the proposed location, design, and method of operation of such tower will not have detrimental effect on the privacy, quiet, light, and air of the neighborhood. The Board may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the

surrounding area.”

This is an application under Z.R. § 73-30 for a special permit to erect a non-accessory radio tower on the rooftop of a building with an existing sign, in accordance with Z.R. § 42-31.

A public hearing was held on this application on January 28, 2020, after due notice by publication in *The City Record*, with continued hearings on March 24, 2020, and June 16, 2020, and then to decision on June 14, 2021. Commissioner Ottley-Brown and Commissioner Scibetta performed inspections of the Premises and the surrounding neighborhood. Community Board 12, the Bronx, recommends approval of this application.

The Premises are located at the southwest corner of the intersection of Rombouts Avenue and the New England Thruway, within an M1-1 zoning district, in the Bronx. With approximately 62 feet of frontage along Rombouts Avenue, 35 feet of frontage along the New England Thruway, and 6,875 square feet of lot area, the Premises are occupied by a parking facility.

The applicant proposes to install a non-accessory radio tower for a public utility wireless communications facility at the subject Premises. Over the course of hearings, the Board expressed concerns regarding the legality of the height of the sign upon which the proposed radio tower would be erected, which was not compliant with the bulk, setback and sky exposure plane requirements of the underlying zoning district, as required under Z.R. § 43-43 and to provide a zoning diagram, as the Board has no authority to waive the Zoning Resolution bulk requirements under the requested special permit. The applicant stated to the Board that the sign is an existing noncompliant condition as to height. However, the DOB Sign Enforcement Unit informed the Board that the consent agreement signed between DOB and the sign company served to toll the enforcement action against the listed illegal signs until they were legalized or removed. DOB further informed the Board that the sign is, in fact, an illegal sign and its illegality could have been cured through conversion to an accessory business sign, a not-for-profit sign, or a telecommunications equipment pole. Because these actions were not taken, DOB views the Premises as vacant, and the sign had not accrued any vested rights to the pole height because it was illegally erected.

The Board expressed further concerns regarding the proposed guardrail around the pole which was depicted on the proposed plans without information on the height or materials shown on the drawings, not shown on the site plan, and only proposed to go half-way around the proposed pole. The applicant also submitted a radio frequency exposure level report, which the Board noted was missing dimensions to indicate the height and length of different exposure levels. In addition, in the adjacent building simulations, the preferred graphic description method showed nothing instead of a range of color scale indicating a range of radio frequency at the studied level.

Furthermore, under BSA Cal. No. 2019-281-A, the Board noted that “Telephone exchanges or other communications equipment structures” as defined by Z.R. §

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32-15 are not “radio towers” that qualify for a special permit under Z.R. § 73-30. Moreover, the underlying zoning district allows the proposed project as of right, without a special permit.

The Board expressed its concerns regarding the proposed project and requested that the applicant address them in its next submission. However, by correspondence, dated May 25, 2021, the applicant requested to withdraw the application without prejudice.

Therefore, it is Resolved, that this application is hereby *withdrawn* without prejudice.

Adopted by the Board of Standards and Appeals, June 14, 2021.

2019-271-BZ

APPLICANT – New York SMSA Limited Partnership d/b/a Verizon Wireless c/o Amato Law Group, PLLC, for 3708 Hylan Boulevard Corp., owner.

SUBJECT – Application October 3, 2019 – Special Permit (§73-30) to permit a non-accessory radio tower consisting of a cupola on the roof of the building. C3A Special South Richmond district.

PREMISES AFFECTED – 37 Mansion Avenue, Block 5190, Lot 85, Borough of Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Application withdrawn without prejudice.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta5

Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated September 10, 2019, acting on Application Type Alteration 1 (DIR 14) No. 520391059, reads in pertinent part:

“The subject property is located within C3A zoning district. Non-accessory radio towers are contrary to the as of right uses in a C3A zoning district as noted in Article III, Chapter 2, Section 32-00 and 32-10 of the New York City Zoning Resolution, the New York City Board of Standards and Appeals may grant a special permit for the installation of non-accessory radio tower, a special permit from the BSA is required for the cupola.”

This is an application under Z.R. § 73-30 for a special permit to erect a non-accessory radio tower on the rooftop of an existing building, contrary to Z.R. § 32-10.

A public hearing was held on this application on February 4, 2020, after due notice by publication in *The City Record*, with a continued hearing on April 21, 2020, and then to decision on June 14, 2021. Community Board 3, Staten Island, recommends approval of this application. The Board received one letter of objection to this application citing structural and chemical concerns that pose risks to

safety and could cause hazardous health conditions.

The Premises are located on the north side of Mansion Avenue, within an C3A zoning district and in the Special South Richmond Development District, on Staten Island. With approximately 219 feet of frontage on Mansion Avenue, 190 feet of depth, and 40,946 square feet of lot area, the Premises are occupied by a two-story community facility building and beach club.

The applicant proposes to construct a non-accessory radio tower, consisting of a radio frequency transparent cupola to be located on the rooftop of the subject Premises. The cupola would be utilized in connection with the applicant’s proposed public utility small cell communication facility.

Over the course of hearings, the Board expressed concerns regarding the submitted Schedule A which described the proposed radio tower as accessory to a Use Group (“UG”) 2, when elsewhere in the application the applicant proposed to erect a non-accessory radio tower. Moreover, the applicant’s proposed plan that the owner of the building would need to notify it 72 hours in advance of any work, which, the Board stated is impracticable in the case of an emergency and affected access for installation of internet and GPS which required rooftop access. The Board noted that the presence of the radio tower would obstruct such access. Additionally, the Board noted that the applicant submitted an Exposure level Report which did not chart and diagram exposure levels for the staircase, lower roof, and upper roof of the building, as it did at street level, and was, therefore, incomplete.

Furthermore, under BSA Cal. No. 2019-281-A, the Board noted that “Telephone exchanges or other communications equipment structures” as defined by Z.R. § 32-15 are not “radio towers” that qualify for a special permit under Z.R. § 73-30.

The Board expressed its concerns regarding the proposed project and requested that the applicant address them in its next submission. However, by correspondence, dated March 12, 2021, the applicant requested to withdraw the application without prejudice.

Therefore, it is Resolved, that this application is hereby *withdrawn* without prejudice.

Adopted by the Board of Standards and Appeals, June 14, 2021.

2020-29-BZ

APPLICANT – Eric Palatnik, P.C., for WF Industrial III LLC, owner.

SUBJECT – Application April 2, 2020 – Variance (§72-21) to permit the enlargement of a UG 16 & 6 warehouse and office building previously before the Board contrary to ZR 22-00. R3-1 and R3-2 zoning districts.

PREMISES AFFECTED – 146-65 Springfield Boulevard, Block 13363, Lot 6, Borough of Queens.

COMMUNITY BOARD #13Q

ACTION OF THE BOARD – Application withdrawn without prejudice.

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THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta5
Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated March 9, 2020, acting on DOB Alteration Type I Application No. 421756898, reads in pertinent part: “the reestablishment of a variance for a warehouse and office building with accessory parking in the open area (UG 16 and 6) previously granted under Calendar Number 339-02-BZ, which expired February 25, 2013, contrary to Z.R. 22-10 and must be referred to the Board of Standards and Appeals for a variance pursuant to Z.R. 72-21.”

This is an application for a variance, pursuant to Z.R. § 72-21, to allow, on a site partially within an R3-2 zoning district and partially within an R3-1 zoning district, the legalization of a Use Group 16 and 6, 32,966 square-foot warehouse and office building with accessory parking, contrary to Z.R. 22-00

A public hearing was held on this application on March 9, 2021, after due notice by publication in *The City Record*, and then to decision on June 14, 2021. Vice-Chair Chanda performed an inspection of the Premises and surrounding neighborhood. Community Board 13, Queens, recommends approval of this application.

The Premises are bounded by Springfield Boulevard to the west, 147th Avenue to the south, and Springfield Lane to the east, partially within an R3-2 zoning district and partially within an R3-1 zoning district, in Queens. With approximately 285 feet of frontage along Springfield Boulevard, 254 feet of frontage along 147th Avenue, 100 feet of frontage along Springfield Lane, and 52,913 square feet of lot area, the Premises are occupied by an existing one-story and mezzanine manufacturing and office building with 32,967 square feet of floor area (0.62 FAR).

The Board has exercised jurisdiction over the Premises since June 21, 1977, when, under BSA Cal. No. 219-71-BZ, the Board granted a variance, under Z.R. § 72-21, to permit, in a then-R3-2 zoning district, the erection of a one-story warehouse and office building with accessory parking in the open area on condition that all work substantially conform to plans as they apply to the objection, filed with the application; the variance be limited to a term of 15 years; the hours of operation be from 7:00 a.m. to 7:00 p.m., six days each week, except that the Premises remain closed on Sunday; all signs conform to a C1 district; the parking lot be secured after working hours; all lighting be directed away from residences; interior lot line masonry walls be finished with brick; all other laws, rules and regulations applicable be complied with; and, substantial construction be completed within one year.

On July 21, 1981, and October 13, 1982, under BSA Cal. No. 219-71-BZ, the Board extended the time to complete substantial construction for periods of one year, the latter of which by July 28, 1983.

On November 20, 1984, under BSA Cal. No. 219-71-

BZ, the Board extended the time to complete substantial construction, by January 28, 1986.

On June 28, 1988, under BSA Cal. No. 219-71-BZ, the Board extended the time to complete substantial construction, by 41 months from January 28, 1986.

On March 20, 1990, under BSA Cal. No. 219-71-BZ, the Board amended the variance to reflect the change in design of the building and landscaping as shown on drawings submitted with the application, on further condition that substantial construction be completed within 17 months from June 28, 1989, a certificate of occupancy be issued by November 28, 1990, no further extensions of time to complete construction be issued, and, other than as amended, the resolution be complied with in all respects.

On November 6, 1991, under BSA Cal. No. 219-71-BZ, the Board extended the time to obtain a certificate of occupancy for one year, by November 6, 1992.

On February 25, 2003, under BSA Cal. No. 339-02-BZ, the Board granted a new variance, under Z.R. § 72-21, to permit the reestablishment of an expired variance, granted previously under BSA Cal. No. 219-71-BZ, which permitted warehouse and office uses and the addition of tax lot 4 to the Premises, on condition that all work substantially conform to plans as they apply to the objections, filed with the application; the term of the variance be limited to ten years, to expire February 25, 2013; the Premises be maintained free of debris and graffiti; any graffiti located on the Premises be removed within 48 hours; the conditions be noted in the certificate of occupancy; substantial construction be completed in accordance with Z.R. § 72-23; 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) and/or configuration(s) not related to the relief granted.

The applicant seeks to reestablish the variance granted under BSA Cal. No. 339-02-BZ and legalize an existing 4,057 square-foot mezzanine, which allows the non-essential ground floor uses to be relocated at the mezzanine level to allow for more efficient operations at the ground floor, resulting in a ground floor with 26,596 square feet of warehouse space and 2,313 square feet of office space, and a mezzanine level with 4,057 square feet of warehouse space, that does not comply with Z.R. § 22-00.

The Board stated that the historic use of the Premises as a warehouse is not a unique condition and disagreed with the applicant that the Premises was occupied with an obsolete building. Further, the Board stated that a parking study would be required to ascertain the demand for the Premises and the parking demand must be met on site. The Board also expressed concerns over the appearance of the Premises and questioned whether it fit within the character of the neighborhood.

By letter dated June 4, 2021, the applicant requested to withdraw the application without prejudice.

Therefore, it is Resolved, that this application is hereby

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withdrawn.

Adopted by the Board of Standards and Appeals, June 14, 2021.

2017-21-BZ

APPLICANT – Mitchell S. Ross, Esq., for Astoria Ice, Inc., owner; Astoria Sports Complex, lessee.

SUBJECT – Application January 24, 2017 – Variance (§72-21) to permit the enlargement of an existing building contrary to ZR §43-28 (Rear Yard Equivalent) and a Special Permit (§73-36 to permit the operation of a Physical Cultural Establishment (Astoria Sports Complex) which is contrary to ZR §42-10. M1-5 zoning district.

PREMISES AFFECTED – 34-38 38th Street, Block 645, Lot 10, Borough of Queens.

COMMUNITY BOARD #1Q

ACTION OF THE BOARD – Laid over to December 6-7, 2021, at 10 A.M., for adjourned hearing.

2017-262-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Delson Developments, LLC, owner.

SUBJECT – Application September 7, 2017 – Variance (§72-21) to permit the construction of three-story plus cellar residential building contrary to ZR §42-00. M1-1 zoning district.

PREMISES AFFECTED – 18 Stanwix Street, Block 03162, Lot 0007, Borough of Brooklyn.

COMMUNITY BOARD #4BK

ACTION OF THE BOARD – Laid over to October 4-5, 2021, at 10 A.M., for continued hearing.

2019-162-BZ

APPLICANT – Jay Goldstein, Esq., for Agit Abeckaser and 725 6th Ave LLC, owner.

SUBJECT – Application May 30, 2019 – 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 ratio) and ZR §23-47 (rear yard). R2 zoning district.

PREMISES AFFECTED – 3336-3338 Bedford Avenue, Block 7642, Lot(s) 52, 53, Borough of Brooklyn.

COMMUNITY BOARD #14BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Shelta, and Commissioner Scibetta5
Negative:0

ACTION OF THE BOARD – Laid over to July 22-23, 2021, at 10 A.M., for decision, hearing closed.

2019-173-BZ

APPLICANT – Eric Palatnik, P.C., for PMG LI, LLC, owner.

SUBJECT – Application June 12, 2019 – 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. C2-4/R6A Special Downtown Jamaica District.

PREMISES AFFECTED – 187-01 Hillside Avenue, Block 9960, Lot 19, Borough of Queens.

COMMUNITY BOARD #8Q

ACTION OF THE BOARD – Laid over to September 13-14, 2021, at 10 A.M., for continued hearing.

2019-192-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 16 Harrison Place Partners LLC, owner.

SUBJECT – Application July 18, 2019 – Variance (§72-21) to permit the construction of a cellar and four-story residential building contrary to ZR §42-10. M1-2 zoning district.

PREMISES AFFECTED – 16 Harrison Place, Block 3093, Lot 13, Borough of Brooklyn.

COMMUNITY BOARD #1BK

ACTION OF THE BOARD – Laid over to October 4-5, 2021, at 10 A.M., for continued hearing.

2020-76-BZ

APPLICANT – Law Office of Jay Goldstein, for 8904 5th Avenue LLC, owner; The Learning Experience d/b/a TLE, lessee.

SUBJECT – Application September 25, 2020 – Special Permit (§73-19) to permit the operation of a daycare facility (TLE) contrary to ZR §32-10. C8-2 Special Bay Ridge Purpose District.

PREMISES AFFECTED – 8902 5th Avenue (8902-8906 5th Avenue, 442-452 89th Street), Block 6066, Lot 26, Borough of Brooklyn.

COMMUNITY BOARD #10BK

ACTION OF THE BOARD – Laid over to July 22-23, 2021, at 10 A.M., for continued hearing.

MINUTES

**PUBLIC HEARINGS
MONDAY-TUESDAY AFTERNOON
JUNE 14-15, 2021, 2:00 P.M.**

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

2019-206-BZ

APPLICANT – Akerman LLP, for HW LIC One LLC, owner.

SUBJECT – Application August 22, 2019 – Special Permit (§73-66) to permit the construction of a development that exceeds the height limits established contrary ZR §61-20. C2-3/R6 zoning district.

PREMISES AFFECTED – 51-22 Roosevelt Avenue, Block 1320, Lot 0012, Borough of Queens.

COMMUNITY BOARD # 2Q

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Shelta, and Commissioner Scibetta5

Negative:.....0

ACTION OF THE BOARD – Laid over to July 22-23, 2021, at 10 A.M., for decision, hearing closed.

2019-277-BZ

APPLICANT – Jay Goldstein, Esq., for Bukharian Jewish Congregation of Hillcrest, owner.

SUBJECT – Application October 17, 2019 – Variance (§72-21) to permit the construction of a three-story plus cellar House of Worship (UG4) (Bukharian Jewish Congregation of Hillcrest) contrary to ZR §24-11 (FAR); ZR §24-34 (front yard); ZR §24-521 (height) and ZR §24-35 (side yard). R2A zoning district.

PREMISES AFFECTED – 81-04 166th Street, Block 7026, Lot 0021, Borough of Queens.

COMMUNITY BOARD #8Q

ACTION OF THE BOARD – Laid over to November 15-16, 2021, at 10 A.M., for postponed hearing.

2020-33-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 437 88 LLC, owner; Blink 88th Street, Inc., lessee.

SUBJECT – Application April 9, 2020 – Special Permit (§73-36) to permit the operation of a physical cultural establishment (Blink Fitness) to be located within the cellar, first and second floors of an existing building contrary to ZR §32-10. C8-2 and C4-2A Special Bayridge zoning districts.

PREMISES AFFECTED – 437 88th Street, Block 6050, Lot 45, Borough of Brooklyn.

COMMUNITY BOARD #10BK

ACTION OF THE BOARD – Laid over to December 6-7, 2021, at 10 A.M., for postponed hearing.

2021-12-BZ

APPLICANT – Terminus Group LLC, for Igor Yakubov, owner.

SUBJECT – Application January 22, 2021 – Variance (§72-21) to permit the construction of a single-family dwelling contrary to ZR 23-45 (Front Yard Regulations). R3A Special Hillside Preservation District.

PREMISES AFFECTED – 250 Westervelt Avenue, Block 41, Lot 25, Borough of Staten Island.

COMMUNITY BOARD #1SI

ACTION OF THE BOARD – Laid over to October 4-5, 2021, at 10 A.M., for continued hearing.

Carlo Costanza, Executive Director

BULLETIN

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2021-40-BZ

157 W. 24th Street, Block 800, Lot(s) 0009, Borough of **Manhattan, Community Board: 4**. Variance (§72-21) to permit the development of a fifteen (15) story mixed-use building contrary to ZR §42-00. M1-6 zoning district. M1-6 district.

2021-41-BZ

22-38 Cumming Street, Block 2237, Lot(s) 16 and 18, Borough of **Manhattan, Community Board: 12**. Variance (§72-21) to permit the development of a nine (9) story residential building contrary to height (ZR §23-662(a)) and parking (ZR §25-23). R7A & R7-2/C2-4 Special Inwood District. R7-A, R7-1 (Special Inwood) district.

2021-42-BZ

2901 Avenue L, Block 7629, Lot(s) 3, Borough of **Brooklyn, Community Board: 14**. Variance (§72-21) to permit the development of a school (UG 3) (Yeshiva Ohr Shraga D'Veletzky) contrary to floor area ratio (ZR § 24-111), lot coverage (ZR § 24-11), wall height (ZR § 24-521), front yards (ZR § 24-34), side yards (ZR § 24-35), protrusion into the required sky exposure plane and the required setback (ZR § 24-521), protrusion into the required side setback (ZR § 24-551) and parking (ZR § 25-31). R2 zoning district.

2021-43-BZ

90-01 Beach Channel Drive, Block 16124, Lot(s) 33, 76, 78, Borough of **Queens, Community Board: 14**. Variance (§72-21) to permit the repurposing of an existing three-story plus cellar building to be occupied with commercial offices (UG 6B) and as of right community facility uses contrary to ZR §32-00. 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

**HYBRID PUBLIC HEARINGS
SEPTEMBER 23-24, 2021, THURSDAY-FRIDAY
10:00 A.M. and 2 P.M.**

NOTICE IS HEREBY GIVEN of hybrid public hearings on Thursday, September 23, 2021, at 10:00 A.M and 2 P.M., and Friday, September 24, 2021, at 10:00 A.M and 2 P.M., to be held remotely and in person on the first floor of 22 Reade Street in Manhattan, which has an occupancy limit of 10 people and potential overflow space available in the building for a few additional people; COVID-19 safety protocols are in effect in the building; all meeting attendees will be required to practice physical distancing, and all attendees over the age of two who are medically able to tolerate a face covering will be required to wear a face covering, regardless of vaccination status; please do not attend this meeting if: ▪ you have experienced any symptoms of COVID-19 within the past 10 days (a fever of 100.0 degrees Fahrenheit or greater, a new cough, new loss of taste or smell, or shortness of breath); ▪ you have tested positive for COVID-19 within the past 10 days; ▪ you have been in close contact (within 6 feet for at least 10 minutes over a 24-hour period) with anyone while they had COVID-19 within the past 10 days and are required to quarantine under existing CDC guidance (you have not had COVID-19 within the past 3 months, and you are not fully vaccinated);

FURTHERMORE, to accommodate social distancing and address ongoing health concerns, members of the public are strongly encouraged to participate in the hearing remotely; the public hearing will be streamed live through the Board's website (www.nyc.gov/bsa), with remote public participation strongly encouraged, on the following matters:

SPECIAL ORDER CALENDAR

2017-286-BZII

APPLICANT – Eric Palatnik, P.C., for Ditmars 31st Street Associates LLC, owner.

SUBJECT – Application December 18, 2020 – Amendment of a previously approved Special Permit (§73-36) which permitted the operation of a Physical Culture Establishment (*The Rock Health & Fitness*) to be located within the cellar level of a proposed three-story retail building. The Amendment seeks to permit the enlargement of the facility to include the first floor. C4-2A/R5D zoning district.

PREMISES AFFECTED – 22-06 31st Street, Block 844, Lot 40, Borough of Queens.

COMMUNITY BOARD #1Q

APPEALS CALENDAR

2019-255-A

APPLICANT – Shmuel D. Flaum, for Mendy Samuel Blau, owner.

SUBJECT – Application September 5, 2019 – Proposed enlargement of an existing single-family home with a portion located within the bed of a mapped street contrary to General City Law §36 and within the street widening line contrary to General City Law §35. R3X zoning district.

PREMISES AFFECTED – 621 Alonzo Road, Queens - Block 15510, Lot 0011

COMMUNITY BOARD #14Q

Margery Perlmutter, Chair/Commissioner

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**PUBLIC HEARINGS
MONDAY-TUESDAY MORNING
JUNE 28-29 & 30, 2021, 10:00 A.M.**

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

SPECIAL ORDER CALENDAR

55-45-BZ

APPLICANT – Carl A. Sulfaro, Esq., for John Passarella, owner; Kingsland Service Station, LLC, lessee.

SUBJECT – Application March 25, 2019 – Extension of Term (§11-411) of a previously approved variance permitting the operation of an Automotive Service Station (UG 16B) (Spirit) with accessory automotive repair which expired on February 27, 2019. C2-4/R6B zoning district.

PREMISES AFFECTED – 63 Kingsland Avenue (f/k/a 51-61 Kingsland Avenue), Block 2866, Lot 40, Borough of Brooklyn.

COMMUNITY BOARD #3BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

This is an application for a waiver of the Board’s Rules of Practice and Procedures, an extension of term of a previously approved variance, previously granted under Z.R. § 11-411, which permitted the use of the Premises as a gasoline service station (Use Group (“UG”) 16) and expired on February 27, 2019, and an extension of time to obtain a certificate of occupancy which expired on March 1, 2012.

A public hearing was held on this application on January 25, 2021, after due notice by publication in *The City Record*, with a continued hearing on April 12, 2021, and then to decision on June 30, 2021. Vice-Chair Chanda performed an inspection of the Premises and surrounding area. Community Board 1, Brooklyn, recommends approval of this application.

The Premises are a triangular lot located on the intersection of Kingsland Avenue, Woodpoint Road, and Frost Street, within a C2-4 (R6B) zoning district, in Brooklyn. With approximately 100 feet of frontage along Kingsland Avenue, 104 feet of frontage along Woodpoint Road, 10 feet of frontage along Frost Street, and 4,969 square feet of lot area, the Premises are occupied by an existing gasoline service station (UG 16) with a one-story accessory building (1,987 square feet of floor area) with lubrication, minor repairs, occasional car washing, and vehicle inspection.

The Board has exercised jurisdiction over the

Premises since July 24, 1945, when, under the subject calendar number, the Board granted a variance, for a term of ten years, to permit a portion of the Premises to be occupied for a gasoline service station on condition that the gasoline service station and a conforming ice storage building be constructed simultaneously and operated jointly under the same control; the Premises be used only as proposed as a gasoline service station and ice storage building in which no ice is manufactured; in all other respects, the buildings and occupancy comply with all laws, rules, and regulations applicable thereto; working drawings be filed with the Board for further consideration and imposing additional conditions before plans are filed with the borough superintendent; such drawings be filed within six months of the date of the resolution and, after approval, all permits be obtained and all work completed within one year.

On November 13, 1945, under the subject calendar number, the Board amended the variance by adding that complete plans are approved as complying with the requirements of the resolution, provided the one-story building shown toward the south as proposed for ice storage be erected at the same time as the proposed gasoline service station and be used and occupied only as proposed, as a conforming building in a business district; the area of the plot devoted to the gasoline service station use not exceed the total length along Kingsland Avenue of 100 feet and a long Woodpoint Road of 128 feet; curb cuts be restricted to two 25-foot curb cuts as shown to Woodpoint Road and two 25-foot cuts to Kingsland Avenue and no portion of any curb cut to be nearer than 5 feet to the intersection of Kingsland Avenue and Woodpoint Road; the number of gasoline service tanks be restricted to four, 550-gallons each; pumps be not nearer than ten feet to the street line; the entire gasoline selling area, where paved, not occupied by the accessory building, be paved with cement or asphalt; the gasoline selling area not be occupied except for such use, together with the usual accessory uses, consisting of car washing, greasing, and sale of accessories, but for no other uses; and, all permits be obtained and all work completed within one year.

On September 24, 1946, under the subject calendar number, the Board further amended the variance to extend the time to complete the work for one year.

On September 28, 1948, under the subject calendar number, the Board further amended the variance by adding that in view of the elimination from the plot of tax lots 46, 47, and 48, the remaining Premises may be constructed as proposed and as indicated on plans filed with the application, for a term of ten years, on condition that the proposed ice storage building and gasoline service station be constructed simultaneously; complete working drawings be filed with the Board for further consideration before same are submitted to the Department of Housing and Buildings; such plans be filed within six months from the resolution and all permits be obtained within one year after approval of such plans.

On April 26, 1949, under the subject calendar number, the Board accepted plans as in substantial compliance with

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the Board's grant.

On February 21, 1950, under the subject calendar number, the Board further amended the variance by adding that there may be installed on the Premises in connection with the ice plant, a tank for the storage of kerosene as proposed and passed upon by the borough superintendent under NB Application 4-1945 and located as shown on revised plan on condition that such kerosene not be dispensed in connection with the gasoline service station and in all other respects the resolution be complied with.

On July 24, 1951, under the subject calendar number, the Board further amended the variance by adding that the brand sign proposed to be located near the intersection of Woodpoint Avenue and Kingsland Avenue may be a two-leaf sign as indicated on plans filed with the application on condition that in all other respects the resolution be complied with.

On July 12, 1955, under the subject calendar number, the Board extended the time to complete the work for one year.

On November 22, 1955, under the subject calendar number, the Board further amended the variance by adding that in the event the owner desires to change the use of the auto accessory store to an inspection bay and omit the store front, install an overhead door in place of such store front, such changes may be made as shown on plans filed with the application on condition that the resolution be complied with in all respects.

On October 29, 1957, under the subject calendar number, the Board further amended the variance to permit one additional 150-gallon approved gasoline storage tank in addition to the four existing tanks, making a total of five.

On November 5, 1958, under the subject calendar number, the Board extended the term of the variance for ten years, to expire on November 5, 1968, on condition that the resolution be complied with in all respects and a new certificate of occupancy be obtained.

On November 5, 1968, under the subject calendar number, the Board extended the term of the variance for ten years, to expire on November 5, 1978, on condition that all billboards and advertising signs be removed from the Premises; other than as amended the resolution be complied with in all respects; and, a new certificate of occupancy be obtained.

On February 27, 1979, under the subject calendar number, the Board extended the term for ten years, to expire on February 27, 1989, on condition that the resolution be complied with in all respects and a new certificate of occupancy be obtained within one year.

On May 1, 1990, under the subject calendar number, the Board waived its Rules of Procedure and further amended the variance to extend the term for ten years, to expire on February 27, 1999, 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 Premises conform with plans filed with the application; the resolution be complied with in all respects and a new certificate of occupancy be obtained within one year.

On May 2, 2000, under the subject calendar number, the Board extended the term of the variance for ten years, to expire on February 27, 2009, on further condition that the resolution be complied with in all respects and a new certificate of occupancy be obtained within one year.

On March 1, 2011, under the subject calendar number, the Board waived its Rules of Practice and Procedures and extended the term of the variance for ten years, to expire on February 27, 2019, and time to obtain a certificate of occupancy, by March 1, 2012, on condition that all use and operations substantially conform to plans filed with the application; all conditions from prior resolutions not specifically waived by the Board remain in effect; 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.

The term of the variance and time to obtain a certificate of occupancy having expired, the applicant now seeks an extension. Because this application was filed more than 30 days since the expiration of time to obtain a certificate of occupancy, the applicant requests a waiver, pursuant to § 1-14.2 of the Board's Rules of Practice and Procedures (the Board's Rules), of § 1-07.3(d)(2), of the Board's Rules to permit the filing of this application.

The applicant represents that no physical changes are proposed or have occurred since the Board's last approval. The Premises operator replaced the old gasoline tanks with new double-walled motor fuel storage tanks and the entire open area was paved with new concrete including new sidewalks and curbs. The motor vehicle servicing operates from 8:00 a.m. to 6:00 p.m., Monday through Saturday, and is closed on Sunday. Refuse storage is provided in a wheeled dumpster that is stored inside the building in the inspection bay and is picked up once per week around 8:00 p.m. Air pumps from the sides of the building have also been removed and one air pump has been relocated to the front of the building. The applicant also provided photographs of the Premises to demonstrate completion of the improvements, including restriping the parking spaces.

The New York State Department of Environmental Conservation states, by correspondence dated December 16, 2020, that the site status update report is approved and groundwater monitoring may be reduced to annually.

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 *wave* its Rules of Practice and Procedures and *amends* the resolution, dated July 24, 1945, as amended through March 1, 2011, so that as amended this portion of the resolution shall read: "to extend the term of the variance for ten years, to expire on February 27, 2029, and extend the time to obtain a certificate of occupancy, *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked "Received February 25, 2021"—Four (4) sheets; and *on*

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further condition:

THAT the term of the variance shall be for ten years, to expire on February 27, 2029;

THAT no signs are permitted to advertise car washing;

THAT car washing may not be a primary use and may be provided only as an incidental service to lubrication, minor repairs, and vehicle inspection 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. 55-45-BZ"), shall be obtained within one year, by June 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, June 30, 2021.

764-56-BZ

APPLICANT – Alfonso Duarte, for Barney's Service Station Inc., owner.

SUBJECT – Application July 2, 2019 – Amendment (§ 11-412) of a previously approved variance permitting the operation of an automotive service station (UG 16B). The amendment seeks to permit the enlargement of the existing accessory building to permit the additions of convenience store, service bay, office and storage space. C1-2/R3-2 zoning district.

PREMISES AFFECTED – 200-05 Horace Harding Expressway, Block 7451, Lot 32, Borough of Queens.

COMMUNITY BOARD #11Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

This is an application for an amendment, under Z.R. § 11-412, to permit the enlargement of the existing accessory building to permit the additions of convenience store, service bay, office, and storage space.

A public hearing was held on this application on July 13, 2020, after due notice by publication in *The City Record*, with a continued hearing on December 14, 2020, and then to decision on June 30, 2021. Vice-Chair Chanda and

Commissioner Ottley-Brown performed inspections of the Premises and surrounding area. Community Board 11, Queens, recommends approval of this application. The Board received a letter from a civic association within whose district the Premises are located, in support of this application but stating that the dumpster should be enclosed.

The Premises are bounded by Horace Harding Expressway to the south, 201st Street to the east, and Hollis Court Boulevard to the west, within a C1-2 (R3-2) zoning district, in Queens. With approximately 115 feet of frontage along Horace Harding Expressway, 100 feet of frontage along 201st Street, 122 feet of frontage along Hollis Court Boulevard, and 14,978 square feet of lot area, the Premises are occupied by an existing automotive service station with one-story accessory building (approximately 1,850 square feet of floor area).

The Board has exercised jurisdiction over the Premises since October 22, 1957, when, under the subject calendar number, the Board granted a variance, for a term of 15 years, to permit the Premises to be occupied as a gasoline service station and accessory use, as indicated on plans filed with the application, on condition that all buildings and uses be removed from the Premises and the Premises graded substantially to the grade of the abutting streets and be arranged and constructed as indicated on such plans; the accessory building be of the location, design, and arrangement indicated with the rear wall on the lot line, as shown, and with no windows or other openings in the rear wall opening upon adjoining premises; from the accessory building along the northerly lot line both to Hollis Court Boulevard and to 201st Street there be erected a masonry wall not less than 3'-6" in height with steel picket fence above 2' in height to a total height of 5'-6"; suitable masonry terminating posts be constructed and maintained; a similar fence wall be continued along the building line of 201st Street to the building line of Horace Harding Expressway; such wall have masonry terminating posts and may be reduced to a height of not less than 4'-6" within ten feet of the building line of 201st Street; the curb cuts be restricted to two on Hollis Court Boulevard and two on Horace Harding Expressway as shown on such plans, each curb cut to be 30 feet in width and no cut to be nearer than 5 feet to a lot line as prolonged; there be no curb cut to 201st Street; the sidewalk and curbing abutting the Premises be constructed or repaired to the satisfaction of the Borough President; pumps be of a low approved type erected not nearer than 15 feet to the street building lines of Horace Harding Expressway service road and Hollis Court Boulevard, as shown on plans above cited; the accessory building be faced with face brick on all sides, have no cellar, and in all other respects comply with the requirements of the Building Code; such portable firefighting appliances be maintained as the Fire Commissioner directs; signs be restricted to a permanent sign attached to the façade of the accessory building and the illuminated globes of the pumps, excluding all roof signs and temporary flags and signs, but permitting the erection of one post standard within the intersection of Hollis Court Boulevard and Horace Harding

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Expressway service road, 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 four feet beyond the building line; at the intersection of 201st Street and Horace Harding Expressway service road there be a block of concrete not less than 12 inches in height extending for 5 feet along each building line; under section 7h, there may be, for a similar term, the parking of cars on unbuilt upon spaces so located as not to interfere with the servicing of the station; under section 7i for a similar term there may be minor repairs with hand tools only for adjustments maintained solely within the accessory building; and, all permits required be obtained and all work completed, and a certificate of occupancy obtained within the requirements of Section 22A of the Zoning Resolution.

On October 21, 1958, under the subject calendar number, the Board amended the variance to extend the time to obtain permits and complete the work on condition that all permits required, including a certificate of occupancy, be obtained and all work completed within one year.

On June 11, 1968, under the subject calendar number, the Board further amended the variance to permit alteration of the accessory building.

On May 23, 1972, under the subject calendar number, the Board extended the term of the variance for ten years, to expire October 22, 1982, on condition that other than as amended the resolution be complied with in all respects and a new certificate of occupancy be obtained.

On August 16, 1983, under the subject calendar number, the Board waived its Rules of Procedure and further amended the variance to extend the term for ten years, to expire October 22, 1992, on condition that there be no use of acetylene torches done on the Premises; there be no spray painting of cars on the Premises; there be no dead storage of automobiles; there be no major automobile repairs (Use Group 16) done on the Premises; the certificate of occupancy be conspicuously posted in clear view of the customer; the station be maintained clean and free of debris at all times; there be no parking of cars on the sidewalk area; the trash be adequately contained in the dumpster and be picked up on a periodic schedule; there be no discharging of crank case oil onto the surrounding property; the brick retaining wall be repaired where required and the station be operated at all times in such a fashion so as to minimize traffic congestion; other than as amended the resolution be complied with in all respects; and, a new certificate of occupancy be obtained within one year.

On July 13, 1993, under the subject calendar number, the Board further amended the variance, under Z.R. §§ 11-411 and 11-412, to legalize the reduction in number of pump islands on condition that the sidewalk along Hollis Court be repaired and adequately maintained; the broken brick wall be repaired; the Premises be debris and graffiti free, clean, and in substantial compliance with the existing and proposed conditions drawings submitted with the application; the term of the variance be for ten years, to expire on October 22, 2002; other than as amended the resolution be complied with in all respects; and, a new

certificate of occupancy be obtained within one year.

On December 17, 2002, under the subject calendar number, the Board further amended the variance, under Z.R. §§ 11-411 and 11-413, to extend the term for ten years, to expire on October 22, 2012, and to permit the sale of used automobiles on condition that the Premises be maintained in substantial compliance with plans filed with the application; there be no parking of automobiles on the sidewalks; the Premises be maintained free of debris and graffiti; any graffiti identified on the Premises be removed within 48 hours; signage be provided in accordance with BSA-approved plans; the conditions 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; 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) and/or configuration(s) not related to the relief granted.

On April 24, 2012, under the subject calendar number, the Board further amended the variance, under Z.R. § 11-411, to extend the term for ten years, to expire October 22, 2022, on condition that the use and operations substantially conform to plans filed with the application; the term of the grant expire on October 22, 2022; the site be maintained free of debris and graffiti; any graffiti identified on the Premises be removed within 48 hours; all signage comply with C1 district regulations; a maximum of five parking spaces on the Premises be utilized for the sale of used cars; the conditions be reflected on the certificate of occupancy; a new certificate of occupancy be obtained by April 24, 2013; all conditions from prior resolutions not specifically waived by the Board remain in effect; 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.

The applicant seeks an amendment to permit an enlargement of the accessory building, by 811 square feet, for a total of 2,661 square feet, to accommodate a service bay, storage room, and office, and is an enlargement of less than 50 percent of the floor area occupied by the use and is permitted under Z.R. § 11-412. Additionally, the applicant proposes to install a 299 square-foot accessory convenience store in the accessory building and, pursuant to DOB Technical Policy and Procedure Notice # 10/99, represents that the accessory retail use will have a maximum retail selling floor area of the lesser of 2500 square feet or twenty-five percent of the zoning lot area (3,745 square feet). The applicant submits that the gas pumps are attended from 5:00 a.m. to 11:00 p.m., the repair shop operates with three bays, six days per week, from 8:00 a.m. to 5:00 p.m., and the accessory convenience store will operate from 5:00 a.m. to 11:00 p.m.

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The applicant provided a light spread diagram demonstrating that lumens are not zero at the lot line of the Premises. The Board discussed that, in this instance, lumens in excess of zero were appropriate because the adjacent property is a commercial use that is not seen by the Board to be negatively impacted by such lumen spread.

The Fire Department states, by letter dated December 9, 2019, that a review of their records indicates that the Premises is current with its permits for the storage of combustible liquids, leak detection equipment, underground storage tank, and the fire suppression (dry chemical) system. Based on the foregoing, the Fire Department has no objection to the application and the Bureau of Fire Prevention will continue to inspect these Premises and enforce all applicable rules and regulations.

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 *amend* the resolution, dated October 22, 1957, as amended through April 24, 2012, so that as amended this portion of the resolution shall read: “to permit an enlargement of the accessory building, under Z.R. § 11-412, *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked “Received June 9, 2021”—Seven (7) sheets; and *on further condition*:

THAT the term of the variance shall expire on October 22, 2022;

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

THAT any graffiti located on the Premises shall be removed within 48 hours;

THAT all signage shall comply with C1 district regulations;

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. 764-56-BZ”), shall be obtained within four years, by June 30, 2025;

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 30, 2021.

516-75-BZIII

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Equinox SC Upper East Side, Inc., owner.

SUBJECT – Application November 16, 2020 – Extension of Term of a previously approved Variance (§72-21) which permit the operation of a physical culture establishment (Equinox) which expired on October 17, 2020. C8-4 zoning district.

PREMISES AFFECTED – 330 East 61st Street, Block 1345, Lot(s) 16, 37, Borough of Manhattan.

COMMUNITY BOARD #8M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE –

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

THE RESOLUTION –

This is an application for an extension of term of a previously approved variance, previously granted under Z.R. § 72-21, which permitted the construction of a five-story building to be occupied by a tennis club with roof tennis facilities and expired on October 17, 2020.

A public hearing was held on this application on May 24, 2021, after due notice by publication in *The City Record*, and then to decision on June 30, 2021. Community Board 1, Manhattan, recommends approval of this application.

The Premises are located on the south side of East 61st Street, with frontage on East 60th Street, between First Avenue and Second Avenue, within a C8-4 zoning district, in Queens. With approximately 67 feet of frontage along East 61st Street, 125 feet of frontage along East 60th Street, and 201 feet of depth, the Premises are occupied by an existing five-story, with cellar and sub-cellar, commercial building.

The Board has exercised jurisdiction over the Premises since May 4, 1976, when, under the subject calendar number, the Board granted a variance, under Z.R. § 72-21, to permit the erection of a five-story building to be occupied as a tennis club with roof tennis facilities that encroaches on the required rear yard and penetrates the sky exposure plane on condition that all work substantially conform to drawings filed with the application, all laws, rules, and regulations applicable be complied with, and substantial construction be completed within one year.

On February 28, 1979, under the subject calendar number, the Board amended the variance to extend the time to complete the work for one year.

On July 24, 1979, under the subject calendar number, the Board further amended the variance to permit a change in the interior layout and acknowledged the changes of use to different conforming uses in the sub-cellar, cellar, first, and second floors including the addition of the lounge and handball-racquet ball court on the third floor, squash courts, handball-racquet ball courts on the fourth and fifth floors.

On January 4, 1983, under the subject calendar number, the Board further amended the variance to permit

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the westerly portion of the first floor to include an eating and drinking establishment (Use Group (“UG”) 12) and offices (UG 6) and to permit the interior layout on the first floor to be rearranged, substantially as shown on drawings filed with the application, on condition that the owner of property take all reasonable steps to prevent illegal parking on the East 60th Street frontage of the property, including, but not limited to, the erection of warning signs and enforcement by building personnel; the UG 12 use not include discotheque-type entertainment or dancing; the UG 12 operation comply with the noise requirement of Local Law 64/79; and, other than as amended the resolution be complied with in all respects.

On July 18, 1995, under the subject calendar number, the Board further amended the variance to permit a change in activities on the third floor from tennis, handball, racquet ball courts and lounge to an exercise room on condition that the easement provided for the adjoining lot pursuant to BSA Cal. No. 184-94-BZ be recorded in the County Clerk’s office within 60 days; the Premises be maintained in substantial compliance with drawings submitted with the application; the resolution be complied with in all respects; and, a new certificate of occupancy be obtained within one year.

On October 17, 2000, under the subject calendar number, the Board further amended the variance to reflect the addition of tax lot 37 to the Premises and to allow the use of the Premises as a physical culture establishment (“PCE”) on condition that the PCE use be limited to a term of ten years, to expire October 17, 2010; all massages be performed by licensed masseurs and masseuses; the Premises be maintained in substantial compliance with the 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 two years.

On May 3, 2011, under the subject calendar number, the Board waived its Rules of Practice and Procedures and further amended the variance to extend the term for ten years, to expire October 17, 2020, to extend the time to obtain a certificate of occupancy for one year, by May 3, 2012, to permit an increase in PCE floor area, from 100,272 square feet to 101,646 square feet, and change the PCE operator, to “The Sports Club/LA,” on condition that all work substantially conform to drawings filed with the application; the term of the grant expire on October 17, 2020; the conditions be listed on the certificate of occupancy; a new certificate of occupancy be obtained by May 3, 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 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.

By letter dated October 22, 2014, the Board approved a change in PCE ownership and operator, from “Sports Club/LA” to “Equinox,” as in substantial compliance with the Board’s approvals.

The term of the variance having expired, the applicant now seeks an extension.

The applicant represents that no changes in the plan or operation of the PCE are proposed and the PCE continues to occupy 101,646 square feet of floor area, with a total of 140,142 gross square feet, as follows: the sub-cellar (19,248 square feet of floor space) contains locker areas, massage rooms, and a natatorium and jacuzzi area; the cellar (19,248 square feet of floor space) contains storage areas and a parking garage with accessory parking spaces; the first floor (18,693 square feet of floor area) contains the reception area, office spaces, a cafe associated with the PCE as well as the eating and drinking establishment operated independently from the PCE; the second floor (17,586 square feet of floor area) contains exercise and weight areas; the second floor mezzanine (7,474 square feet of floor area) has an exercise track; the third floor (18,788 square feet of floor area) contains exercise studios and lounge areas; the fourth floor (18,750 square feet of floor area) contains additional locker rooms, office space, and a training room; the fifth floor (18,643 square feet of floor area) contains sports courts, squash courts, a rock climbing wall, and lounge areas; and, the roof (552 square feet of floor area) has a roof terrace and outdoor deck for sunbathing with an area for food preparation. The PCE is protected by an approved interior fire alarm and sprinkler systems and continues to comply with all pertinent accessibility requirements.

The Fire Department states, by letter dated May 24, 2021, that the Premises are protected by a fire suppression system and a fire alarm system that have been inspected and have current permits. Based on the foregoing, the Fire Department has no objection to the application and the Bureau of Fire Prevention will continue to inspect the Premises and enforce all applicable rules and regulations.

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 *amend* the resolution, dated May 4, 1976, as amended through May 3, 2011, so that as amended this portion of the resolution shall read: “to extend the term of the variance for ten years, to expire on October 17, 2030, *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked “Received April 2, 2021”—Fifteen (15) sheets; and *on further condition*:

THAT the term of the variance shall be for ten years, to expire on October 17, 2030;

THAT all massages shall be performed by New York State-licensed massage therapists;

THAT no lighting or amplified sound is permitted on the roof area;

THAT the above conditions shall appear on the

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certificate of occupancy;

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 516-75-BZ”), shall be obtained within one year, by June 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, June 30, 2021.

599-76-BZII

APPLICANT – Eric Palatnik, PC, for Jeffrey Mink, owner.
SUBJECT – Application March 3, 2020 – Amendment and Extension of Term of a previously approved Variance (72-21) which permitted the operation of a two-story (UG 17) accessory storage and shipping building (FM Brush Company) which expired on December 21, 2016. The amendment seeks to amend the Board’s condition of term to re-instate the variance; Waiver of the Board’s Rules of Practice and Procedures. R4-1 zoning district.

PREMISES AFFECTED – 70-02 72nd Place, Block 03664, Lot 7, Borough of Queens.

COMMUNITY BOARD #5Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

This is an application for a waiver of the Board’s Rules of Practice and Procedures, and an amendment to permit an extension of term of a previously approved variance, previously granted under Z.R. § 72-21, which permitted the erection of a second-floor enlargement to an existing manufacturing building and expired on December 21, 2016.

A public hearing was held on this application on February 8, 2021, after due notice by publication in *The City Record*, with a continued hearing on May 10, 2021, and then to decision on June 30, 2021. Vice-Chair Chanda performed an inspection of the Premises and surrounding area. Community Board 5, Queens, recommends approval of this application.

The Premises are a triangular lot located on southwest corner of 72nd Place and Edsall Avenue, within an R4-1

zoning district, in Queens. With approximately 97 feet of frontage along 72nd Place, 103 feet of frontage along Edsall Avenue, and 10,846 square feet of lot area, the Premises are occupied by an existing two-story Use Group (“UG”) 17 factory, accessory storage and shipping building (approximately 15,501 square feet).

The Board has exercised jurisdiction over the Premises since December 21, 1976, when, under the subject calendar number, the Board granted a variance, under Z.R. § 72-21, to permit, in a then-R5 zoning district, the erection of a second floor enlargement to an existing manufacturing building that increases the degree of non-compliance in open space ratio and front yard encroachment, for a term of 15 years, on condition that all work substantially conform to plans filed with the application; all existing and/or new exterior mechanical devices be placed on the roof of the new or proposed second story addition with the minimum of 30 feet distance of all interior lot lines, and all gates providing access to the yard be securely locked at non-working hours; the refuse container be placed within the limits of the property; exterior lighting be installed along the 72nd Place façade; shipping and receiving be limited to the Edsall Street side; employee parking be limited along Edsall Street; the hours of operation be limited to 8:00 a.m. to 5:00 p.m., except Sundays; all laws, rules, and regulations applicable be complied with; and, substantial construction be completed within one year.

On November 17, 1992, under the subject calendar number, the Board amended the variance to extend the term for ten years, to expire on December 21, 2001, on further condition that the Premises be maintained graffiti free; street trees be maintained and replaced when necessary; other than as amended the resolution be complied with in all respects; and, a new certificate of occupancy be obtained within one year.

On October 30, 2001, under the subject calendar number, the Board further amended the variance to extend the term for 15 years, to expire on December 21, 2016, on condition that a sprinkler system connected to the domestic water system be installed throughout the Premises and the Premises be maintained in substantial compliance with plans filed with the application; other than as amended the resolution be complied with in all respects; and, a certificate of occupancy be obtained within 24 months, by October 30, 2003.

The term of the variance having expired, the applicant now seeks an extension. Because this application was filed less than ten years since the expiration of the term, the applicant requests a waiver, pursuant to § 1-14.2 of the Board’s Rules of Practice and Procedures (the Board’s Rules), of § 1-07.3(b)(3)(ii), of the Board’s Rules to permit the filing of this application.

The applicant represents that the Premises operates Monday through Friday, 8:00 a.m. to 4:30 p.m., and maintains the Premises free of debris with daily cleaning. The Premises are protected by an automatic wet sprinkler system connected to an FDNY-approved central station in areas with rack storage. The Premises are maintained with

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lighting, which is kept off unless needed due to FDNY or security purposes, and an 8"-thick, 5'-tall concrete wall separating the Premises from residential neighbors. Deliveries to the Premises are made between 8:00 a.m. to 12:00 p.m. and 1:00 p.m. to 5:00 p.m., using only the Edsall Avenue frontage. Refuse is stored within an enclosed trash area on Edsall Avenue and is collected daily. In response to Board comments, the applicant provided photographs demonstrating painting of the concrete wall.

The Fire Department states, by letter dated February 8, 2021, that the Premises are protected by a fire suppression system (sprinkler) and a fire alarm system. Such systems were tested as witnessed by the Fire Department and tested satisfactorily to the Department's rules and regulations. Based on the foregoing, the Fire Department has no objection to the application and the Bureau of Fire Prevention will continue to inspect these Premises and enforce all applicable rules and regulations.

The Fire Department adds, by letter dated February 11, 2021, that an inspection was performed on February 10, 2021, to determine the type of exterior lighting installed in the side yards at the Premises. The Fire Department can confirm that the lights are not emergency lights and no records of violations were issued to install any exterior emergency lights. Therefore, the owner may either remove these lights or provide shielding for the same. The Fire Department requests the plans to be amended to remove the symbols for emergency lighting in the side yards.

In response to Fire Department comments, the applicant amended the plans to remove the emergency lighting fixtures on the side yard, west, and south exterior elevations.

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 *waive* its Rules of Practice and Procedures and *amends* the resolution, dated December 21, 1976, as amended through October 30, 2001, so that as amended this portion of the resolution shall read: "to extend the term of the variance for 15 years, to expire on June 30, 2036, *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked "Received April 22, 2021"—Six (6) sheets; and *on further condition*:

THAT the term of the variance shall be for 15 years, to expire on June 30, 2036;

THAT trash pickup shall occur before 11:00 p.m.;

THAT all existing and/or new exterior mechanical devices be placed on the roof of the new or proposed second story addition with the minimum of 30 feet distance of a ll interior lot lines, and all gates providing access to the yard shall be securely locked at non-working hours; the refuse container be placed within the limits of the property;

THAT exterior lighting shall be installed along the 72nd Place façade;

THAT shipping and receiving shall be limited to the Edsall Street side;

THAT employee parking shall be limited a long Edsall Street;

THAT the hours of operation shall be limited to 8:00 a.m. to 5:00 p.m., except Sundays;

THAT the Premises shall be maintained graffiti free;

THAT street trees shall be maintained and replaced when necessary;

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. 599-76-BZ"), shall be obtained within one year, by June 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, June 30, 2021.

105-81-BZ

APPLICANT – David L. Businelli, for 235 Forest Associates, owner; George Sieghardt, lessee.

SUBJECT – Application October 2, 2019 – Extension of Term of a previously approved Variance (§72-21) which permitted the operation of a commercial office building which expired on August 10, 2012; Amendment for signage, Waiver of the Board's Rules. R3A zoning district.

PREMISES AFFECTED – 235 Forest Avenue, Block 130, Lot(s) 44, Borough of Staten Island.

COMMUNITY BOARD #5SI

ACTION OF THE BOARD – Application granted on condition.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta5

Negative:.....0

THE RESOLUTION –

This is an application for a waiver of the Board's Rules of Practice and Procedures, an extension of term of a previously approved variance, previously granted under Z.R. § 72-21, which permitted the use of the Premises as a commercial office building and expired on August 10, 2012, and an amendment to the same.

A public hearing was held on this application on May 10, 2021, after due notice by publication in *The City Record*, and then to decision on June 30, 2021. Community Board 1, Staten Island, recommends approval of this application.

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The Premises are located on the northwest corner of Forest Avenue and Brighton Avenue, within an R3A zoning district and in the Special Hillside Preservation District, on Staten Island. With approximately 4,920 square feet of lot area, the Premises are occupied by an existing two-story, with cellar, commercial office building.

The Board has exercised jurisdiction over the Premises since August 10, 1982, when, under the subject calendar number, the Board granted a variance, under Z.R. § 72-21, to permit, in a then-R4 zoning district, the change in use of an existing two-story, two-family dwelling with doctors' offices into an office building on condition that all work substantially conform to drawings as they apply to the objection, filed with the application; the variance be limited to a term of 15 years; the occupancy of the Premises be limited to medical, dental, or business offices only (Use Group 6); the hours of operation be limited to 8:30 a.m. to 6:00 p.m., Monday through Friday, and 8:30 a.m. to 1:00 p.m., on Saturday, closed on Sunday; identification of lessees be limited to one, six-square-foot non-illuminated and non-flashing sign; occupancy be limited to no more than one tenant per floor; an approved smoke detector be installed on each level and in each office, connected to an alarm that can be heard throughout the building; the basement level be sprinklered off the domestic supply; all exits and exit doors comply with the Building Code; the utility room be properly ventilated, and separated from the rest of the building by materials having a minimum one-hour fire rating; the facade of the building be maintained with a residential character; shrubbery be maintained, and promptly replaced when necessary; 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, substantial construction be completed in accordance with Z.R. § 72-23.

On April 12, 1983, under the subject calendar number, the Board amended the variance to permit a change in the hours of operation, to 9:00 a.m. to 8:00 p.m., Monday through Saturday, closed on Sunday, two tenants to occupy the cellar floor level, to allow the erection of a 15-square-foot double-face illuminated non-flashing sign in lieu of the 6-square-foot non-illuminated and non-flashing sign, and to eliminate the exterior and interior stairs located on the Forest Avenue side, on condition that the Premises conform to revised drawings submitted with the application; sign illumination be turned off after business hours; all work be completed within one year, by April 12, 1984; and, other than as amended the resolution be complied with in all respects.

On August 10, 1999, under the subject calendar number, the Board waived its Rules of Practice and Procedures and further amended the variance to extend the term for 15 years, to expire on August 10, 2012, on condition that a certificate of occupancy be obtained within one year.

The term of the variance having expired, the applicant now seeks an extension. Because this application was filed less than ten years since the expiration of the term, the

applicant requests a waiver, pursuant to § 1-14.2 of the Board's Rules of Practice and Procedures (the Board's Rules), of § 1-07.3(b)(3)(ii), of the Board's Rules to permit the filing of this application. In accordance with the Board's Rules, the applicant represents that the Premises have been in continuous use as law offices since the expiration of the Board grant and submits utility bills to continuously cover the period from the 2012 expiration through the filing of this application.

The applicant additionally seeks an amendment to permit a change in the hours of operation, to Monday to Friday, 8:00 a.m. to 7:00 p.m., and Saturday, 9:00 a.m. to 12:00 p.m., closed Sunday, and to permit an increase in signage, to a 24.5 square-foot, double-faced, non-illuminated sign. With respect to Board-required landscaping, the applicant submits that some shrubbery must be planted to be in compliance with the Board's prior approvals, specifically at the parking pad on Forest Avenue. The shrubs have been planted, however, only three-foot-high shrubs were available. The applicant provided affidavits from the owner and contractor attesting to the unavailability of four-foot-high shrubs.

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 *wave* its Rules of Practice and Procedures and *amends* the resolution, dated August 10, 1982, as amended through August 10, 1999, so that as amended this portion of the resolution shall read: "to extend the term of the variance for 15 years, to expire on June 30, 2036, *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked "Received March 9, 2021"—Ten (10) sheets; and *on further condition*:

THAT the term of the variance shall be for 15 years, to expire on June 30, 2036;

THAT the hours of operation shall be limited to Monday to Friday 8:00 a.m. to 7:00 p.m., and Saturday, 9:00 a.m. to 12:00 p.m., closed Sunday;

THAT signage shall not exceed one 24.5 square-foot double-faced, non-illuminated sign;

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. 105-81-BZ"), shall be obtained within one year, by June 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

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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, June 30, 2021.

200-01-BZ

APPLICANT – Davidoff Hatcher & Citron LLP, for Bowne Associates, owner; Hillside Manor Rehabilitation and Extended Care Center LLC, lessee.

SUBJECT – Application August 19, 2019 – Extension of Time to Obtain a Certificate of Occupancy of a previously approved variance (72-21) to permit the enlargement of an existing 11-story and penthouse rehabilitation and long-term care facility (Hillside Manor Rehabilitation and Extended Care Center) which expired on March 17, 2011; Waiver of the Board’s Rules. C2-4/R6A Special Downtown Jamaica District.

PREMISES AFFECTED – 182-15 Hillside Avenue, Block 9950, Lot 1, Borough of Queens.

COMMUNITY BOARD #8Q

ACTION OF THE BOARD – Application granted.

THE VOTE –

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

THE RESOLUTION –

This is an application for a waiver of the Board’s Rules of Practice and Procedures and an extension of time to obtain a certificate of occupancy of a variance, previously granted by the Board pursuant to Z.R. § 72-21, which permitted the enlargement of an existing 11-story and penthouse rehabilitation and long-term care facility and expired on March 17, 2011.

A public hearing was held on this application on November 9, 2020, after due notice by publication in *The City Record*, with a continued hearing on April 12, 2021, and then to decision on June 30, 2021. Vice-Chair Chanda performed an inspection of the Premises and surrounding neighborhood.

The Premises are located on the northeast corner of Hillside Avenue and Avon Street, within a C2-4 (R6A) zoning district, in the Special Downtown Jamaica District, in Queens. With approximately 333 feet of frontage along Hillside Avenue, 100 feet of frontage along Avon Street, and 51,748 square feet of lot area, the Premises are occupied by an existing 11-story building and penthouse rehabilitation and long-term care facility.

The Board has exercised jurisdiction over the Premises since April 16, 2002, when, under the subject calendar number, the Board granted a variance, pursuant to Z.R. § 72-21, to permit, in a C2-2 (R5) zoning district, the proposed enlargement of the 12th floor of an existing 11 (plus partial 12) story community facility building and the addition of three elevators, which does not comply with the zoning requirements for floor area, FAR and sky exposure plane, contrary to Z.R. §§ 33-441, 33-161, and 54-31, on

condition that all work substantially conform to drawings as they apply to the objections as noted and filed with the application; the proposed enlargement obtain a special permit from the City Planning Commission (“CPC”) pursuant to Z.R. § 22-42; a special permit under Z.R. § 74-902, which allows up to 2.00 FAR for qualifying community facilities be obtained from CPC also; the development comply with all Fire Department requirements; the development, as approved, is 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; a new certificate of occupancy be obtained within two years from the date of the resolution, by April 16, 2004.

On January 11, 2005, under the subject calendar number, the Board amended the variance to permit an extension of the time to obtain a certificate of occupancy for an additional two years from the date of the resolution, to expire on January 11, 2007, on condition that all conditions from prior resolutions not specifically waived by the Board remain in effect; the approval is 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 must ensure compliance with all applicable provisions of the Zoning Resolutions, 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.

By letter dated January 20, 2009, the Board stated that it had no objection to the proposed minor modifications to the approved plans which include decreasing the size of the subcellar by 1,065 square feet; decreasing the size of the cellar by 5,077 square feet; rearrangement of the interior partitions for more productive use of floor area; slight extension of southwest wall to line up with exterior building walls above; addition of a second exterior door in the Receiving Room to allow for more efficient ingress and egress on condition that the Department of Buildings ensure compliance with all applicable provisions of the Zoning Resolution, Building Code, or any other relevant law.

On March 17, 2009, under the subject calendar number, the Board further amended the variance to grant an extension of time to complete construction and obtain a certificate of occupancy for two years on condition that the use and operation of the site substantially conform to BSA-approved plans associated with the prior approval and on condition that a certificate of occupancy be obtained by March 17, 2011; all conditions from the prior resolution not specifically waived by the Board remain in effect; the approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdictions objection(s) only; and the Department of Buildings ensure compliance with all 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.

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The time having expired, the applicant now seeks an extension of time to obtain a certificate of occupancy. Because this application was filed more than 30 days after the expiration of the term, the applicant requests a waiver, pursuant to § 1-14.2 of the Board's Rules of Practice and Procedures (the Board's Rules), of § 1-07.3(d)(2), of the Board's Rules to permit the filing of this application.

Over the course of hearings, the Board expressed concerns over the open violations at the subject Premises and the progress of the required façade restoration. In response, the applicant submitted its email correspondences with the Department of Building which show that the violations had been dismissed and provided plans for façade repair submitted to the Department of Buildings that had been approved along with an updated timeline for the repairs.

Based upon its review of the record, the Board has determined that the requested rule waiver 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* its Rules of Practice and Procedures and *amend* the resolution, dated March 17, 2009, so that as amended this portion of the resolution shall read: "to extend the time to obtain a certificate of occupancy for two years; *on condition* that the use and operation of the site shall substantially conform to the BSA-approved plans associated with the prior approval; and *on further condition*:

THAT a certificate of occupancy, also indicating this approval and calendar number ('BSA Cal. No. 200-01-BZ'), shall be obtained within two years, by June 30, 2023;

THAT the above conditions shall appear on the certificate of occupancy;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

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

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 30, 2021.

21-10-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Aquilla Realty Company, Inc., owner; Burger Brother Hutch Restaurant Associates LP dba Burger King, lessee.

SUBJECT – Application September 14, 2020 – Extension of Term of a previously approved Special Permit (§73-243) which permitted the operation of an accessory drive-through to an eating and drinking establishment which expired on September 14, 2020; Extension of Time to Obtain a Certificate of Occupancy which expired on February 13, 2020; Waiver of the Board's Rules of Practice and Procedures. C1-2/R4A zoning district.

PREMISES AFFECTED – 2801 Roebling Avenue, Block 5386, Lot 0001, Borough of Bronx.

COMMUNITY BOARD #10BX

ACTION OF THE BOARD – Application granted on condition.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta5

Negative:.....0

THE RESOLUTION –

This is an application for a waiver of the Board's Rules of Practice and Procedures, an extension of term of a previously approved special permit, previously granted under Z.R. § 73-243, which permitted the use of the Premises as an eating and drinking establishment with a drive-through and expired on September 14, 2020, and an extension of time to obtain a certificate of occupancy, which expired on February 13, 2019.

A public hearing was held on this application on February 22, 2021, after due notice by publication in *The City Record*, with a continued hearing on May 10, 2021, and then to decision on June 30, 2021. Commissioner Ottley-Brown performed an inspection of the Premises and surrounding area. Community Board 10, the Bronx, recommends approval of this application.

The Premises are located on the northeast corner of Roebling Avenue and Hutchinson River Parkway, within a C1-2 (R4A) zoning district, in the Bronx. With approximately 143 feet of frontage along Roebling Avenue, 99 feet of frontage along Hutchinson River Parkway, and 12,483 square feet of lot area, the Premises are occupied by an existing one-story eating and drinking establishment (3,084 square feet of floor area) with a drive-through and accessory on-site parking.

The Board has exercised jurisdiction over the Premises since June 2, 1987, when, under BSA Cal. No. 473-86-BZ, the Board granted a special permit, under Z.R. § 73-243, to legalize the addition of a drive-through facility to an eating and drinking establishment, for a term of five years, on condition that the owner comply with the conditions set forth in the conditional negative declaration, the hours of operation of the drive-through facility be limited to 7:00 a.m. to 10:00 p.m., Monday through Thursday, and 7:00 a.m. to 12:00 midnight, Friday through Sunday; all outdoor lighting be directed down and away

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from adjoining residences; all fences and landscaping be adequately maintained at all times and replaced when necessary; the physical separation between the subject use and the adjacent supermarket be maintained in accordance with the plans; the loudspeaker on the menu board be operated at a decibel level which cannot be heard beyond the lot line of the Premises; the dumpsters be kept covered at all times and located as shown on plans; the exterior of the building be kept clean and free of graffiti at all times; 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 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 accordance with Z.R. § 73-30.

On September 14, 2010, under the subject calendar number, the Board granted a new special permit, under Z.R. § 73-243, to legalize the operation of an accessory drive-through facility in conjunction with an as-of-right eating and drinking establishment (Use Group 6), on condition that all work substantially conform to drawings as they apply to the objections, filed with the application; the term of the grant expire on September 14, 2015; 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; the conditions appear on the certificate of occupancy; all signage conform with the underlying C1 zoning district regulations; the approval be limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; substantial construction be completed in accordance with Z.R. § 73-70; 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.

On February 13, 2018, under the subject calendar number, the Board amended the special permit to extend the term for an additional five years, to expire on September 14, 2020, 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 on further condition that all work and site conditions comply with drawings filed with the application and a new certificate of occupancy be obtained within one year, by February 13, 2019.

The term of the special permit, and time to obtain a certificate of occupancy, having expired, the applicant now seeks an extension. Because this application was filed more than 30 days since the expiration of time to obtain a certificate of occupancy, the applicant requests a waiver, pursuant to § 1-14.2 of the Board's Rules of Practice and

Procedures (the Board's Rules), of § 1-07.3(d)(2), of the Board's Rules to permit the filing of this application.

The applicant represents that the eating and drinking establishment continues to be operated in accordance with the Board's approval, trash is picked up by a private carter on Monday, Wednesday and Friday between the hours of 8:00 p.m. and 9:00 p.m., and the hours of operation have reduced to Sunday, 8:00 a.m. to 12:00 a.m., Monday, 7:00 a.m. to 10:00 p.m., and, Tuesday through Saturday, 7:00 a.m. to 12:00 a.m. for the drive-through, and 8:00 a.m. to 8:00 p.m., daily, for the dining room. The applicant also submits that acoustical consultants determined that the menu board noise levels do not exceed noise thresholds for the Premises in the evening hours. A volume limiter for the menu board is set, and will remain, at "10" and has been demonstrated to be within acceptable sound levels. Two light poles were replaced with shorter poles in the northeast corner of the Premises and at the drive-through entrance and ensures that the additional installation of light shields reduce the lumen levels to zero at the property line.

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 *waive* its Rules of Practice and Procedures and *amends* the resolution, dated September 14, 2010, as amended through February 13, 2018, so that as amended this portion of the resolution shall read: "to extend the term of the special permit for five years, to expire on September 14, 2025, and extend the time to obtain a certificate of occupancy, *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked "Received September 14, 2020"—Eight (8) sheets; and *on further condition*:

THAT the term of the special permit shall be for five years, to expire on September 14, 2025;

THAT the hours of operation shall be limited to Sunday, 8:00 a.m. to 12:00 a.m., Monday, 7:00 a.m. to 10:00 p.m., and Tuesday through Saturday, 7:00 a.m. to 12:00 a.m. for the drive-through;

THAT menu board generated noise shall not increase the noise level at the residential lot line above the ambient noise level;

THAT trash pickups shall occur only on weekdays, not before 7:00 a.m. and not later than 9:00 p.m.;

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 down away from the nearby residential uses to ensure zero lumen levels at the property line;

THAT the above conditions shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also indicating this

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approval and calendar number (“BSA Cal. No. 21-10-BZ”), shall be obtained within one year, by June 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, June 30, 2021.

853-53-BZ

APPLICANT – Eric Palatnik, P.C., Knapp, LLC, owner, Bolla EM Realty, LLC, lessee.

SUBJECT – Application November 15, 2019 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of an automotive service station (UG 16B) which expires on October 23, 2019. C2-2/R3-2 zoning district.

PREMISES AFFECTED – 2402/16 Knapp Street, Block 7429, Lot 0010, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to September 23-24, 2021, at 10 A.M., for adjourned hearing.

467-58-BZIII

APPLICANT – Walter T. Gorman, P.E., P.C., for (GTY-CPG) Leasing, Inc., owner; Global Partners LP, lessee.

SUBJECT – Application December 24, 2020 – Extension of Term (§11-411) of a previously approved variance permitting the operation of an Automotive Service Station (UG 16B) which expired on December 14, 2019, Waiver of the Board’s Rules of Practice and Procedures. R3-2, R4B and R3X zoning districts.

PREMISES AFFECTED – 172-11 Northern Boulevard, Block 5363, Lot 1, Borough of Queens.

COMMUNITY BOARD #7Q

ACTION OF THE BOARD – Laid over to October 4-5, 2021, at 10 A.M., for postponed hearing.

803-61-BZ

APPLICANT – Eric Palatnik, P.C., for Martin Blessinger, owner; BP Products North America Inc., lessee.

SUBJECT – Application November 15, 2019 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of an automotive service station (UG 16B) which expires on July 27, 2020. C2-1/R3-2 zoning district.

PREMISES AFFECTED – 1416 Hylan Boulevard, Block 3350, Lot 30, Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Laid over to September 23-24, 2021, at 10 A.M., for adjourned hearing.

81-74-BZIV

APPLICANT – Gerald J. Caliendo, RA, AIA, for 57 Avenue Market Inc., owner.

SUBJECT – Application August 4, 2020 – Extension of Time to Obtain a Certificate of Occupancy for a previously approved variance (§72-21) which permitted the operation of a supermarket (UG 6) which expired on July 23, 2020. 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 September 27-28, 2021, at 10 A.M., for postponed hearing.

282-79-BZ

APPLICANT – David L Businelli, for 1745 Forest Avenue Corp., Anthony DiLeo, President, owner; 1745 Operating LLC, lessee.

SUBJECT – Application June 11, 2019 – Amendment to a condition of term for a previously approved Variance (§72-21) which permitted an accessory off-site parking facility accessory to an eating and drinking establishment located on the opposite side of the street which expired on July 24, 2009; Waiver of the Board’s rules. R3A zoning district.

PREMISES AFFECTED – 840 Richmond Avenue, Block 1147, Lot(s) 1, Borough of Staten Island.

COMMUNITY BOARD #1SI

ACTION OF THE BOARD – Laid over to October 4-5, 2021, at 10 A.M., for adjourned hearing.

21-91-BZ

APPLICANT – Sheldon Lobel, P.C., for Hardath Latchminarain, owner.

SUBJECT – Application July 19, 2017 – Extension of Term of a previously approved Variance (§72-21) which permitted the operation of an automotive glass and mirror repair establishment (UG 7D) and used car sales (UG 16B) which expired on March 16, 2015; Amendment to permit the legalize the conversion of the existing building to Use Car Sales (UG 16B) and relinquishing the automotive glass and mirror repair establishment (UG 7D); Waiver of the Board’s Rules. R5 zoning district.

PREMISES AFFECTED – 2407-2417 Linden Boulevard, Block 4478, Lot 24, Borough of Brooklyn.

COMMUNITY BOARD #5BK

ACTION OF THE BOARD – Laid over to September 13-14, 2021, at 10 A.M., for deferred decision.

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42-97-BZ

APPLICANT – Law Offices of Marvin Mitzner LLC, for NDC Elmhurst, LLC, owner.

SUBJECT – Application October 18, 2019 – Extension of Term of a previously approved Variance (§72-21) which permitted the construction and use of a one-story and cellar retail drug store (UG 6) which expired on March 3, 2018; Amendment to permit the elimination of a term since the use is now permitted with the exception of a portion located in a R6B zoning district; Waiver of the Board's Rules. C1-3 and R6B zoning districts.

PREMISES AFFECTED – 93-20 Astoria Boulevard, Block 1367, Lot 48, Borough of Queens.

COMMUNITY BOARD #3Q

ACTION OF THE BOARD – Laid over to October 4-5, 2021, at 10 A.M., for adjourned hearing.

5-98-BZ

APPLICANT – Heywood Blaufeux, for Priority Landscaping Inc., owner.

SUBJECT – Application December 12, 2020 – Extension of Term of a previously approved variance (§72-21) which permitted a garden supply sales and nursery establishment (UG 17) with accessory parking and storage which expired on February 23, 2019; Waiver of the Board's Rules. R5 zoning district.

PREMISES AFFECTED – 1861 McDonald Avenue, Block 6633, Lot 55, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to November 15-16, 2021, at 10 A.M., for adjourned hearing.

6-09-BZ

APPLICANT – Rampulla Associates Architects for Joseph Romeo, owner.

SUBJECT – Application June 18, 2020 – Extension of Term of a previously approved Variance (§72-21) which permitted the use of Automotive Repair (UG 16B) which will expire on November 9, 2020. C4-1 Special South Richmond Development and Special Growth Management Districts.

PREMISES AFFECTED – 24 Nelson Avenue, Block 31, Lot 5429, Borough of Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Laid over to September 27-28, 2021, at 10 A.M., for adjourned hearing.

24-09-BZ

APPLICANT – Bryan Cave Leighton Paisner LLP, for Meadow Park Rehabilitation and Health Care Center, owner.

SUBJECT – Application July 26, 2019 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) permitting the enlargement of a community facility (Meadow Park Rehabilitation and

Health Care Center) which expired on July 26, 2015; Waiver of the Board's Rules. R3-2 zoning district.

PREMISES AFFECTED – 78-10 164th Road, Block 6851, Lot(s) 9, 11, 12, 23, 14, Borough of Queens.

COMMUNITY BOARD #8Q

ACTION OF THE BOARD – Laid over to September 27-28, 2021, at 10 A.M., for adjourned hearing.

42-09-BZIII

APPLICANT – Sheldon Lobel, P.C., for Arrow Linen Supply Co., Inc., owner.

SUBJECT – Application June 5, 2020 – Extension of Term of a previously approved variance (expired July 12, 1992) which permitted the extension of a legal non-conforming commercial laundry use (Arrow Linen Supply) within a residential zoning district which expired on August 11, 2019; Extension of Time to Obtain a Certificate of Occupancy which expired on February 11, 2010; Waiver of the Board's Rules. R5B zoning district.

PREMISES AFFECTED – 441-467 Prospect Avenue, Block 1113, Lot(s) 61,73, Borough of Brooklyn,

COMMUNITY BOARD #3BK

ACTION OF THE BOARD – Laid over to September 27-28, 2021, at 10 A.M., for postponed hearing.

2017-213-BZ

APPLICANT – Hirschen Singer & Epstein, LLP, for Dynamic Youth Community, Inc., owner.

SUBJECT – Application October 21, 2020 – Amendment of a previously approved variance (ZR 72-21) for a six-story with cellar, community-facility building (Use Group 3), contrary to use and bulk regulations. Amendment to reduce the size of the cellar level, modify interior program, and change certain finishing materials. C8-2 ZD/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 27-28, 2021, at 10 A.M., for adjourned hearing.

2017-240-BZ

APPLICANT – Troutman Pepper LLC, for 310 Lenox Avenue LLC & RM 310 Lenox LLC., owner.

SUBJECT – Application February 12, 2021 – Extension of Term of a previously approved Special Permit (§73-244) permitting an eating and drinking establishment without restrictions and no limitation on entertainment and dancing (UG 12A) (Red Rooster Harlem Restaurant located on the cellar level which expires on expiring March 27, 2021. 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

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September 27-28, 2021, at 10 A.M., for postponed hearing.

APPEALS CALENDAR

CORRECTION: This resolution adopted on June 30, 2021, under Calendar No. 2020-34-A, is hereby corrected to read as follows:

2020-34-A

APPLICANT – Goldner Architects by Davis Iszard, RA, for Vlad Tsirkin, CFO, 45 John NY, LLC, owner.

SUBJECT – Application April 10, 2020 – Application requesting a variance of the Multiple Dwelling Law to existing HACA multiple dwelling to be partially converted to a hotel. An existing inner court supplying legal light and air to apartments does not meet the size requirements for hotels. C6-4 Lower Manhattan Special Purpose District.

PREMISES AFFECTED – 45 John Street, Block 00078, Lot 28, Borough of Manhattan.

COMMUNITY BOARD #1M

ACTION OF THE BOARD – Application granted.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings, dated April 9, 2020, acting on Alteration Application No. 12385794, reads in pertinent part: “Proposed Inner Court does not comply with the area requirements of MDL 26.7a. . . . Proposed design does not comply with the light and ventilation requirements of MDL 30.2.”

This is an application for a modification, under Multiple Dwelling Law § 310, to allow an existing multiple dwelling to be converted to a hotel that would not comply with minimum standards for inner courts (MDL § 26(7)(a)) and light and air (MDL § 30(2)).

A public hearing was held on this application on April 13, 2021, after due notice by publication in *The City Record*, with a continued hearing on May 25, 2021, and then to decision on June 30, 2021.

I.

The Premises are located on the northwest corner of John Street and Dutch Street, in a C6-4 zoning district, in the Special Lower Manhattan District, in Manhattan. With approximately 75 feet of frontage along John Street, 114 feet of frontage along Dutch Street, and 12,156 square feet of lot area, the Premises are improved with an existing 14-story, with cellar, multiple dwelling (the “Building”).

Originally constructed in 1907 under New Building Application No. 74/07, the Building contains approximately 103,000 square feet of floor space and is classified as a Commercial Altered Class A apartment building, which was “originally erected as a nonresidential building in accordance with the laws in effect prior to December 6,

1968, and use for one or more of the nonresidential purposes enumerated in MDL § 277 prior to January 1, 1977, and subsequently converted to a multiple dwelling in compliance with the old code and MDL Article 7-B.” The Building features an inner court with a width of 29’-2” and a length of 33’-5”.

The applicant now proposes to convert approximately 64,000 square feet of floor space on floors 2–10 of the Building to hotel suites with some of the bedrooms facing the existing inner court and to convert part of the cellar to an accessory spa for hotel guests. However, the proposed conversion would not comply with minimum area requirements for inner courts (MDL § 26(7)(a)) and would not provide legal light and air to the proposed hotel bedrooms ((MDL § 30(2)). Accordingly, the applicant requests the relief sought herein.

II.

The Multiple Dwelling Law vests the Board with the authority, “[w]here the compliance with the strict letter of this chapter causes any practical difficulties or any unnecessary hardships . . . provided the spirit and intent of this chapter are maintained and public health, safety and welfare preserved and substantial justice done, to vary or modify any provision or requirement of this chapter” under certain enumerated circumstances. MDL § 310(2).

In particular, “[f]or multiple dwellings and buildings erected or to be erected or altered pursuant to plans filed on or after December fifteenth, nineteen hundred sixty-one,” the Board may vary or modify the Multiple Dwelling Laws “provisions relating to: (1) Height and bulk; (2) Required open spaces; or (3) Minimum dimensions of yards and courts.” MDL § 310(2)(c).

Such modifications may only be granted under Paragraph C “on condition that open areas for light and air are provided which are at least equivalent in area to those required by the applicable provisions of this chapter.” MDL § 310(2).

III.

The applicant submits that strict compliance with the inner-court and light-and-air provisions of the Multiple Dwelling Law would result in practical difficulties. In particular, the applicant notes that the owner would be required to vacate all apartments while fire stairs and elevators were demolished and rebuilt. This and other required work would come at a cost of approximately \$5.5 million, as demonstrated by a construction cost estimate. However, the spirit of the law would be maintained and substantial justice done with the relief sought herein because the existing inner court is adjacent to another existing inner court on the same lot, which, taken together, contain an area greater than the Multiple Dwelling Law’s minimum requirement and because the existing inner court currently provides required light and air for “living” rooms, which would remain unchanged by conversion to hotel rooms.

Next, the applicant notes that open areas for light and air would be provided that “are at least equivalent in area to those required” by the Multiple Dwelling Law. MDL § 310(2). In support of this contention, the applicant

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submitted drawings demonstrating that Section 26(7) of Article III of the Multiple Dwelling Law requires an inner court with dimensions of 40'-0" by 30'-0". The existing inner court's dimensions are 29'-2" by 33'-5". However, there is an adjacent inner court to the north with dimensions of 14'-1½" by 20'-4" and contains an open area of approximately 287 square feet. Additionally, adjacent to the Building to the west is a five-story building, resulting in further open area to the west above the height of the adjacent building. This adjacent building to the west is further restricted by a Zoning Lot Development Agreement and Section 54-31 of the Zoning Resolution, both of which restrict its further enlargement. The applicant submits that, because there is no increase in the square footage of habitable rooms, because there is no change in size of the inner court, the only change is in occupancy from apartment rooms to hotel rooms, because the area of the two contiguous inner courts provide substantial light and air and are greater in area than required, the existing inner court provides light and air "at least equivalent" to strict adherence to the Multiple Dwelling Law.

In response to questions from the Board at hearing, the applicant clarified the Building's Multiple Dwelling Law classification and the site history of the Premises. The applicant further noted that the Premises are part of a larger zoning lot that is subject to the above Zoning Lot Development Agreement and a Zoning Resolution-required declaration that runs with the land, and the applicant supplemented its analysis of the applicable findings under Section 310 of the Multiple Dwelling Law with narrative explanation and schematic diagrams to further illustrate the availability of light and air.

Based on the foregoing, the Board finds that this is an appropriate case in which to modify the minimum dimensions of courts and that evidence in the record supports that "open areas for light and air are provided which are at least equivalent in area to those required by the applicable provisions of this chapter." MDL § 310(2).

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *modify* the decision of the Department of Buildings, dated April 9, 2020, limited to the decision noted above, to *permit* an existing multiple dwelling to be converted to a hotel that would not comply with minimum standards for inner courts (MDL § 26(7)(a)) and light and air (MDL § 30(2)); *on condition* that all work, operations, and site conditions shall conform to drawings filed with this application marked "Received May 27, 2021"—23 sheets; and *on further condition*:

THAT the dimensions of the inner court shall be at least 29'-2" by 33'-5", as reflected on the Board-approved drawings;

THAT a certificate of occupancy, also indicating this approval and calendar number ("BSA Cal. Nos. 2020-34-A"), shall be obtained within four years and an additional six months, in light of the current state of emergency declared to exist within the City of New York resulting from an outbreak of novel coronavirus disease, by February 6,

2026;

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 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 30, 2021.

2021-11-BZY

APPLICANT – Kenneth K. Loweinstein, for 559 Development, LLC, owner.

SUBJECT – Application January 21, 2021 – Extension of Time to Complete Construction and Obtain a Certificate of Occupancy (§11-332) for a period of two years from December 20, 2020.

PREMISES AFFECTED – 38-59 11th Street, Block 00473, Lot 559, Borough of Queens.

COMMUNITY BOARD #2Q

ACTION OF THE BOARD – Laid over to September 27-28, 2021, at 10 A.M., for postponed hearing.

ZONING CALENDAR

2019-16-BZ

CEQR #19-BSA-077Q

APPLICANT – Pryor Cashman LLP, for McDonald's Corp., owner.

SUBJECT – Application January 22, 2019 – Special Permit (§73-243) to permit an accessory drive-through to a proposed eating and drinking establishment (UG 6) (McDonald's) contrary to ZR §32-15. C1-2/R3-1 and R2A zoning districts.

PREMISES AFFECTED – 250-01 Northern Boulevard, Block 8129, Lot 1, Borough of Queens.

COMMUNITY BOARD #11Q

ACTION OF THE BOARD – Application granted.

THE VOTE –

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

THE RESOLUTION –

The decision of the Department of Buildings, dated January 17, 2019, acting on Alteration Type I Application No. 421398605, reads in pertinent part:

"Pursuant to ZR 73-243. 'In C1-1, C1-2 and C1-3 districts, the Board of Standards and Appeal may permit eating or drinking places with accessory

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drive-through facilities for a term not to exceed five years, provided that the following findings are made.”

This is an application under Z.R. §§ 73-243 and 73-03 to permit, in a C1-2 (R3-1) zoning district and partially within a C1-2 (R2-A) zoning district, the operation of an eating and drinking establishment with an accessory drive-through facility, contrary to Z.R. § 32-15.

A public hearing was held on this application on October 3, 2019, after due notice by publication in *The City Record*, with continued hearings on January 28, 2020, March 24, 2020, and October 20, 2020, and then to decision on June 30, 2021. Vice-Chair Chanda, Commissioner Ottley-Brown, and Commissioner Sheta performed inspections of the site and surrounding neighborhood. Community Board 11, Queens, recommends approval of this application with the following condition:

Marathon Parkway between Northern Boulevard and 43rd Avenue is a narrow roadway with one lane of traffic going in each direction. The entrance should be an “entrance only” with proper signage.

The Board received one letter of support and three letters of objection to this application citing concerns over increased traffic and congestion, decreased property value, and the cost of repairs from the increased traffic.

The Premises are located on the northeast corner of Marathon Parkway and Northern Boulevard, on a site located partially within a C1-2 (R3-1) zoning district and partially within a C1-2 (R2-A) zoning district, in Queens. With approximately 149 feet of frontage along Northern Boulevard, 193 feet of frontage along Marathon Parkway, and 27, 716 square feet of lot area, the Premises are occupied by a one-story eating and drinking establishment (approximately 2,929 square feet of floor area), operated as “McDonald’s,” with accessory drive-through.

The Board has exercised jurisdiction over the Premises since October 20, 1998, when under BSA Cal. No. 230-97-BZ, the Board granted a special permit, pursuant to Z.R. §§ 73-243 and 73-03, to permit, in a C1-2 zoning district, the reestablishment of an expired special permit previously granted under BSA Cal. No. 1023-83-BZ, the operation of an accessory drive-through facility and expansion of 406 square feet to an existing eating and drinking facility, on condition that all work substantially conform to drawings as they apply to the objections above noted, filed with the application; the term of the variance be limited to five years to expire on October 20, 2003; the hours of operation be limited to 6:30 a.m. to 12 a.m.; “No Trespassing” signs be maintained in the parking lot; the Premises be maintained graffiti and debris free at all times; the parking lot be secured at all times that the said business is closed; 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 law under the jurisdiction of the Department; and, substantial construction

be completed in accordance with Z.R. § 72-23.

The Board notes that in addition to the foregoing, its determination is also subject to and guided by Z.R. § 73-03. Furthermore, the Board notes that, pursuant to Z.R. § 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.

As a threshold matter, the Board notes that this site is within the boundaries of a designated area in which the subject special permit is available.

The applicant states that the eating and drinking establishment is designed for safe maneuvering and that the drive-through lane provides space for the queueing of a minimum of ten vehicles without interfering with parking. Accordingly, the Board finds that the subject drive-through facility contains reservoir space for not less than ten automobiles.

The applicant represents that the subject site layout of the drive-through facility will cause minimal interference with traffic flow in the immediate vicinity. Specifically, the entrance and exit to the drive-through facility are located on Northern Boulevard, a two-way wide thoroughfare. There is also an entrance to the Site located on Marathon Parkway, also a two-way wide thoroughfare. Therefore, the Premises have entrances and an exit on two-way wide thoroughfares. Accordingly, the Board finds that the subject drive-through facility will cause minimal interference with traffic flow in the immediate vicinity.

The applicant represents that the eating or drinking establishment with an accessory drive-through facility fully complies with the accessory off-street parking regulations for the C1-2 zoning district where the Premises is located. Specifically, the applicant states that, pursuant to ZR Section 36-21, the minimum required number of parking spaces is 16; the Premises proposes 31 parking spaces. 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 a site located in a C1-2 (R3-1) zoning district and partially within a C1-2 (R2-A) zoning district, including provision of the required number of accessory off-street parking spaces.

The applicant represents that the character of the commercially zoned street frontage within 500 feet of the subject premises reflects substantial orientation toward the motor vehicle. Specifically, the entrance to the drive-through facility is located on Northern Boulevard, a two-way wide thoroughfare and the exit is located on Marathon Parkway, also a two-way wide thoroughfare. Both Northern Boulevard and Kissena Boulevard run beyond 500 feet from

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the Site. 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).

The applicant represents that the operation of the drive-through will not have an undue adverse impact on the residences within the immediate vicinity of the subject Premises. In support of this contention, the applicant submitted a radius diagram and Site Plan, which demonstrates that there are no residences adjacent to the drive through menu board, and the residences to the east of the site are approximately 95 feet from the drive-through lane.

Accordingly, the Board finds that the subject drive-through facility shall not have an undue adverse impact on residences within the immediate vicinity of the subject site and finds that there will be adequate buffering between the drive-through facility and adjacent residential uses. Further, 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. The proposed special permit use will not interfere with any pending public improvement project.

At hearings, the Board expressed concerns about the state of the Premises, specifically the parking lot, the fencing, and the landscaping, as well as the Environmental Assessment Statement (“EAS”), which did not correlate with the proposed conditions plans submitted with the application. In response, the applicant provided photographs of a resurfaced parking lot, a fully repaired fence, and installed landscaping at the Premises and revised the EAS to reflect the proposed conditions as indicated on the final set of proposed conditions plans submitted to the Board.

The project is classified as a Type II action pursuant to 6 NYCRR Part 617.5, and the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 19BSA077Q, dated June 30, 2021.

In light of the foregoing, the Board finds that the evidence in the record supports the findings required to be made under Z.R. §§ 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 Z.R. §§ 73-243 and 73-03 to *permit*, in a C1-2 (R3-1) and partially within a C1-2 (R2-A) zoning district, the operation of an eating and drinking establishment with an accessory drive-through facility, contrary to Z.R. § 32-15; *on condition* that all work, site conditions and operations shall conform to drawings filed

with this application marked “Received September 30, 2020”—Ten (10) sheets; and *on further condition*:

THAT this grant shall be limited to a term of five years, expiring June 30, 2026;

THAT all signage on the site shall comply with C1 district regulations;

THAT the parking lot be secured at all times that said business is closed;

THAT there shall be no change in the operator of the subject eating and drinking establishment without prior approval of the Board;

THAT the site must be kept free of debris and graffiti at all times;

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. 2019-16-BZ”), shall be obtained within four years, by June 30, 2025;

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 the jurisdiction of the Department.

Adopted by the Board of Standards and Appeals, June 30, 2021.

2019-275-BZ

CEQR #20-BSA-037M

APPLICANT – Sheldon Lobel, P.C., for Northern Star Textile Corporation, owner; Krav Maga NYC, LLC d/b/a Fit Hit, lessee.

SUBJECT – Application October 16, 2019 – Special Permit (§73-36) to permit the operation of a Physical Cultural Establishment (Fit Hit) located in the cellar and ground floor of an existing building contrary to ZR §42-10. M1-6 zoning district.

PREMISES AFFECTED – 122 West 27th Street, Block 00802, Lot 0056, Borough of Manhattan.

COMMUNITY BOARD #5M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE –

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

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated September 16, 2019, acting on DOB Alteration Type I Application No. 123817539, reads in pertinent part:

“ZR 42-10, ZR 42-31, ZR 73-36 - A #Physical Culture Establishment# is not allowed as-of-right

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in a M1-6 zoning district. Obtain NYC Board of Standards and Appeals (BSA) approval”

This is an application under Z.R. §§ 73-36 and 73-03 to legalize, on a site located within an M1-6 zoning district, the operation of a physical culture establishment (“PCE”) on a portion of the cellar level and first floor of an existing 12-story commercial building, contrary to Z.R. § 42-10.

A public hearing was held on this application on May 25, 2021, after due notice by publication in *The City Record*, and then to decision on June 30, 2021. Community Board 5, Manhattan, waives its recommendation of this application.

The Premises are located on the south side of West 27th Street, between Seventh Avenue and Avenue of the Americas, within an M1-6 zoning district, in Manhattan. With approximately 99 feet of frontage along West 27th Street, 95 feet depth, and 9,752 square feet of lot area, the Premises are occupied by an existing 12-story commercial building.

The Board notes that its determination is subject to and guided by Z.R. § 73-03. The Board notes that pursuant to Z.R. § 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. 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.

The applicant represents that the PCE occupies 4,562 square feet of floor space on the cellar level with an open exercise area with training equipment; and 4,096 square feet of floor area on the first floor with an exercise instruction area, retail area, locker rooms, and office space. The PCE began operation in December 2018, and proposes to operate as “Fit Hit,” 5:00 a.m. to 10:00 p.m., daily

The applicant represents that PCE use will neither impair the essential character nor the future use or development of the surrounding area because the subject PCE use is located within an existing commercial building, in a densely populated commercial and manufacturing area characterized by other PCEs and local retail stores, eating and drinking establishments.

The applicant submits that the PCE contains facilities for classes, instruction and programs for physical improvement, body building, weight reduction, aerobics, or martial arts. The Board finds that the subject PCE use is consistent with those eligible pursuant to Z.R. § 73-36(a)(2) for the issuance of the special permit. 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.

The applicant submits that noise abatement measures will be maintained within the PCE space to ensure that the PCE operation does not negatively impact other occupied spaces within the Premises. These measures include 1" rubber floor mats in the exercise areas; nonrated partition walls would include a 2-1/2" sound attenuation batt insulation and a layer on each side of the wall of 5/8" type X Gypsum Board; the one-hour fire rated partition walls would include a 3" sound attenuated fire blanket, a layer each side of 5/8" type X Gypsum Board and fire rated sealant. The applicant represents that the PCE use will produce no adverse effect on the privacy, quiet, light and air in the neighborhood and the benefits provided by the PCE will greatly outweigh any potential disadvantages to the community.

The applicant represents that the PCE will be maintained with an approved fire alarm system and sprinkler system. The Fire Department states, by letter dated May 25, 2021, that the Premises are protected by a fire suppression system (standpipe and sprinkler) that has been tested and has current permits. A fire alarm system has been proposed for the Premises and an application has been filed. Based on the foregoing, the Fire Department has no objection to the application and the Bureau of Fire Prevention will continue to inspect the Premises and enforce all applicable rules and regulations.

In response to Board concerns regarding the accessibility of the cellar, the applicant represents that both the cellar and ground floor exercise areas provide the same type of classes.

Accordingly, 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. In addition, the Board finds that the operation of the PCE will not interfere with any public improvement project.

The project is classified as a Type II action pursuant to 6 NYCRR Part 617.5. The Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 20-BSA-037M, dated June 30, 2021.

Therefore, the Board has determined that the evidence in the record supports the requisite findings for the special permit pursuant to Z.R. §§ 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 Z.R. §§ 73-36 and 73-03 to *legalize*, on a site located within an M1-6 zoning district, the operation of a physical culture establishment on a portion of the cellar level and first floor of an existing 12-story commercial building, contrary to Z.R. § 42-10, *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked “Received June

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10, 2021”—Six (6) sheets; and *on further condition*:

THAT this grant shall be limited to a term of ten years, expiring June 30, 2031;

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-foot-wide exit pathways shall be maintained leading to the required exits and that pathways shall be maintained unobstructed, including from any equipment;

THAT an approved fire alarm and sprinkler system shall be maintained in the entire PCE space, as indicated on the Board-approved plans;

THAT accessibility shall be provided pursuant to the standards set forth in applicable accessibility laws, including but not limited to Chapter 11 of the NYC Building Code, the 2009 American National Standards Institute (ANSI) A117.1 and Title III of the Americans with Disabilities Act, as reviewed and approved by DOB;

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. 2019-275-BZ”), shall be obtained within one year, by June 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;

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 30, 2021.

2019-279-BZ

APPLICANT – Terminus Group, LLC, for CeeJay Real Estate Development Corp., owner.

SUBJECT – Application October 22, 2019 – Special Permit (§73-126) to permit the enlargement of an ambulatory diagnostic or treatment care facility which exceeds 1,500 square feet, located within a lower density growth management area, contrary to ZR §22-14. R3A Special South Richmond District (Lower Density Growth Management Area).

PREMISES AFFECTED – 4119 Richmond Avenue, Block 5268, Lot 37, Borough of Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Application withdrawn without prejudice.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta5

Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated October 4, 2019, acting on DOB New Building Application No. 520389106, reads in pertinent part: “In R3A zoning district, ambulatory diagnostic or treatment health care facility shall be limited to a maximum of 1,500 square feet of floor area, including cellar space, when located within Lower Density Growth Management Area as per ZR 22-14(A), Footnote (1); In R3A zoning district in Lower Density Growth Management Area, the BSA 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 as per ZR 73-126.”

This is an application for a special permit, pursuant to Z.R. § 73-126, to allow, on a site located within an R3A zoning district, within a Lower Density Growth Management Area (“LDGMA”), and in the Special South Richmond Development District, an ambulatory diagnostic facility that exceeds the 1,500 square foot limitation, contrary to Z.R. § 22-14(A).

A public hearing was held on this application on December 1, 2020, after due notice by publication in *The City Record*, and then to decision on June 30, 2021. Community Board 3, Staten Island, recommends disapproval of this application, citing concerns over the size of the proposed building, the potential for seven proposed medical suites to generate 350 or more patient visits a day, and a detrimental impact to the surrounding area. The Board received 15 letters in objection to this application stating that the proposed building will be out of character with the neighborhood and raising concerns over the negative impacts of congestion, traffic, and noise from the proposed use.

The Premises are located on a through-lot with frontage along the east side of Richmond Avenue and the west side of Ridgecrest Avenue, between Sycamore Street and Park Road, within an R3A zoning district, within an LDGMA, and in the Special South Richmond Development District, on Staten Island. With approximately 60 feet of frontage along each Richmond Avenue and Ridgecrest Avenue, a depth ranging from 183 feet along the southerly lot line to 188 feet along the northerly lot line, and 11,079 square feet of lot area, the Premises are currently vacant.

The applicant seeks a special permit, pursuant to Z.R. § 73-126, to develop the Premises with a two-story, with cellar, 7,621 square-foot (0.69 FAR) ambulatory diagnostic facility (Use Group 4) building with seven community facility doctor’s office suites (four on the first floor and three on the second floor) ranging from 580 to 810 square feet in size, and 19 accessory parking spaces (8 of the spaces required under Z.R. § 25-31 will be in the building’s cellar) accessed through a 17'-wide curb cut and 15'-wide driveway. The applicant represents that the proposal is well below the 55% maximum lot coverage allowed as per Z.R. § 24-11, at 31.1%, and, therefore, 68.9% of the Premises will remain open. The applicant proposes to landscape 18% of

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the Premises and provided a neighborhood character study arguing that the proposal meets the character of the area with respect to lot coverage, open area, and landscaping; however, concedes that 49% usage of the Premises for parking is higher than that of the study area.

At hearing, the Board stated that the surrounding area was more residential in character than as portrayed by the applicant. The Board raised concern over the proposed curb cut on Richmond Avenue as too extreme and a large increase over that allowable. The Board disagreed with the applicant's lot coverage and open area calculations and questioned whether the applicant's proposal is compatible with the residential character of the neighborhood. Specifically, the Board questioned whether a smaller building, with less required parking and asphaltic paving, and more landscaping would better meet the findings of the special permit.

By letter dated June 1, 2021, the applicant stated that they will proceed with an as of right development and requested to withdraw the application without prejudice.

Therefore, it is Resolved, that this application is hereby withdrawn.

Adopted by the Board of Standards and Appeals, June 30, 2021.

2020-42-BZ

CEQR #20-BSA-088K

APPLICANT – Eric Palatnik, PC, for Dmitry and Marianna Gorelik, owner.

SUBJECT – Application May 13, 2020 – Special Permit (§73-622) to permit the enlargement of an existing one-family dwelling. R3-1 zoning district.

PREMISES AFFECTED – 155 Girard Street, Block 8750, Lot 0383, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta5

Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated April 30, 2020, acting on Alteration Type 1 Application No. 322032242, reads in pertinent part:

“Proposed vertical and horizontal enlargement of an existing single family home in an R3-1 district is non-compliant in regards to:

FAR: Proposed FAR is contrary to ZR 23-142

Open Space: Proposed Open Space is contrary to ZR 23-142

Lot Coverage: Proposed Lot Coverage is contrary to ZR 23-142

Rear Yard: Proposed Rear Yard is contrary to ZR 23-47

And must be referred to the Board of Standards

and Appeals for a special permit pursuant to ZR 73-622.”

This is an application under Z.R. §§ 73-622 and 73-03 to permit, in an R3-1 zoning district, the enlargement of an existing single-family, two-story with cellar detached residence that does not comply with zoning regulations for FAR (Z.R. § 23-142), open space (Z.R. § 23-142), lot coverage (Z.R. § 23-142), and rear yards (Z.R. § 23-47).

A public hearing was held on this application on February 9, 2021 after due notice by publication in *The City Record*, with continued hearings on April 27, 2021, and May 25, 2021, then to decision on June 30, 2021. Community Board 15, Brooklyn, recommends approval of this application. The Board received one letter of support, and one letter of objection to this application citing concern that the construction will prolong noises and obstruct views and light in the residences.

The Premises are located on the east side of Girard Street, between Ocean View Avenue and Oriental Boulevard, within an R3-1 zoning district, in Brooklyn. With approximately 60 feet of frontage along Girard Street, 104 feet of depth, and 6,240 square feet of lot area, the Premises are occupied by an existing two-story with cellar, single-family detached residence.

The Board notes that its determination herein is subject to and guided by, inter alia, Z.R. §§ 73-01 through 73-04. As a threshold matter, the Board notes that the Premises are within the boundaries of a designated area in which the subject special permit is available. The Board notes further that this application seeks to enlarge an existing detached single-family residence, as contemplated in Z.R. § 73-622.

The existing single-family residence is a two-story, with cellar, single-family, detached building with a total floor area of approximately 2,937 square feet (2,254.47 square feet on the first floor and 682.76 square feet on the second floor); an FAR of 0.47; one side yard with a width of 9.8' and one side yard with a width of 10.0'; open space of 64%; lot coverage of 36%; and a rear yard with a depth measuring 15.8' at the first floor and above.

At the Premises, a maximum FAR of 0.5 is permitted (3,120 square feet of floor area), pursuant to Z.R. § 23-142; a minimum of 65% open space is required, pursuant to Z.R. § 23-142; a maximum of 35% lot coverage is permitted, pursuant to Z.R. § 23-142, and a rear yard with a minimum depth of 30 feet is required, pursuant to Z.R. § 23-47.

The applicant proposes to enlarge the existing residence by permitting a second-floor enlargement over the existing first floor. The applicant represents that the proposed residence would retain a lot coverage of 36% (2,246.40 square feet of lot coverage), open space of 64% (3,993.60 square feet of open space), two side yards with widths of 9.8' and 10', and a rear yard with a depth of 15.8' at the first floor. However, the rear yard at the second floor and above would now have a depth of 20.8'; and the residence would have 4,228.46 total square feet of floor area (2,254.47 square feet of floor area on the first floor and 1,973 square feet of floor area on the second floor) with an FAR of 0.68.

MINUTES

The applicant represents that the proposed single-family residence as enlarged is consistent with the built character of the neighborhood. In support of this contention, the applicant surveyed single- and two-family residences within 400 feet of the Premises and with the same relevant bulk regulations (the "Study Area"), finding that of the 81 qualifying residences, 44 residences (54 percent) have an FAR ranging from 0.50 to 1.01, and 20 residences (25 percent) have an FAR of 0.68 or greater; and 29 residences (36 percent) have open space ranging from 35% to 48%, and 25 residences (31 percent) have a lot coverage of 36% or greater. The applicant further surveyed the subject block and found that of the 25 qualifying residences, 16 residences (64 percent) have a rear yard with a depth ranging from 30 feet to 4 feet, and 3 residences (12 percent) have a rear yard with a depth measuring 15 feet or less.

At hearings, the Board expressed concerns about the depth of the residence's existing rear yard, which the applicant stated was a legal noncomplying condition. In response, the applicant submitted historical aerial photographs, to demonstrate the existence of the home's rear yards at its current depth prior to the adoption of the 1961 Zoning Resolution. The Board notes that although the applicant represents that the existing rear yard extension is a legal noncomplying condition, the DOB must make a determination about the legality of the 15.0' obstruction in the rear yard. If this condition is, in fact, not a legal noncomplying condition, the applicant must return to the BSA to remove the 5.0' that extends beyond the 20.0' mark, as the Board does not have the authority to grant a rear yard with a depth of 15.0'. If the applicant must return to the Board to remove the five-foot obstruction, it may be requested by letter.

The Board further questioned the design of the proposal, which did not retain 50% of the existing exterior walls. In response to questions from the Board at hearing, the applicant redesigned the proposal to include a note requesting a DOB determination of the legality of the existing rear yard extension and to retain 50% of the existing exterior walls.

Based upon its review of the record and inspections of the Premises 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.

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. The proposed modification of bulk regulations will not interfere with any pending public improvement project.

The project is classified as a Type II action pursuant to 6 NYCRR Part 617.5, as noted in CEQR Checklist No. 20BSA088K, dated June 30, 2021.

The Board finds that the evidence in the record

supports the findings required to be made under Z.R. §§ 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 make each and every one of the required findings under Z.R. §§ 73-622 and 73-03 to *permit* the enlargement of an existing two-story with cellar, single-family, detached residence that does not comply with zoning regulations for FAR, open space, lot coverage and rear yard, contrary to Z.R. §§ 23-142 and 23-47; *on condition* that all work and site conditions shall conform to drawings filed with this application marked "June 30, 2021"- Twenty-Five (25) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: a maximum of FAR of 0.68, a rear yard with minimum depths of 15.8' at the first floor and 20.8' at the second floor and above, a minimum open space of 64%, and maximum lot coverage of 36%, as illustrated on the Board-approved plans;

THAT DOB must verify that the incursion in the rear yard beyond the 20-foot point is an existing, noncomplying condition which may remain;

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. 2020-42-BZ"), shall be obtained within four years, by June 30, 2025;

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 30, 2021.

2020-80-BZ
CEQR #21-BSA-020M

APPLICANT – Eric Palatnik, P.C., for 459 Lexington Associates, Inc., owner; Spa 45, lessee.

SUBJECT – Application October 8, 2020 – Special Permit (§73-36) to permit the operation of a Physical Culture Establishment (Spa 45) contrary to ZR §32-10. C5-3 Special Midtown Purpose District.

PREMISES AFFECTED – 459 Lexington Avenue, Block 1300, Lot 0023, Borough of Manhattan.

COMMUNITY BOARD #6M

ACTION OF THE BOARD – Application granted.

THE VOTE –

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

MINUTES

Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated October 1, 2020, acting on DOB Alteration Type I Application No. 140934960, reads in pertinent part:

“The Physical Cultur[e] Establishment in a C5-3 Zoning District in the Special Midtown District is not permitted pursuant to ZR 32-10 and is referred to Board of Standards and Appeals (BSA) for a special permit under ZR 73-36”

This is an application under Z.R. §§ 73-36 and 73-03 to legalize, on a site located within a C5-3 zoning district and in the Special Transit Midtown District, the operation of a physical culture establishment (“PCE”) on a portion of the third floor of an existing three-story commercial building, contrary to Z.R. § 32-10.

A public hearing was held on this application on April 13, 2021, after due notice by publication in *The City Record*, with a continued hearing on May 25, 2021, and then to decision on June 30, 2021. Vice-Chair Chanda performed an inspection of the Premises and surrounding area. Community Board 6, Manhattan, waives its recommendation of this application.

The Premises are located on the northeast corner of Lexington Avenue and East 45th Street, within a C5-3 zoning district and in the Special Transit Midtown District, in Manhattan. With approximately 40 feet of frontage along Lexington Avenue, 65 feet of frontage along East 45th Street, and 2,650 square feet of lot area, the Premises are occupied by an existing three-story commercial building.

The Board notes that its determination is subject to and guided by Z.R. § 73-03. The Board notes that pursuant to Z.R. § 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. 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.

The applicant represents that the PCE occupies 2,559 square feet of floor area on a portion of the third floor with 11 spa rooms, 2 restrooms (ADA compliant), a waiting area, a pantry, a shower, and a laundry room. The PCE operates as “Spa 45,” 24 hours per day, 7 days per week.

The applicant represents that PCE use will neither impair the essential character nor the future use or development of the surrounding area because the subject PCE use is entirely contained within an existing building and is consistent with the mixed use commercial and residential area will not any negative impacts on the area’s character or potential for development.

The applicant submits that the PCE contains facilities for the practice of massage by New York State-licensed masseurs or masseuses. The Board finds that the subject PCE use is consistent with those eligible pursuant to Z.R. § 73-36(a)(2) for the issuance of the special permit. 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.

The applicant submits that noise abatement measures will be maintained within the PCE space to ensure that the sound level in other portions of the building does not exceed the maximum noise level of 45 dBA. The applicant represents that the PCE use will produce no adverse effect on the privacy, quiet, light and air in the neighborhood because the PCE is located in a commercial building with no residential uses in an area surrounded by other commercial buildings.

The Fire Department states, by letter dated April 7, 2021, that the proposed occupant load for the PCE is 25 persons and a Public Assembly application is not required. The Premises are not protected by a fire suppression system or fire alarm system, which are not required. The plans show a corridor leading from Lexington Avenue to the existing interior stair. These plans are drawn incorrectly, in that the stair run is in the “up” direction from East 45th Street, which no corridor or lobby is shown. The Fire Department has no objection to the use at the Premises, but revised and corrected plans should be filed. The Bureau of Fire Prevention will continue to inspect the Premises and enforce all applicable rules and regulations.

Accordingly, 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. In addition, the Board finds that the operation of the PCE will not interfere with any public improvement project.

The project is classified as a Type II action pursuant to 6 NYCRR Part 617.5. The Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 21-BSA-020M, dated June 30, 2021.

Therefore, the Board has determined that the evidence in the record supports the requisite findings for the special permit pursuant to Z.R. §§ 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 Z.R. §§ 73-36 and 73-03 to *legalize*, on a site located within a C5-3 zoning district and in the Special Transit Midtown District, the operation of a physical culture establishment on a portion of the third floor of an existing three-story commercial building, contrary to Z.R. § 32-10, *on condition* that all work, site conditions and operations shall conform to drawings filed with this

MINUTES

application marked “Received June 2, 2021”—Six (6) sheets; and *on further condition*:

THAT this grant shall be limited to a term of ten years, expiring June 30, 2031;

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

THAT all massage services shall be provided by New York State-licensed massage therapists;

THAT minimum three-foot-wide exit pathways shall be maintained leading to the required exits and that pathways shall be maintained unobstructed, including from any equipment;

THAT fire safety measures shall be maintained, as indicated on the Board-approved plans;

THAT accessibility shall be provided pursuant to the standards set forth in applicable accessibility laws, including but not limited to Chapter 11 of the NYC Building Code, the 2009 American National Standards Institute (ANSI) A117.1 and Title III of the Americans with Disabilities Act, as reviewed and approved by DOB;

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. 2020-80-BZ”), shall be obtained within one year, by June 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;

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 30, 2021.

2016-4463-BZ

APPLICANT – Law Office of Jay Goldstein, for The AM Foundation c/o Arthur Meisels, owner; Mosdos Satmar BP, lessee.

SUBJECT – Application December 8, 2016 – Variance (§72-21) to permit the construction of a Use Group 3 school (Mosdos Satmar BP) contrary to Use (§42-00 and §77-11), Floor Area/Floor Area Ratio (§43-122, §24-11 and §77-22), Lot Coverage (§24-11 and §77-24), Height, Setbacks and Sky Exposure Plane (§43-43) and §24-521), Front Yard (§24-34 and §77-27), Side Yard (§24-35 and §77-27), Rear Yard (§24-36 and §77-27), Side Yard Setback (§24-551 and §77-28) and Required Yard Along District Boundary (§43-301) regulations. ZR 73-19 to permit a school in an M1-1 ZD. M1-1/R5B zoning district.

PREMISES AFFECTED – 6202 14th Avenue (1372-1384 62nd St., 1370 62nd St, 6210 14th Avenue) Block 5733, Lot(s)

35, 36, 42, Borough of Brooklyn.

COMMUNITY BOARD #10BK

ACTION OF THE BOARD – Laid over to October 18-19, 2021, at 10 A.M., for adjourned hearing.

2019-24-BZ

APPLICANT – Eric Palatnik, P.C., for Crystal Bay Imports, LTD, owner.

SUBJECT – Application January 31, 2019 – Special Permit (§73-49) to permit accessory parking on the roof of an under-construction DOB-approved Use Group 9A automotive sales use establishment contrary to ZR §36-11. C2-2/R4 zoning district.

PREMISES AFFECTED – 2721 Nostrand Avenue, Block 7666, Lot 20, Borough of Brooklyn.

COMMUNITY BOARD #18BK

ACTION OF THE BOARD – Laid over to September 13-14, 2021, at 10 A.M., for adjourned hearing

2019-66-BZ

APPLICANT – Law Office of Jay Goldstein, for 7-15 Terrace View Avenue LLC, owner.

SUBJECT – Application March 27, 2019 – Variance (§72-21) to permit the development of a seven (7) story building containing 59 rental apartments contrary to ZR §42-00. M1-1 zoning district.

PREMISES AFFECTED – 15 Terrace View Avenue, Block 2215, Lot 173, Borough of Manhattan.

COMMUNITY BOARD #8BX

ACTION OF THE BOARD – Laid over to November 15-16, 2021, at 10 A.M., for adjourned hearing

2019-67-BZ

APPLICANT – Sheldon Lobel, P.C., for Sheperd DT Corp., owner.

SUBJECT – Application March 29, 2019 – Variance (§72-21) to permit the development of a six-story, three-family residential building contrary to ZR §§ 23-32 (minimum lot area), 23-45 (front yard), and 23-631 (street wall, setback and total height). R5 zoning district.

PREMISES AFFECTED – 2781 Coyle Street, Block 8805, Lot 105, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to September 23-24, 2021, at 10 A.M., for adjourned hearing

2019-263-BZ

APPLICANT – Eric Palatnik, P.C., for Andrew Lester, owner.

SUBJECT – Application September 11, 2019 – Special Permit (§73-243) to permit an eating and drinking establishment (Starbucks) with an accessory drive-thru contrary to ZR §32-10. C1-2/R3-2 zoning district.

PREMISES AFFECTED – 2122 Richmond Avenue, Block

MINUTES

2102, Lot 120, Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Laid over to October 4-5, 2021, at 10 A.M., for adjourned hearing.

2019-294-BZ

APPLICANT – The Law Offices of Marvin B. Mitzner LLC, for GM7 Realty LLC, owner.

SUBJECT – Application November 15, 2019 – Variance (§72-21) to permit the construction of a mixed-use residential building (UG 2) with ground floor commercial (UG 6) contrary to underlying bulk requirements. C2-4/R7D zoning district.

PREMISES AFFECTED – 241-243 Throop Avenue, Block 1756, Lot 6, Borough of Brooklyn.

COMMUNITY BOARD #3BK

ACTION OF THE BOARD – Laid over to October 4-5, 2021, at 10 A.M., for adjourned hearing.

2020-18-BZ

APPLICANT – Eric Palatnik, P.C, for Albert Hasson, owner.

SUBJECT – Application December 16, 2020 – Request for Re-Hearing of an application requesting a Special Permit (§73-622) to permit the enlargement of an existing single-family home contrary to ZR §23-142 (floor area) which was denied on October 19, 2020. R3-1 zoning district

PREMISES AFFECTED – 920 Shore Boulevard, Block 8746, Lot 107, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to September 13-14, 2021, at 10 A.M., for deferred decision.

2020-70-BZ

APPLICANT – Law Office of Lyra J. Altman, for The Albert Dweck Irri Trust FBO Morris Dweck, owner.

SUBJECT – Application September 11, 2020 – Special Permit (§73-622) to permit the enlargement of a single-family residences into one single-family residence. R4-1 zoning district.

PREMISES AFFECTED – 1903 Homecrest Avenue, Block 7291, Lot 0168, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to October 18-19, 2021, at 10 A.M., for deferred decision.

2020-75-BZ

APPLICANT – Eric Palatnik, P.C., for 474 Associates, Inc., owner.

SUBJECT – Application September 22, 2020 – Special Permit (§73-36) to permit the legalization of a physical cultural establishment (Spa 7) located in the third floor an existing building contrary to ZR §42-10. M1-6 zoning district.

PREMISES AFFECTED – 474 7th Avenue, Block 00785, Lot 0043, Borough of Manhattan.

COMMUNITY BOARD #5M

ACTION OF THE BOARD – Laid over to November 15-16, 2021, at 10 A.M., for deferred decision.

2020-88-BZ

APPLICANT – Sheldon Lobel, P.C., for 315 Berry St Corp., owner; Microgrid Networks, lessee.

SUBJECT – Application November 16, 2020 – Special Permit (§73-14) to permit the construction of an electric utility substation (UG 6D) on the roof of an existing building contrary to ZR §22-10. R6 zoning district.

PREMISES AFFECTED – 315 Berry Street, Block 2430, Lot 2, Borough of Brooklyn.

COMMUNITY BOARD #1BK

ACTION OF THE BOARD – Laid over to October 4-5, 2021, at 10 A.M., for adjourned hearing.

Carlo Costanza, Executive Director

BULLETIN

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2021-44-BZ

3204 Bedford Avenue, Block 7606, Lot(s) 0077, Borough of **Brooklyn, Community Board: 14**. Special Permit (§73-622) to permit the enlargement of a one-family home contrary to ZR §23-142 (FAR, open space), ZR §23-461(a) (side yard) and ZR §23-47 (rear yard). R2 zoning district. R2 district.

2021-45-BZ

1714 East 27th Street, Block 6809, Lot(s) 0011, Borough of **Brooklyn, Community Board: 15**. Special Permit (§73-622) to permit the enlargement of a one-family home contrary to ZR §23-142 (FAR, open space and lot coverage), ZR §23-631(b) (perimeter wall height) and ZR §23-47 (rear yard). R3-2 zoning district. R3-2 district.

2021-46-BZ

2111 Avenue N, Block 7657, Lot(s) 0005, Borough of **Brooklyn, Community Board: 14**. Special Permit (§73-622) to permit the enlargement of a one-family home contrary to ZR §23-142 (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

**HYBRID PUBLIC HEARINGS
SEPTEMBER 27-28, 2021, MONDAY-TUESDAY
10:00 A.M.**

NOTICE IS HEREBY GIVEN of hybrid public hearings on Monday, September 27, 2021, at 10:00 A.M., and Tuesday, September 28, 2021, at 10:00 A.M. to be held remotely and in person on the first floor of 22 Reade Street in Manhattan, which has an occupancy limit of 10 people and potential overflow space available in the building for a few additional people; COVID-19 safety protocols are in effect in the building; all meeting attendees will be required to practice physical distancing, and all attendees over the age of two who are medically able to tolerate a face covering will be required to wear a face covering, regardless of vaccination status; please do not attend this meeting if: ▪ you have experienced any symptoms of COVID-19 within the past 10 days (a fever of 100.0 degrees Fahrenheit or greater, a new cough, new loss of taste or smell, or shortness of breath); ▪ you have tested positive for COVID-19 within the past 10 days; ▪ you have been in close contact (within 6 feet for at least 10 minutes over a 24-hour period) with anyone while they had COVID-19 within the past 10 days and are required to quarantine under existing CDC guidance (you have not had COVID-19 within the past 3 months, and you are not fully vaccinated);

FURTHERMORE, to accommodate social distancing and address ongoing health concerns, members of the public are strongly encouraged to participate in the hearing remotely; the public hearing will be streamed live through the Board's website (www.nyc.gov/bsa), with remote public participation strongly encouraged, on the following matters:

SPECIAL ORDER CALENDAR

81-74-BZIV

APPLICANT – Gerald J. Caliendo, RA, AIA, for 57 Avenue Market Inc., owner
SUBJECT – Application August 4, 2020 – Extension of Time to Obtain a Certificate of Occupancy for a previously approved variance (§72-21) which permitted the operation of a supermarket (UG 6) which expired on July 23, 2020. C1-2/R6A & R6B zoning district.
PREMISES AFFECTED – 97-27 57th Avenue, Block 1906, Lot(s) 1, Borough of Queens.
COMMUNITY BOARD #4Q

490-72-BZ

APPLICANT – Gerald J. Caliendo, RA, AIA, for Eran Gohari, owner
SUBJECT – Application August 5, 2020 – Extension of Time to Obtain a Certificate of Occupancy of a previously approved variance (§72-21) which permitted the operation of a commercial bank (UG 6) which expired on February 5, 2020; Waiver of the Board's Rules of Practice of Procedures. R4 zoning district.
PREMISES AFFECTED – 4200 Baychester Avenue, Block 5023, Lot 29, Borough of Bronx.
COMMUNITY BOARD #12BX

42-09-BZIII

APPLICANT – Sheldon Lobel, P.C., for Arrow Linen Supply Co., Inc., owner.
SUBJECT – Application June 5, 2020 – Extension of Term of a previously approved variance (expired July 12, 1992) which permitted the extension of a legal non-conforming commercial laundry use (Arrow Linen Supply) within a residential zoning district which expired on August 11, 2019; Extension of Time to Obtain a Certificate of Occupancy which expired on February 11, 2010; Waiver of the Board's Rules. R5B zoning district.
PREMISES AFFECTED – 441-467 Prospect Avenue, Block 1113, Lot(s) 61,73, Borough of Brooklyn
COMMUNITY BOARD #3BK

220-14-BZII thru 221-14-BZII

APPLICANT – Hirschen Singer & Epstein LLP, for Post Industrial Thinking LLC, owner.
SUBJECT – Application January 7, 2021 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) to permit the construction of two 3-story single family residences which expired on January 12, 2020; Waiver of the Board's Rules of Practice and Procedures. M1-1 zoning district.
PREMISES AFFECTED – 8-10 Underhill Avenue, Block 1122, Lot 37, Borough of Brooklyn.
COMMUNITY BOARD #8BK

2017-240-BZ

APPLICANT – Troutman Pepper LLC, for 310 Lenox Avenue LLC & RM 310 Lenox LLC., owner.
SUBJECT – Application February 12, 2021 – Extension of Term of a previously approved Special Permit (§73-244) permitting an eating and drinking establishment without restrictions and no limitation on entertainment and dancing (UG 12A) (Red Rooster Harlem Restaurant located on the cellar level which expires on expiring March 27, 2021. C4-4A (Special 125th Street District).
PREMISES AFFECTED – 310 Lenox Avenue, Block 1723, Lot 69, Borough of Manhattan.
COMMUNITY BOARD # 10M

CALENDAR

APPEALS CALENDAR

2021-11-BZY

APPLICANT – Kenneth K. Loweinstein, for 559 Development, LLC, owner.

SUBJECT – Application January 21, 2021 – Extension of Time to Complete Construction and Obtain a Certificate of Occupancy (§11-332) for a period of two years from December 20, 2020.

PREMISES AFFECTED – 38-59 11th Street, Block 00473, Lot 559, Borough of Queens.

COMMUNITY BOARD #1Q

Margery Perlmutter, Chair/Commissioner

MINUTES

**PUBLIC HEARING
THURSDAY-FRIDAY MORNING
JULY 22-23, 2021, 10:00 A.M.**

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

SPECIAL ORDER CALENDAR

378-45-BZ

APPLICANT – Davidoff Hutcher & Citron, LLP, for Leemilts Petroleum, Inc., owner; Atlantis GRC Realty LLC, lessee.

SUBJECT – Application December 28, 2018 – Amendment (§11-412) of a previously approved variance permitting the operation of an Automotive Service Station (UG 16B) seeking to permit a change in the configuration of existing gasoline pumps, the addition of a canopy and the conversion of an accessory lubritorium to an accessory convenience store with a drive-through. C2-3/R5D zoning district.

PREMISES AFFECTED – 116-60 Sutphin Boulevard, Block 12008, Lot(s) 0034, Borough of Queens.

COMMUNITY BOARD #12Q

ACTION OF THE BOARD – Laid over to October 4-5, 2021, at 10 A.M., for adjourned hearing.

523-58-BZ

APPLICANT – Glen V. Cutrona, AIA, for Yehuda LLC, owner; Farmers Mini Mart Inc., lessee.

SUBJECT – Application August 26, 2019 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of an automotive service station (UG 16B) which expired on May 7, 2014; Waiver of the Board's Rules. C1-3/R5D zoning district.

PREMISES AFFECTED – 117-30 Farmers Boulevard, Block 12448, Lot 0031, Borough of Queens,

COMMUNITY BOARD #12Q

ACTION OF THE BOARD – Laid over to October 4-5, 2021, at 10 A.M., for adjourned hearing.

490-72-BZ

APPLICANT – Gerald J. Caliendo, RA, AIA, for Eran Gohari, owner

SUBJECT – Application August 5, 2020 – Extension of Time to Obtain a Certificate of Occupancy of a previously approved variance (§72-21) which permitted the operation of a commercial bank (UG 6) which expired on February 5, 2020; Waiver of the Board's Rules of Practice of Procedures. 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

September 27-28, 2021, at 10 A.M., for postponed hearing.

92-99-BZ, 94-99-BZ, 96-99-BZ, 98-99-BZ, 100-99-BZ, 102-99-BZ

APPLICANT – Goldman Harris LLC for Walden Terrace Inc., owner.

SUBJECT – Application June 30, 2020 – Application to extend the term of a variance allowing transient parking at the above-referenced Premises pursuant to §1-07.1(a)(2); extend the Applicant's time to obtain Certificate of Occupancy pursuant to §1-07.1(a)(3); waiver pursuant to §1-07.3(d)(2). R7-1 Zoning District.

PREMISES AFFECTED – 98-09, 98-25, 98-41, 64th Road, 98-51, 98-33, 98-19 64th Avenue, Block 2101, Lot (s)0001, 0016, 0024, Block 2100, lot (s)0029, 0021, 0015, Borough of Queens.

COMMUNITY BOARD #6Q

ACTION OF THE BOARD – Laid over to October 4-5, 2021, at 10 A.M., for deferred decision.

339-02-BZ

APPLICANT – Eric Palatnik, P.C., for WF Industrial III LLC, owner.

SUBJECT – Application June 1, 2021 – Amendment to modify the Board's condition of term pursuant to (§ 1-07.3(3) (ii) of the Board's Rules of Practice and Procedures for a previously granted Variance (§72-21) which permitted warehouse and office uses contrary to underlying use regulations which expired on February 25, 2013; Amendment to legalize the addition of mezzanine increasing the degree of non-conformance; Waiver of the Board's Rules. R3-1 and R3-2 zoning districts.

PREMISES AFFECTED – 146-65 Springfield Boulevard, corner of Springfield Boulevard and 147th Avenue, Block 13363, Lot 6. Borough of Queens.

COMMUNITY BOARD #13Q

ACTION OF THE BOARD – Laid over to September 23-24, 2021, at 10 A.M., for adjourned hearing.

6-04-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Glenmore Associates, owner; TSI Third Ave, LLC dba New York Sports Club, lessee.

SUBJECT – Application November 16, 2017 – Extension of Term of a variance granted pursuant to §72-21 allow the operation of a physical culture establishment located in a C1-3/R6B, Special Bay Ridge zoning district.

PREMISES AFFECTED – 7118-7124 Third Avenue, Block 5890, Lot(s) 43, Borough of Brooklyn.

COMMUNITY BOARD #1BK

ACTION OF THE BOARD – Laid over to October 18-19, 2021, at 10 A.M., for adjourned hearing.

MINUTES

114-07-BZ

APPLICANT – Eric Palatnik, P.C., for Sullivan Mountain Real Estate, LLC, owner.

SUBJECT – Application March 18, 2019 – Amendment of a previously approved Special Permit (§73-19) which permitted the operation of a day-care center (Kiddie Academy) (UG3). The amendment seeks an enlargement to the existing day care facility, a modification in the approved floor area, a change in the number of parking spaces, as well as request to permit a proposed outdoor play area on the roof. M1-1/R2A zoning district.

PREMISES AFFECTED – 7-05 152nd Street, Block 4531, Lot 35, Borough of Queens.

COMMUNITY BOARD #7Q

ACTION OF THE BOARD – Laid over to September 23-24, 2021, at 10 A.M., for adjourned hearing.

23-08-BZ

APPLICANT – Sheldon Lobel, P.C., for Boris Aronov, owner.

SUBJECT – Application February 15, 2019 – Amendment of a previously approved Variance (§72-21) which permitted the construction of a two-story and cellar house of worship (UG 4) contrary to floor area and parking requirements. R1-2 zoning district.

PREMISES AFFECTED – 80-14 Chevy Chase Street, Block 7248, Lot 44, Borough of Queens.

COMMUNITY BOARD #8Q

ACTION OF THE BOARD – Laid over to September 13-14, 2021, at 10 A.M., for deferred decision.

18-09-BZIV

APPLICANT – Klein Slowik PLLC, for West 54th Street LLC c/o ZAR Property, owner; Crunch LLC, lessee.

SUBJECT – Application March 29, 2021 – Extension of Time to Obtain a Certificate of Occupancy of a previously approved Special Permit (§73-36) permitting the operation of a physical culture establishment (Crunch Fitness) which expires on May 21, 2020; 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 September 13-14, 2021, at 10 A.M., for deferred decision.

189-12-BZ

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for 98 Montague LLC, owner.

SUBJECT – Application August 25, 2020 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) to permit the conversion of an existing building into a transient hotel (UG 5), contrary to use regulations (§22-00) which expired on July 23, 2020. C1-3/R7-1 and R6 (LH-1) zoning districts. Property is located

within the Brooklyn Heights Historic District.

PREMISES AFFECTED – 98 Montague Street, Block 248, Lot 15, Borough of Brooklyn.

COMMUNITY BOARD #2BK

ACTION OF THE BOARD – Laid over to October 4-5, 2021, at 10 A.M., for deferred decision.

120-13-BZ

APPLICANT - Pryor Cashman, LLP, for Doris Kurlender and Samuel Jacobson, Owner; Spillane Parkside Corp., lessee.

SUBJECT – August 13, 2019 – Extension of Term of a previously approved Special Permit (§73-243) which permitted an accessory drive-thru to an eating and drinking establishment (UG 6) (McDonald's) which expired on January 14, 2019; Waiver of the Board's Rules. C1-1/R3-2 zoning district.

PREMISES AFFECTED – 1815 Forest Avenue, Block 1180, Lots 6, 49, Borough of Staten Island.

COMMUNITY BOARD #1SI

ACTION OF THE BOARD – Laid over to September 13-14, 2021, at 10 A.M., for deferred decision.

220-14-BZII thru 221-14-BZII

APPLICANT – Hirschen Singer & Epstein LLP, for Post Industrial Thinking LLC, owner.

SUBJECT – Application January 7, 2021 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) to permit the construction of two 3-story single family residences which expired on January 12, 2020; Waiver of the Board's Rules of Practice and Procedures. M1-1 zoning district.

PREMISES AFFECTED – 8-10 Underhill Avenue, Block 1122, Lot 37, Borough of Brooklyn.

COMMUNITY BOARD #8BK

ACTION OF THE BOARD – Laid over to September 27-28, 2021, at 10 A.M., for postponed hearing.

2017-286-BZII

APPLICANT – Eric Palatnik, P.C., for Ditmars 31st Street Associates LLC, owner.

SUBJECT – Application December 18, 2020 – Amendment of a previously approved Special Permit (§73-36) which permitted the operation of a Physical Culture Establishment (*The Rock Health & Fitness*) to be located within the cellar level of a proposed three-story retail building. The Amendment seeks to permit the enlargement of the facility to include the first floor. 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 – Laid over to September 23-24, 2021, at 10 A.M., for postponed hearing.

MINUTES

APPEAL CALENDAR

2018-178-A

APPLICANT – Rampulla Associates Architects, LLP, for Sushanta Mukherjee, owner.

SUBJECT – Application November 15, 2018 – 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.

PREMISES AFFECTED – 2 Oaktree Way aka 300 Ocean Terrace, Block 864, Lot 1 (Ten.3), Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Laid over to September 13-14, 2021, at 10 A.M., for deferred decision.

2019-255-A

APPLICANT – Shmuel D. Flaum, for Mendy Samuel Blau, owner.

SUBJECT – Application September 5, 2019 – Proposed enlargement of an existing single-family home with a portion located within the bed of a mapped street contrary to General City Law §36 and within the street widening line contrary to General City Law §35. R3X zoning district.

PREMISES AFFECTED – 621 Alonzo Road, Queens. Block 15510, Lot 0011

COMMUNITY BOARD #14Q

ACTION OF THE BOARD – Laid over to September 23-24, 2021, at 10 A.M., for postponed hearing.

2019-276-A

APPLICANT – Pryor Cashman LLP, for Bill Lecomplex, owner.

SUBJECT – Application October 16, 2019 – Proposed enlargement of an existing two-story with cellar single-family home located on the bed of a mapped street contrary to General City Law §35. R1-2 zoning district.

PREMISES AFFECTED – 15 Stuart Lane, Block 8103, Lot 62, Borough of Queens.

COMMUNITY BOARD #11Q

ACTION OF THE BOARD – Laid over to October 18-19, 2021, at 10 A.M., for adjourned hearing.

ZONING CALENDAR

2018-26-BZ

APPLICANT – Gerald J. Caliendo, RA, AIA, for Ivan Duque, owner.

SUBJECT – Application February 21, 2018 – 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.

PREMISES AFFECTED – 79-03 Roosevelt Avenue, Block 1290, Lot 46, Borough of Queens.

COMMUNITY BOARD #3Q

ACTION OF THE BOARD – Laid over to October 18-19, 2021, at 10 A.M., for adjourned hearing.

2018-173-BZ

APPLICANT – Law Office of Jay Goldstein, for Beachfront Developers LLC, owner.

SUBJECT – Application November 2, 2018 – 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.

PREMISES AFFECTED – 128 Beach 9th Street, Block 15612, Lot 0026, Borough of Queens.

COMMUNITY BOARD #14Q

ACTION OF THE BOARD – Laid over to November 29-30, 2021, at 10 A.M., for adjourned hearing.

2019-32-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 801 Co-Op City Boulevard Realty LLC, owner; Co-Op Medical Realty LLC, lessee.

SUBJECT – Application February 11, 2019 – Project: Special Permit (§73-44) to permit the reduction of required accessory off-street parking spaces for an ambulatory diagnostic or treatment facility (UG 4) (PRC-B1 parking category) contrary to ZR §36-21. C4-1 zoning district.

PREMISES AFFECTED – 801 Co-Op City Boulevard, Block 5141, Lot 0280, Borough of Bronx.

COMMUNITY BOARD #10BX

ACTION OF THE BOARD – Laid over to September 27-28, 2021, at 10 A.M., for adjourned hearing.

MINUTES

2019-162-BZ

APPLICANT – Jay Goldstein, Esq., for Agit Abeckaser and 725 6th Ave LLC, owner.

SUBJECT – Application May 30, 2019 – 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 ratio) and ZR §23-47 (rear yard). R2 zoning district.

PREMISES AFFECTED – 3336-3338 Bedford Avenue, Block 7642, Lot(s) 52, 53, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Laid over to September 13-14, 2021, at 10 A.M., for deferred decision.

2019-206-BZ

APPLICANT – Akerman LLP, for HW LIC One LLC, owner.

SUBJECT – Application August 22, 2019 – Special Permit (§73-66) to permit the construction of a development that exceeds the height limits established contrary ZR §61-20. C2-3/R6 zoning district.

PREMISES AFFECTED – 51-22 Roosevelt Avenue, Block 1320, Lot 0012, Borough of Queens.

COMMUNITY BOARD # 2Q

ACTION OF THE BOARD – Laid over to September 23-24, 2021, at 10 A.M., for deferred decision.

2019-257-BZ

APPLICANT – Sheldon Lobel, P.C., for 179 Tenants Corp., owner.

SUBJECT – Application September 6, 2019 – Special Permit (§73-621) to permit a 390 square foot enlargement of an existing super’s apartment contrary to ZR §§12-10 & 23-152. C1-5/R10A & R10A zoning districts.

PREMISES AFFECTED – 179 East 79th Street, Block 1508, Lot 0031, Borough of Manhattan.

COMMUNITY BOARD # 8M

ACTION OF THE BOARD – Laid over to September 23-24, 2021, at 10 A.M., for adjourned hearing.

2019-258-A

APPLICANT – Sheldon Lobel, P.C., for 179 Tenants Corp., owner.

SUBJECT – Application September 6, 2019 – Request to permit a 390 square foot enlargement of an existing super’s apartment contrary Multiple Dwelling Law (MDL) and Housing and Maintenance Code (HMC). C1-5/R10A & R10A zoning districts.

PREMISES AFFECTED – 179 East 79th Street, Block 1508, Lot 0031, Borough of Manhattan.

COMMUNITY BOARD # 8M

ACTION OF THE BOARD – Laid over to September 23-24, 2021, at 10 A.M., for adjourned hearing.

2020-25-BZ

APPLICANT – Sheldon Lobel, P.C., for Angela Guarino, owner.

SUBJECT – Application March 27, 2020 – Variance (§72-21) to legalize an existing single-family house contrary to ZR §§23-45 & 23-48 (side and front yard requirements. R1-2 zoning district.

PREMISES AFFECTED – 142-30 13th Avenue, Block 4435, Lot 27, Borough of Queens.

COMMUNITY BOARD #7Q

ACTION OF THE BOARD – Laid over to September 23-24, 2021, at 10 A.M., for adjourned hearing.

2020-45-BZ & 127-15-BZ

APPLICANT – Goldman Harris LLC, for Queens Theater Owner LLC, owner.

SUBJECT – Application May 22, 2020 – Variance (ZR §72-21) to permit the construction of a 16-story mixed-use building contrary to Residential FAR (ZR §23-151), Commercial FAR (ZR §33-121), and Total FAR (ZR §35-311(d)); Open Space and Open Space Ratio (ZR §23-151) and (ZR §35-32), permitted obstruction in the rear yard (ZR §24-339(b)(3) and ZR §33-23(b)(3)), Density (ZR §23-22), location of eating and drinking establishment above the ground floor (ZR §32-421), and contrary to maximum height for new buildings in the Airport Approach District (ZR §61-21); Amendment of a previously approved Special Permit (ZR §73-66) for the construction of a building in excess of the height limits in the Airport Approach District (ZR §61-21). R6 (C2-2) Zoning District.

PREMISES AFFECTED – 135-35 Northern Boulevard, Block 4958, Lot 38, Borough of Queens.

COMMUNITY BOARD #7Q

ACTION OF THE BOARD – Laid over to October 18-19, 2021, at 10 A.M., for adjourned hearing.

2020-55-BZ

APPLICANT – Eric Palatnik, P.C., for 1284 Plaza LLC, owner.

SUBJECT – Application July 2, 2020 – Variance (§72-21) to permit the development of and eight story and cellar residential building contrary to ZR §23-47 (rear yard). R7A zoning district.

PREMISES AFFECTED – 1284 East 19th Street, Block 6738, Lot (s) 31, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Laid over to October 18-19, 2021, at 10 A.M., for adjourned hearing.

MINUTES

2020-65-BZ

APPLICANT – Law Office of Lyra J. Altman, for 1215 East 22nd LLC by David Herzka, owner.

SUBJECT – Application August 21, 2020 – Special Permit (§73-622) to permit the enlargement and combination of two single-family residences into one single-family residence. R2) zoning district.

PREMISES AFFECTED – 1215-1217 East 22nd Street, Block 7622, Lot 24, 26, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Laid over to September 23-24, 2021, at 10 A.M., for adjourned hearing.

2020-76-BZ

APPLICANT – Law Office of Jay Goldstein, for 8904 5th Avenue LLC, owner; The Learning Experience d/b/a TLE, lessee.

SUBJECT – Application September 25, 2020 – Special Permit (§73-19) to permit the operation of a day care facility (TLE) contrary to ZR §32-10.

C8-2 Special Bay Ridge Purpose District.

PREMISES AFFECTED – 8902 5th Avenue (8902-8906 5th Avenue, 442-452 89th Street), Block 6066, Lot 26, Borough of Brooklyn.

COMMUNITY BOARD #10BK

ACTION OF THE BOARD – Laid over to September 23-24, 2021, at 10 A.M., for adjourned hearing.

Carlo Costanza, Executive Director

BULLETIN

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September 24, 2021

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Monday-Tuesday, September 13-14, 2021**

Morning Calendar305

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18-09-BZIV	250 West 54 th Street, Manhattan
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2020-76-BZ	8902 5 th Avenue (8902-8906 5 th Avenue, 442-452 89 th Street), Brooklyn
2020-84-BZ	161 Emerson Place, Brooklyn
2020-87-BZ	30 West 32 nd Street, Manhattan

DOCKETS

New Case Filed Up to September 13-14, 2021

2021-47-BZ

2100 Hermany Avenue, Block 3685, Lot(s) 0009, Borough of **Bronx, Community Board: 9**. Variance (§72-21) to permit the development of a two-family residence contrary to ZR §23-45 (required front yard). R3-2 zoning district. R3-2 district.

2021-48-A

42 Schmeig Avenue, Block 7528, Lot(s) 19, Borough of **Staten Island, Community Board: 3**. Proposed development of a one-story warehouse (UG 16B) not fronting on a legally mapped street contrary to General City Law §36. M1-1 Special South Richmond District. M1-1 (SRD) district.

2021-49-A

72 Schmeig Avenue, Block 7528, Lot(s) 74, Borough of **Staten Island, Community Board: 3**. Proposed development of a one-story warehouse (UG 16B) not fronting on a legally mapped street contrary to General City Law §36. M1-1 Special South Richmond District. M1-1 (SRD) district.

2021-50-BZ

50 Lawrence Avenue, Block 5422, Lot(s) 0010, Borough of **Brooklyn, Community Board: 14**. Special Permit (§73-19) to permit the operation of a school (UG 3) (Hadrán Academy) contrary to ZR §42-00. Variance (§72-21) to permit the development of the building contrary to underlying bulk regulations. M1-1 zoning district. R5 and M1-1 district.

2021-51-BZ

133-25 37th Avenue, Block 4970, Lot(s) 11 and 18, Borough of **Queens, Community Board: 7**. Special Permit (§73-66) to permit the construction of a new building in excess of the height limits established under ZR 61-21. C4-2 zoning district. C4-2 district.

2021-52-BZ

134-24 159th Street, Block 12297, Lot(s) 0019, Borough of **Queens, Community Board: 12**. Variance (§72-21) to permit the construction of a single-family detached home contrary to side yard regulations. R3-1 zoning district. R3-1 district.

2021-53-A

45 Ocean Avenue, Block 3121, Lot(s) 0036, Borough of **Staten Island, Community Board: 2**. Proposed development of a one-family residential building located partially within the bed of a mapped street contrary to General City Law §35. R3-1 zoning district. R3-1 district.

2021-54-A

47 Ocean Avenue, Block 3121, Lot(s) 0034, Borough of **Staten Island, Community Board: 2**. Proposed development of a one-family residential building located partially within the bed of a mapped street contrary to General City Law §35. R3-1 zoning district. R3-1 district.

2021-55-BZ

134-16 35th Avenue, Block 4958, Lot(s) 120, Borough of **Queens, Community Board: 7**. Special Permit (§73-66) to permit the construction of a new building in excess of the height limits established under ZR 61-21. C2-2/R6 zoning district. R6/C2-2 district.

2021-56-BZ

341 39th Street, Block 00704, Lot(s) 0054, Borough of **Brooklyn, Community Board: 7**. Special Permit (§73-19) to permit the operation of a school (UG 3) (Brooklyn Prospect Charter School) contrary to ZR §42-00. M1-2 zoning district. M1-2 district.

2021-57-A

1990 Hylan Boulevard, Block 3666, Lot(s) 0001, Borough of **Staten Island, Community Board: 2**. Proposed construction of a two-story commercial (UG 6) building located partially in the bed of a mapped street contrary to General City Law §35. C2-1/R3-2 zoning district. R3-2/C2-1 district.

2021-58-BZ

25 West 28th Street, Block 00830, Lot(s) 14, 17, Borough of **Manhattan, Community Board: 3**. Special Permit (§73-36) to permit the operation of a physical cultural establishment in a proposed hotel building contrary to ZR §42-10. M1-6 zoning district. M1-6 district.

DOCKETS

2021-59-BZ

161-09 Union Turnpike, Block 6831, Lot(s) 0118, Borough of **Queens, Community Board: 8**. Special Permit (§73-243) to permit an accessory drive-through accessory to a Eating and Drinking establishment (UG 6) of an eating and drinking establishment contrary to ZR §36-23. C1-2/R3-2 zoning district. C1-2/R32 district.

2021-60-BZ

112-116 West 28th Street, Block 00803, Lot(s) 0049, Borough of **Manhattan, Community Board: 5**. Variance (§72-21) to permit the enlargement of an existing hotel contrary to ZR §42-111. M1-6 zoning district. M1-6 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

**TELECONFERENCE PUBLIC HEARINGS
OCTOBER 4-5, 2021, MONDAY-TUESDAY
10:00 A.M. and 2:00 P.M.**

NOTICE IS HEREBY GIVEN of teleconference public hearings, Monday, October 4, 2021, at 10:00 A.M. and 2:00 P.M., and Tuesday October 5, 2021, at 10:00 A.M. and 2:00 P.M., to be streamed live through the Board's website (www.nyc.gov/bsa), with remote public participation, on the following matters:

SPECIAL ORDER CALENDAR

467-58-BZIII

APPLICANT – Walter T. Gorman, P.E., P.C., for (GTY-CPG) Leasing, Inc., owner; Global Partners LP, lessee.
SUBJECT – Application December 24, 2020 – Extension of Term (§11-411) of a previously approved variance permitting the operation of an Automotive Service Station (UG 16B) which expired on December 14, 2019, Waiver of the Board's Rules of Practice and Procedures. R3-2, R4B and R3X zoning districts.
PREMISES AFFECTED – 172-11 Northern Boulevard, Block 5363, Lot 1, Borough of Queens.
COMMUNITY BOARD # 7Q

584-82-BZ

APPLICANT – Sheldon Lobel, P.C., for 64th Street Third Avenue Associates, LLC, owner.
SUBJECT – Application August 15, 2020 – Amendment of a previously approved Variance (§72-21) permitting the construction of a required plaza at a height in excess of 5 feet above the curb level. The seeks modifications to the layout of a Privately Owned Public Space ("POPS"). R8B and C1-9 zoning districts.
PREMISES AFFECTED – 200 East 64th Street, Block 1418, Lot 45, Borough of Manhattan.
COMMUNITY BOARD #8M

238-07-BZ

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for Graduate Center Foundation Housing Corporation, LIC, owner.
SUBJECT – Application September 22, 2020 – Extension of Time to Complete Construction of a previously approved variance (§72-21) which allowed the construction of a 12-story mixed-use residential/commercial building and a 6-story graduate student housing building which expired on September 23, 2020. M1-4 and M1-4/R6A Special Long Island City Purpose District.
PREMISES AFFECTED – 5-17 47th Avenue, Block 00028, Lot(s) 12,15,17,18,121, Borough of Queens.
COMMUNITY BOARD #2Q

160-08-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for HJC Holding Corp., owner.
SUBJECT – Application February 5, 2021 – Extension of Term of a previously approved Variance (§72-21) permitting commercial storage of motor vehicles/buses (UG 16C) with accessory fuel storage and motor vehicles sales and repair(UG 16B) which expired on July 13, 2013; Amendment to eliminate the accessory fuel storage and motor vehicles sales and repair use; Extension of Time to obtain a Certificate of Occupancy which expired on January 13, 2012; Waiver of the Board's Rules of Practice and Procedures. R4 zoning district.
PREMISES AFFECTED – 651-671 Fountain Avenue, Block 4527, Lot 0000, Borough of Brooklyn.
COMMUNITY BOARD #5BK

226-10-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Orb Management LTD, owner; Equinox Hudson Street, Inc., lessee.
SUBJECT – Application January 29, 2011 – Extension of Term of a previously approved Special Permit (§73-36) permitting a Physical Culture Establishment (Equinox Fitness) on the first, ninth and tenth floors of an existing 10-story mixed-use building which expired on January 1, 2021. M1-5 zoning district.
PREMISES AFFECTED – 421 Hudson Street, Block 601, Lot 7501, Borough of Manhattan.
COMMUNITY BOARD #2M

2017-100-BZ

APPLICANT – Friedman & Gotbaum LLP, for Trustees of the Spence School Inc., owner.
SUBJECT – Application July 27, 2021 – Amendment of a previously variance for the Spence School Inc., a non-profit private school, to facilitate the transfer of unused development rights from the variance site for incorporation into a new as-of-right commercial development. C8-4 zoning district.
PREMISES AFFECTED – 412 East 90th Street, Block 1569, Lot 35, Borough of Manhattan.
COMMUNITY BOARD #8M

CALENDAR

ZONING CALENDAR

2017-269-BZ

APPLICANT – David L. Businelli, R.A., for Grasmere Avenue LLC, owner; Auto Pro Collision Inc., lessee.

SUBJECT – Application September 20, 2017 – Variance (§72-21) to permit the legalization of a one-story enlargement of an existing non-conforming Automotive Repair Facility (UG 16B) contrary to ZR §22-10. R3-2 zoning district.

PREMISES AFFECTED – 65 Grasmere Avenue, Block 03163, Lot 0001, Borough of Staten Island.

COMMUNITY BOARD #2SI

2020-89-BZ

APPLICANT – Eric Palatnik, P.C., for Arkadiy Shukhat, owner.

SUBJECT – Application November 18, 2020 – Special Permit (§73-622) to permit the enlargement of an existing single-family home. R3-1 zoning district.

PREMISES AFFECTED – 111 Langham Street, Block 8755, Lot 12, Borough of Brooklyn.

COMMUNITY BOARD # 15BK

2021-9-BZ

APPLICANT – Stroock & Stroock & Lavan LLP, for Red Hook JV LLC, owner.

SUBJECT – Application January 15, 2021 – Variance (§72-21) to permit the development of a 15-story mixed-use residential, commercial and manufacturing building contrary to ZR §42-10 (Use), ZR §43-12 (FAR) and ZR §43-28 (Rear Yard). M2-1 zoning district.

PREMISES AFFECTED – 145-163 Wolcott Street, Block 574, Lot(s) 1, 23 and 24, Borough of Brooklyn.

COMMUNITY BOARD #6BK

2021-15-BZ

APPLICANT – Kramer Levin Naftalis & Frankel LLC, for 81 Beaver Development LLC, owner.

SUBJECT – Application February 22, 2021 – Variance (§72-21) to permit the residential conversion of an existing manufacturing building contrary to §ZR 42-10. M1-1 district.

PREMISES AFFECTED – 81 Beaver Street, Block 3135, Lot 27, Borough of Brooklyn.

COMMUNITY BOARD #4BK

2021-30-BZ

APPLICANT – Sheldon Lobel, P.C., for Mesorah Publications, LTD, owner; Brooklyn Rise Charter School, lessee.

SUBJECT – Application May 5, 2021 – Variance (§72-21) to permit the development of a school (UG 3) (Brooklyn Rise Charter School) contrary to ZR §42-10 (use), ZR §43-26 (rear yard), ZR §43-43 (street wall height, setback and sky exposure plane). M1-2 Zoning District.

PREMISES AFFECTED – 222 44th Street, Block 736, Lot(s) 13, Borough of Brooklyn.

COMMUNITY BOARD #7BK

Margery Perlmutter, Chair/Commissioner

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**PUBLIC HEARINGS
MONDAY-TUESDAY MORNING
SEPTEMBER 13-14, 2021, 10:00 A.M.**

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

SPECIAL ORDER CALENDAR

21-91-BZ

APPLICANT – Sheldon Lobel, P.C., for Hardath Latchminarain, owner.

SUBJECT – Application July 19, 2017 – Extension of Term of a previously approved Variance (§72-21) which permitted the operation of an automotive glass and mirror repair establishment (UG 7D) and used car sales (UG 16B) which expired on March 16, 2015; Amendment to permit the legalize the conversion of the existing building to Use Car Sales (UG 16B) and relinquishing the automotive glass and mirror repair establishment (UG 7D); Waiver of the Board’s Rules. R5 zoning district.

PREMISES AFFECTED – 2407-2417 Linden Boulevard, Block 4478, Lot 24, Borough of Brooklyn.

COMMUNITY BOARD #5BK

ACTION OF THE BOARD – Application denied.

THE VOTE –

Affirmative:.....0

Negative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta5

THE RESOLUTION –

I.

This is an application for a waiver of the Board’s rules and an amendment and extension of term of a variance, which allowed the operation of an automobile glass and mirror establishment with sales of used cars until its expiration in 2015.

A public hearing was held on this application on December 17, 2019, after due notice by publication in *The City Record*, with continued hearings on May 18, 2020, January 11, 2021, March 8, 2021, and April 12, 2021, and then to decision on September 13, 2021.

Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, Commissioner Scibetta, and the Board’s Compliance Officer performed inspections of the Premises and surrounding area.

The Board received a letter in opposition to the application from the Concerned Homeowners Association, raising concerns regarding noise complaints and illegal use of the Premises, including a music venue and concert(s) at the Premises, a soundstage, and other violations.

For the reasons that follow, the Board denies the applicant’s request for the relief sought herein.

II.

The Premises are located on the northwest corner of

Linden Boulevard and Montauk Avenue, within an R5 zoning district, in Brooklyn. With approximately 100 feet of frontage along Linden Boulevard, 120 feet of frontage along Montauk Avenue, and 12,000 square feet of lot area, the Premises are occupied by an automobile glass and mirror establishment (UG 7) with sales of used cars (UG 16) and one-story accessory building (approximately 1,595 square feet of floor area), now vacant.

The Board has exercised jurisdiction over the Premises since July 29, 1958, when, under BSA Cal. No. 963-57-BZ, the Board granted a variance to permit the erection and maintenance of a gasoline service station, lubritorium, car wash, minor auto repairs, storage, and the parking and storage of motor vehicles for a term of 15 years, on condition that all building and uses then on the Premises be removed and the Premises be leveled substantially to the grade of Linden Boulevard and Montauk Avenue; the building be arranged and constructed as indicated on such plans; the accessory building be erected, as shown, 10 feet from the northerly lot line and of the design, as indicated, without cellar and faced on all sides with face brick, no windows opening to the side lot line wall to the west; pumps be of the low approved type, erected not nearer than 15 feet to the street building line of Linden Boulevard; gasoline storage tanks not exceed 12 550-gallon approved gasoline storage tanks; along the lot line to the west, there be a woven wire fence of the chain link type with a suitable terminating post at the building line carried to the wall of the accessory building to a total height of five feet six inches and a similar fence be erected on the side lot line beyond the accessory building to the rear lot line and along the rear lot line for the full width and returned along the building line of Montauk Avenue for a distance of not less than ten feet with suitable terminating post; curb cuts be restricted to two curb cuts, each 30 feet in width to Linden Boulevard, and two curb cuts of similar width to Montauk Avenue; the sidewalks and curbing be constructed or repaired to the satisfaction of the Borough President; the planting area be maintained at the rear, protected with concrete curbing and with suitable planting material; the Premises where unbuilt upon be paved with concrete or asphaltic material; such portable fire-fighting appliances be maintained as the Fire Commissioner directs; under Section 7h for a similar term there may be parking of cars of the pleasure car type only on such portions of the Premises where the use will not interfere with the servicing of the station; under Section 7i, there may be minor repairs with hand tools only for adjustments, for a similar term, maintained solely within the accessory building; signs be restricted to permanent signs erected on the front façade of the accessory building facing Linden Boulevard and the illuminated globes of the pumps, excluding all roof and temporary signs and advertising devices, but permitting the erection 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 for a distance of four feet beyond the building line; at such intersection there may be a block of concrete extending five feet in either direction from

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the intersection; and, all permits be obtained and all work completed within the requirements of Section 22A of the Zoning Resolution.

On October 21, 1958, under BSA Cal. No. 963-57-BZ, the Board amended the variance to permit a change in the size of the accessory building from 60 feet by 30 feet to 55'-4" by 28'-8", setback of the building by 64'-8" from Linden Boulevard instead of 80 feet, and design of the accessory building, as shown on plans filed with the application, on condition that the requirements of the resolution be complied with in all other respects.

On July 21, 1970, under BSA Cal. No. 963-57-BZ, the Board further amended the variance to permit modification to the gasoline pumps on condition that they conform to plans filed with the application; the underground gasoline storage tanks be limited as to number, capacity, and location in accordance with the requirements of the Administrative Code; a copy of the original resolution, as amended, and a certified copy of the plans, as approved by the Board, be permanently posted in the office of the subject automotive service station; and, other than as amended the resolution be complied with in all respects.

On November 8, 1972, under BSA Cal. No. 963-57-BZ, the Board extended the term of the variance for ten years, to expire on July 29, 1983, on condition that the fence along the northerly lot line be made to comply with the requirements of Z.R. § 25-66, other than as amended the resolution be complied with in all respects; and, a new certificate of occupancy be obtained.

On June 20, 1995, under the subject calendar number, the Board granted a new variance, under Z.R. § 72-21, to legalize a change in use from an automotive service station with accessory uses (UG 16) to an automotive glass and mirror establishment (UG 7) with sales of used cars (UG 16) on condition that all work substantially conform to plans as they apply to the objection, filed with the application; signs fronting on Linden Boulevard comply with C1 zoning district regulations and signs on Montauk Avenue be limited to a total of 40 square feet and located within 20 feet of the intersection of Linden Boulevard and Montauk Avenue; street trees be planted and fencing and landscaping maintained and replaced, as necessary, in accordance with BSA approved plans; sidewalks be repaired, where necessary; the curb on Montauk Avenue be restored and there be no curb cuts or gates on Montauk Avenue; hours of operation be limited from 9:00 a.m. to 5:00 p.m., Monday through Saturday; the Premises be maintained clean and free of debris and graffiti; there be no open storage; all repairs take place within the building; the term of the variance be limited to ten years, to expire on June 20, 2005; the conditions appear on the certificate of occupancy; in accordance with a Conditional Negative Declaration signed by the applicant on March 15, 1992, and duly published on June 8, 1992, the applicant has agreed to the following:

The applicant must submit to the New York City Department of Environmental Protection ("DEP") for review and approval, a soil gas, soil, and groundwater testing protocol including a

description of methods, and a site map with all sampling locations clearly and precisely represented. No sampling program should begin until written approval of a protocol is received from DEP. The number and location of sample sites should be selected to adequately characterize the site, the specific source of the suspected contamination and the condition of the remainder of the site. The characterization should be completed enough to determine what remediation strategy (if any) is necessary after review of sampling data. Guidelines and criteria for choosing sampling sites and performing sampling will be provided by DEP upon request.

A written report with findings and a summary of the data must be presented to DEP after completion of the testing phase and laboratory analysis for review and approval. After receiving such test results, a determination will be made by DEP if the results indicate that remediation is necessary.

If DEP determines that no remediation is necessary, written notice shall be given by DEP. If remediation is necessary according to the test results, a proposed remediation plan must be submitted to DEP for review and approval. The applicant must perform such remediation as determined necessary by DEP. After completion of said remediation, the applicant should provide proof that the work has been satisfactorily completed;

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 in accordance with Z.R. § 72-23, by June 20, 1999.

On July 24, 2007, under the subject calendar number, the Board waived its Rules of Practice and Procedures and amended the variance to extend the term for two years, to expire on July 24, 2009, and to permit a six-month extension of time to obtain a certificate of occupancy, on condition that the use substantially conform to plans filed with the application; the term of the grant expire on July 24, 2009; the Premises be maintained free of debris and graffiti; opaque fencing and a landscape buffer be provided along the northwest property line; site conditions conform to the BSA-approved plans; the number of cars for sale at the Premises be limited to 13; all signage comply with C1 zoning district regulations; the hours of operation be limited to 8:00 a.m. to 5:00 p.m., Monday through Saturday; the conditions appear on the certificate of occupancy; the Premises be brought into compliance with all conditions of the grant and a certificate of occupancy obtained by January 24, 2008; 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

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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.

On March 16, 2010, under the subject calendar number, the Board waived its Rules of Practice and Procedures and further amended the variance to extend the term for a period of five years, to expire on March 16, 2015, on condition that any and all work substantially conform to plans as they apply to the objections, filed with the application; the term of the grant expire on March 16, 2015; the Premises be maintained free of debris and graffiti; opaque fencing and a landscape buffer be provided along the northwest property line; the site conditions conform to the BSA-approved plans; the number of cars for sale at the Premises be limited to 13 and the parking layout be as reflected on the approved plans; there be no parking of vehicles on the sidewalk; all signage comply with C1 zoning district regulations; the hours of operation be limited to 8:00 a.m. to 5:00 p.m., Monday through Saturday, and closed on Sunday; the conditions be listed on the certificate of occupancy; the Premises be brought into compliance with all conditions of the grant and a certificate of occupancy be obtained by March 16, 2011; 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)/configuration(s) not related to the relief granted.

The instant application was filed with the Board on July 19, 2017, and received a pre-hearing dismissal warning letter August 2, 2018, for failing to completely respond to the notice of comments. In the almost two years in hearings before the Board, amidst three adjournments at the applicant's request and applicant's counsel's denied request to withdraw representation, the Board has observed little to no progress to comply with the Board's instructions to improve the Premises and remove illegal conditions.

III.

The term of the variance having expired, the applicant now seeks an extension. Because this application was filed more than two 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 Procedures (the Board's Rules), of § 1-07.3(b)(3)(ii) of the Board's Rules to permit the late filing of this application. The applicant seeks to legalize the conversion of the existing building located at the Premises, from a UG 7 automotive glass and mirror establishment to a UG 16E used car sales accessory offices, to permit an additional five used cars to be parked for sale on the western portion of the Premises, and to extend the term of the previously granted variance for an additional ten years.

The applicant states that the exterior bulk regulations have not been altered from the previous grants, but the interior layout now includes two new offices, each measuring approximately 184 square feet, that were constructed subsequent to the 2010 approval, absent Board review and approval. The proposed ground floor also includes a utility/mechanical room. The applicant seeks to operate the Premises Monday through Saturday, 9:00 a.m. to 7:00 p.m.

IV.

Over the course of hearings, the Board questioned whether the applicant has complied with prior Board approvals and could bring the Premises into compliance. The Board raised concerns regarding the maintenance of the Premises, compliance with prior Board conditions, effective prosecution of the instant application, and common ownership of adjacent tax lots.

A.

The Board noted that the Premises presented, and remained over the course of hearings, in poor condition. The Board conducted site inspections throughout the course of hearings revealing an unacceptable level of disrespect for the Premises and community at large. The Board raised concern over the applicant's continued noncompliance of Board conditions at the Premises. Specifically, the Board has required, since 1995, that "street trees be planted and fencing and landscaping maintained and replaced, as necessary, in accordance with BSA approved plans," and "the Premises be maintained clean and free of debris and graffiti," as well as "opaque fencing and a landscape buffer be provided along the northwest property line," since 2007, and, always, that the Premises "substantially conform to plans [. . .] filed with the application."

The Board observed the continued presence of debris, broken fencing, tires, a modified accessory building, and a lack of compliant landscaping that has been a condition of the Board for nearly 30 years. Because of these Board and community concerns, the applicant claimed that the Premises had been cleaned up. The applicant proposes to maintain a chain link fence with opaque slats located along the rear of the Premises, a dense landscaped buffer in the existing planting bed located at the rear of the Premises, including a mixture of trees, shrubs, ornamental grasses, and perennials.

Contrary to the applicant's claims, the Board's Compliance Officer observed the Premises with overgrown and unmaintained planting, decayed fencing, the presence of trash, debris, and oil tanks, and excessive light spill on adjacent properties. The history of noncompliance with Board conditions, specifically relating to landscaping and screening the Premises from nearby residential uses, provides no confidence that the applicant can or will operate and maintain the Premises within the limits and conditions of any Board grant.

B.

The Board stated that the applicant failed to effectively prosecute the application. As stated, the application had its first public hearing December 17, 2019, over two years after

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having been filed with the Board and over one year after receiving a dismissal warning letter for failing to respond to comments.

After a year in public hearing, with three adjournments at the applicant's request, the applicant's counsel requested to withdraw the application in December 2020. Given the extant noncompliance of the Premises, the Board's counsel issued a notice to appear at the January 11, 2021, hearing, stating, in part, that "... attendance at the Board's January 11, 2021, virtual public hearing is mandatory for the continued representation of this application. Failure to prosecute this application before the Board may extinguish your rights under the variance. Loss of the variance may result in the termination and removal of all commercial operations on the Premises and/or Department of Buildings enforcement action(s)."

The applicant's refusal to prosecute the application, both before and during the course of public hearings, further diminished any credibility in the applicant and confidence that the Premises could be maintained in a compliant condition.

C.

The Board also raised concerns over the common ownership of adjacent tax lots by the Premises owner. Specifically, adjacent tax lots 42 through 47 are commonly owned and abut the Premises. The Board observed that this common ownership improperly permitted the use to operate beyond the confines of the Premises. Board site inspections also revealed a similar level of poor condition and maintenance of adjacent properties owned by the applicant.

Department of Buildings inspection, on or about April 9, 2021, revealed a Class 1 violation of § 28-105.1 of the Administrative Code for work without a permit; specifically, that an addition to the building at the Premises had been started on adjacent tax lots 45 and 46 with concrete footings poured, walls framed out, and a roof framed. The violation confirmed Board concerns, that the owner was illegally conducting its business beyond the scope of the variance by extending onto adjacent and commonly owned tax lots. The Board notes that this illegal construction occurred during the course of the instant application and had not yet been demolished. The Board observes that the owner has taken advantage of commonly owned tax lots not subject to the variance, causing noncompliance of the Premises, the presence of illegal uses on the adjacent tax lots, and disruption in the surrounding area.

The Board also questioned whether, given the common ownership of the Premises with adjacent tax lots 42 through 47, a larger zoning lot and changed circumstances cure the owner's complained hardship under Z.R. § 72-21.

V.

The Board states that it is not appropriate to waive the Board's rules, extend the term of the variance, and permit an amendment. The owner has failed to operate the Premises in compliance with the Board's conditions and restrictions both historically and throughout the instant application, the

prosecution of which has required two warning letters from the Board for failure to prosecute.

Z.R. § 72-22 states:

The Board of Standards and Appeals may prescribe such conditions or restrictions applying to the grant of a variance as it may deem necessary in the specific case, in order to minimize the adverse effects of such variance upon other property in the neighborhood. Such conditions or restrictions shall be incorporated in the building permit and certificate of occupancy. Failure to comply with such conditions or restrictions shall constitute a violation of this Resolution, and may constitute the basis for denial or revocation of a building permit or certificate of occupancy and for all other applicable remedies.

The Board observes the Premises in a state of noncompliance throughout the instant and prior applications. The Board's conditions and restrictions, including maintenance of the Premises, fencing, and landscaping, are necessary to minimize the adverse effects of the use of the Premises upon surrounding properties and ensure the preservation of the essential character of the neighborhood and surrounding area. The Board repeatedly requested proof of compliance with the Board's conditions from the applicant and, for almost two years before the Board, the applicant failed to demonstrate a clean Premises, installation of sufficient and proper fencing and landscaping, and the absence of light spill over adjacent residential properties. Further, the applicant has taken advantage of commonly owned adjacent property such that operation of the use at the Premises has illegally exceeded the confines of the zoning lot. The applicant failed to demonstrate that they can operate the Premises within the limits of the variance.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *deny* the application and the variance is hereby *revoked*.

Adopted by the Board of Standards and Appeals, September 13, 2021.

122-95-BZ

APPLICANT – Capell Barnett Matalon & Schoenfeld LLC, for 152-65 Realty Company LLC, owner.

SUBJECT – Application October 1, 2019 – Extension of Term of a previously approved Variance (§72-21) which permitted a warehouse (UG 16) and trucking terminal (UG 17) with accessory offices, loading and unloading contrary to use regulations which expired on July 11, 2016; Amendment to permit a change in the hours of operation and a request to eliminate the term. C2-2/R3-1 zoning district.

PREMISES AFFECTED – 152-65 Rockaway Boulevard, Block 12278, Lot 60, Borough of Queens.

COMMUNITY BOARD #12Q

ACTION OF THE BOARD – Application granted on

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condition.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta5

Negative:.....0

THE RESOLUTION –

This is an application for a waiver of the Board’s Rules of Practice and Procedures, an extension of term of a variance, previously granted by the Board pursuant to Z.R. § 72-21, which permitted a warehouse (Use Group (“UG”) 16) and trucking terminal (UG 17) with accessory offices, loading, and unloading and expired on June 11, 2016, and an amendment to the same.

A public hearing was held on this application on April 6, 2020, after due notice by publication in *The City Record*, with continued hearings on July 27, 2020, October 19, 2020, February 8, 2021, and April 12, 2021, and then to decision on September 14, 2021. Vice-Chair Chanda and Commissioner Ottley-Brown performed inspections of the Premises and surrounding neighborhood. Community Board 12, Queens, recommends approval of this application on condition that the Sunday operating schedule of the warehouse be closed from 7:00 a.m. to 7:00 p.m., with a five-year term and local labor hiring. The Board received one letter of objection citing concerns about the amount noise produced at the Premises at all hours of the day.

The Premises are located on the southeast corner of Rockaway Boulevard and 132nd Avenue, partially within R3-2 (C2-2) zoning district and partially within an R3X zoning district, in Queens. With approximately 503 feet of frontage along Rockaway Boulevard, 83 feet of frontage along 132nd Avenue, and 60,220 square feet of lot area, the Premises are occupied by an existing two-story, manufacturing building occupied as a warehouse (UG 16) and trucking terminal (UG 17), with 36 accessory parking spaces.

The Board has exercised jurisdiction over the Premises since June 11, 1996, when, under the subject calendar number, the Board granted a variance, pursuant to Z.R. § 72-21, to permit, in an R3-2 (C2-2) district, the extension of the use of the Premises as a warehouse (UG 16) and truck terminal (UG 17) with accessory offices, loading and unloading, on condition that the curb be restored on the 132nd Avenue side of the Premises; all lighting be directed down and away from the residential properties; landscaping be provided and maintained in accordance with BSA-approved plans; there be a dispatcher on site during business hours to direct the trucks to insure all trucks are completely within the loading docks; the term of the variance be limited to 20 years, to expire on June 11, 2016; all signs comply with C2 district regulations; all garbage be stored inside the Premises until immediately prior to pick up; the hours of operation be 7:00 a.m. to 9:00 p.m., Monday through Friday, and 7:00 a.m. to 3:00 p.m. on Saturdays; 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 in accordance with Z.R. § 72-23.

On January 12, 1999 under the subject calendar number, the Board amended the variance to permit a change in the number of loading berths, from 18 to 15; to add 618 square feet of additional warehouse space on the first floor of the new building; and to add additional 8,531 square feet of office space on the mezzanine level of the existing building on condition that the hours of operation of the Premises be: Monday through Friday 7:00 a.m. to 9:00 p.m., Saturdays 7:00 a.m. to 3:00 p.m., closed Sundays; all garbage be stored inside the Premises until immediately prior to pick up; a dispatcher be on duty during business hours to insure all trucks are completely within the loading areas; trucks which are not actively loading or unloading be kept within the parking area; all landscaping be maintained in accordance with the BSA-approved plans; all signs be maintained in accordance with the BSA-approved plans; all fencing be kept free of gaps and additional fencing be placed in the rear yard adjacent to the all of the new building; the trash dumpster be kept near the wall of the interior loading bays; all lighting be kept pointed away from residential uses; the curb cut along 132nd Avenue be restored; the owner and applicant work with the local community and Department of Transportation to have requisite signs/traffic control devices installed within the vicinity of the subject Premises; 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; a new certificate of occupancy be obtained in one year, by January 12, 2000; and, the conditions appear on the certificate of occupancy.

The term of the variance having expired, the applicant now seeks an extension. Because this application was filed more than two 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 Procedures (the Board’s Rules), of § 1-07.3(b)(3)(ii), of the Board’s Rules to permit the filing of this application.

The applicant also seeks an amendment to the terms of the variance to eliminate the 20-year term and to permit the Premises to operate 24 hours a day, 7 days a week.

Over the course of hearings, the Board questioned how the applicant could mitigate the noise impacts caused by truck traffic in the warehouse parking lot during nighttime hours and raised concerns regarding the condition of the landscaping at the Premises, how the applicant’s request for 24/7 hours of operation and elimination of its 20-year term could result in excessive noise and light spread negatively impacting nearby residential properties, and parking causing disruption to local streets.

As per the noise, the applicant conducted a noise study and proposed to construct an acoustical wall to reduce noise impacts on abutting residential properties to levels in compliance with Department of Environmental Protection noise regulations. The proposed 20-foot acoustical wall will

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be located on the portion of the Premises that abuts the residential properties on 132nd Avenue, five feet inside the property line and the top five feet would consist of a clear acrylic noise barrier panel. The applicant also proposes to maintain signs reading "No Noise or Idling" at certain locations in the parking lot.

Regarding the landscaping, the applicant submitted proposed plans showing all barbed wire at the property would be removed; an 18" wide planter bed would be installed along the 132nd Avenue-acoustical fence, which in turn would be landscaped with ivy; the five-foot path between the existing fence and the acoustical wall would be planted with grass; and, landscaping at the triangle located on Rockaway Boulevard, the triangle located next to the parking lot ramp, and four trees along Rockway Boulevard.

As for the proposed amendments, the applicant stated that the hours of operation in the prior Board approvals did not permit it to properly service the JFK airline storage industry which requires 24/7 access to warehouses. The applicant requests that the Board eliminate the 20-year term because the applicant has fully complied with prior Board conditions, there had been no history of complaints at the Premises, and the terms of the prior Board approvals have made it harder to lease the property.

Finally, as a response to the concerns about the light emanating from the Premises, the applicant submitted a Lumens Spread Diagram, which measured the light emanating from the light fixtures attached to the acoustical wall and the existing lights located on the wall of the warehouse facing the parking lot. As per the purposed plans, the new light fixtures would be located two feet below the top of the acoustical wall and would have no light impacts on the abutting residential properties.

The applicant additionally prepared a restrictive declaration, committing to the following:

That the total facility shall consist of 45,363 square feet of zoning floor area, which includes storage and office space. The facility may accommodate up to two tenants, one using the Rockaway loading bays and one using the parking loading bays as detailed below;

That the facility shall not be a "last mile distribution facility";

That post-BSA approval, the applicant shall perform a trip generation survey with the facility at full utilization in compliance with applicable DOT protocols. The applicant shall submit a scope for the trip generation survey within six months after achieving full occupancy to the New York City Department of Transportation for review and approval prior to undertaking survey;

That a noise barrier wall shall be maintained in the parking lot running along the rear of the abutting residential properties as per the approved plans;

That trucks utilizing the eight loading bays on Rockaway Boulevard must park fully inside the bay before unloading or loading and may not

idle on Rockaway Boulevard;

That there shall be a flagger at all times located at the Rockaway Boulevard bays directing trucks to fully enter the bays upon arrival;

That trucks utilizing the parking lot's two interior bays must park fully inside the bay before unloading or loading and trucks using the five exterior bays must back up flush to the exterior loading bay before unloading or loading;

That all trucks shall not idle their engines, use backup beepers, use horns, use radios, make any unnecessary noise, only one truck at a time can access and maneuver in the surface lot during arrival and departure, no truck greater than 40 feet in length can access surface lot;

That all trucks at any bay shall not obstruct the sidewalk;

That there shall be a flagger at all times located in the parking lot directing traffic and enforcing noise rules, and to assure pedestrian and vehicular safety;

That there shall be a flagger at all times at the driveways and the surface lot and ramp;

That there shall be signs located in the parking lot prohibiting engine idling, the use of horns, beepers and sound systems or creating any other unnecessary noise and alerting all users to be considerate of the adjacent residential neighbors;

That along Rockaway Boulevard, there shall be 2 curb cuts, separated by 5 feet: (i) a 33-foot curb cut for the parking lot with 2.6 inch splays and (ii) a 17-foot curb cut for the car ramp with 1.6 inch splays;

That the car ramp curb cut shall be equipped with a two-way blind spot, the existing tree and pit will be removed, no left turn shall be permitted from driveways onto eastbound Rockaway Boulevard, and a "No Left Turn" sign shall be installed prohibiting such turns (subject to City approval);

That the parking lot fence along 132nd Avenue shall be landscaped, and the existing curb cut removed;

That the portion of the parking lot noise barrier wall facing the neighbors shall be landscaped with ivy and shall be maintained in first-rate condition;

That the rear wall of the subject Premises facing 154th Street shall be maintained with live ivy;

That all landscaping at the subject Premises, including the landscaping detailed in the approved plans, shall be maintained in first-rate condition;

That all lighting in the parking lot shall be installed and maintained in such a manner as to minimize any impact on the residential neighbors;

That current mechanical systems on the roof

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shall face away from the residential neighbors;

That 45,363 square feet of zoning floor area used for warehouse with accessory offices;

That there shall be 34 parking spaces;

That there shall be 10 interior loading bays and 5 exterior loading bays;

That the applicant shall plant trees in a small portion of the Premises that protrudes into an R3X district, abutting the rear of the Premises;

That all lights on the Premises shall point away from the adjacent residences;

That the parking lot fence shall abut the neighbor's rear yards;

That all signs shall conform to the C2 regulations;

That the HVAC system shall face away from the adjacent residences;

That the exterior walls shall be kept clean and free of graffiti;

That trash shall be stored inside the Premises until designated pickup times;

That there shall be a dispatcher at the loading areas at all times during loading;

That the fencing in parking lot shall be kept free of gaps;

That the required landscaping shall be maintained;

That the rear wall of the premises shall be stucco with ivy;

In response, the Board stated that the request to amend the hours of operation was reasonable but would not eliminate the term of the variance.

By correspondence dated April 3, 2020, the Fire Department states that it is in receipt of a submission providing copies of the FDNY test card showing the date of the sprinkler testing and the test was deemed satisfactory. This information has been forwarded to the sprinkler/standpipe unit to update their records. The permit for the sprinkler will expire in June 2024. Based on the foregoing, the Department has no objection to the application. The Bureau of Fire Prevention will continue to inspect these Premises and enforce all applicable rules and regulations.

By letter dated September 7, 2021, the Department of Environmental Protection ("DEP"), Bureau of Environmental Planning and Analysis states that it has reviewed the applicant's Tech Memo, Noise Analysis dated August 20, 2021 and the support material. Based on the noise assessment performed for the proposed project, there is no potential significant noise impacts. The project-generated traffic will not double on existing roadways, therefore there is no potential for significant adverse noise impacts pertaining to mobile sources. Based on the Noise Analysis ("Acoustic Report"), the implementation of a 20-foot noise attenuation will prevent noise impacts on adjacent residences. With sound barrier in place, sound levels from truck operations are projected to meet the night-time limits of the NYC noise Code and the nighttime noise CEQR

Impact Thresholds. DEP has concluded there will be no significant adverse noise impacts from truck movements. In addition, the loading and unloading operations will take place inside the building, therefore, there is no potential for noise impacts from loading operations in the warehouse. The building mechanical systems (i.e., HVAC systems) would be designed to meet all applicable noise regulations (New York City Noise Control Code) and therefore would not result in any significant increase in ambient noise levels. Therefore, the proposed actions would not result in significant adverse noise impacts related to building mechanical equipment.

By letter dated September 13, 2021, the Department of Transportation ("DOT") states following the 2020 CEQR Technical Manual, Level 1 (Trip Generation) assessment was conducted for the weekday, Saturday, and Sunday peak hours. Based on our review of the Technical Memorandum ("TM") and supplemental information including the screening assessments, DOT concurs with the applicant's determination that a detailed traffic and pedestrian analysis is not warranted as the site generated trips would not exceed the 50-vehicle and 200 pedestrian trips thresholds in any peak hours. The applicant has agreed to perform trip generation survey when the site is fully operational. Prior to performing any survey, the consultant will submit a scope of the trip generation survey within six months of full occupancy to NYC DOT for review and approval. In addition, in a new technical memorandum including the results of the survey should be submitted to the DOT for review and approval. Also, the proposed facility can not be used as last-mile facility. The applicant will be responsible for instituting following operational changes:

an existing 55-foot-wide curb cut along Rockaway Boulevard which provides shared access to the surface lot and to the vehicular ramp for the cellar parking area will be replaced with two curb cuts; a new 33-foot curb cut which will provide access to the surface lot and a new 17-foot curb cut will provide access to the cellar; existing curb cut along 132nd Avenue will be restored to full-height curb and sidewalk; the proposed tree removal requires NYC Department of Parks and Recreation ("DPR") review and approval;

Surface lot access: no truck greater than 40-feet in length can access surface lot; only one truck at a time can access and maneuver in the surface lot during arrival and departure; to assure pedestrian and vehicular safety, there will be a flagger at all times at the driveways to surface lot and ramp; no left turn will be permitted from driveways onto eastbound Rockaway Boulevard.

Loading bay access along Rockaway Boulevard: there will be a flagger at all times to assure pedestrian and vehicular safety; all trucks must fully park inside the bays for loading and unloading; no loading and unloading will be permitted along Rockaway Boulevard. Sidewalk

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will be clear for pedestrians at all times.

The applicant will be responsible for all costs associated with the design and installation of all proposed modifications including capital improvements such as replacement of existing curb cuts along Rockaway Boulevard and closure of the existing curb cut along 132nd Avenue, trip generation survey, flagger, etc. The applicant will be responsible for obtaining DPR's approval. The applicant will submit all of the required drawings as per AASHTO and DOT specifications and requirements for NYC DOT review and approval. DOT will participate in the review process relating to all future modifications to geometric alignment, curb cuts, striping, and signage.

Based upon its review of the record, the Board has determined that the extension of term of the variance and amendment to the hours of operation, appropriate with certain conditions as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *waive* its Rules of Practice and Procedures and *amend* the resolution, dated June 11, 1996, as amended through January 12, 1999, so that as amended this portion of the resolution shall read: "to extend the term of the variance for 20 years, to expire on June 11, 2036; *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked 'Received May 28, 2021 – Eleven (11) sheets'; and *on further condition*:

THAT the term of the variance will be for 20 years, to expire on June 11, 2036;

THAT the total facility shall consist of 45,363 square feet of zoning floor area, which includes storage and office space. The facility may accommodate up to two tenants, one using the Rockaway loading bays and one using the parking loading bays as detailed below;

THAT the facility shall not be a "last mile distribution facility";

THAT post-BSA approval, the applicant shall perform a trip generation survey with the facility at full utilization in compliance with applicable DOT protocols. The applicant shall submit a scope for the trip generation survey within six months after achieving full occupancy to the New York City Department of Transportation for review and approval prior to undertaking survey;

THAT a noise barrier wall shall be maintained in the parking lot running along the rear of the abutting residential properties as per the approved plans;

THAT trucks utilizing the eight loading bays on Rockaway Boulevard must park fully inside the bay before unloading or loading and may not idle on Rockaway Boulevard;

THAT there shall be a flagger at all times located at the Rockaway Boulevard bays directing trucks to fully enter the bays upon arrival;

THAT trucks utilizing the parking lot's two interior bays must park fully inside the bay before unloading or loading and trucks using the five exterior bays must backup flush to the exterior loading bay before unloading or loading;

THAT all trucks shall not idle their engines, use backup beepers, use horns, use radios, make any unnecessary noise, only one truck at a time can access and maneuver in the surface lot during arrival and departure, no truck greater than 40 feet in length can access surface lot;

THAT all trucks at any bay shall not obstruct the sidewalk;

THAT there shall be a flagger at all times located in the parking lot directing traffic and enforcing noise rules, and to assure pedestrian and vehicular safety;

THAT there shall be a flagger at all times at the driveways and the surface lot and ramp;

THAT there shall be signs located in the parking lot prohibiting engine idling, the use of horns, beepers and sound systems or creating any other unnecessary noise and alerting all users to be considerate of the adjacent residential neighbors;

THAT along Rockaway Boulevard, there shall be 2 curb cuts, separated by 5 feet: (i) a 33-foot curb cut for the parking lot with 2.6 inch splays and (ii) a 17-foot curb cut for the car ramp with 1.6 inch splays;

THAT the car ramp curb cut shall be equipped with a two-way blind spot, the existing tree and pit will be removed, no left turn shall be permitted from driveways onto eastbound Rockaway Boulevard, and a "No Left Turn" sign shall be installed prohibiting such turns (subject to City approval);

THAT the parking lot fence along 132nd Avenue shall be landscaped, and the existing curb cut removed;

THAT the portion of the parking lot noise barrier wall facing the neighbors shall be landscaped with ivy and shall be maintained in first-rate condition;

THAT the rear wall of the subject Premises facing 154th Street shall be maintained with live ivy;

THAT all landscaping at the subject Premises, including the landscaping detailed in the approved plans, shall be maintained in first-rate condition;

THAT all lighting in the parking lot shall be installed and maintained in such a manner as to minimize any impact on the residential neighbors;

THAT current mechanical systems on the roof shall face away from the residential neighbors;

THAT 45,363 square feet of zoning floor area used for warehouse with accessory offices;

THAT there shall be 34 parking spaces;

THAT there shall be 10 interior loading bays and 5 exterior loading bays;

THAT the applicant shall plant trees in a small portion of the Premises that protrudes into an R3X district, abutting the rear of the Premises;

THAT all lights on the Premises shall point away from the adjacent residences;

THAT the parking lot fence shall abut the neighbor's rear yards;

THAT all signs shall conform to the C2 regulations;

THAT the HVAC system shall face away from the adjacent residences;

THAT the exterior walls shall be kept clean and free

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of graffiti;

THAT trash shall be stored inside the Premises until designated pickup times;

THAT there shall be a dispatcher at the loading areas at all times during loading;

THAT the fencing in parking lot shall be kept free of gaps;

THAT the required landscaping shall be maintained;

THAT the rear wall of the premises shall be stucco with ivy;

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. 122-95-BZ'), shall be obtained within two years, by September 14, 2023;

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."

Adopted by the Board of Standards and Appeals, September 14, 2021.

23-08-BZ

APPLICANT – Sheldon Lobel, P.C., for Boris Aronov, owner.

SUBJECT – Application February 15, 2019 – Amendment of a previously approved Variance (§72-21) which permitted the construction of a two-story and cellar house of worship (UG 4) contrary to floor area and parking requirements. R1-2 zoning district.

PREMISES AFFECTED – 80-14 Chevy Chase Street, Block 7248, Lot 44, Borough of Queens.

COMMUNITY BOARD #8Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta5
Negative:0

THE RESOLUTION –

The decision of the Department of Buildings ("DOB"), dated January 17, 2019, acting on Alteration Type 1 Application No. 402618431, reads in pertinent part:

"Proposed plans are contrary to prior BSA approval under BSA cal. No. 23-08-BZ...dated July 15, 2008:

The 2008 decision did not permit the use of the cellar storage room for the preparation of food or beverage for functions, occasions or events in the

Lecture Hall."

This is an application for an amendment of a variance, previously granted under Z.R. § 72-21, which permitted the construction of a two-story and cellar Use Group ("UG") 4 house of worship, contrary to floor area and parking requirements, for changes in the cellar layout and landscaping and to include an obstruction in the front yard, contrary to Z.R. §§ 24-33 and 24-34.

A public hearing was held on this application on January 14, 2020, after due notice by publication in *The City Record*, with continued hearings on March 24, 2020, May 18, 2020, October 5, 2020, and January 11, 2021, and then to decision on September 13, 2021. Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta performed inspections of the Premises and surrounding neighborhood. Community Board 8, Queens, recommends disapproval of this application citing concerns over the outstanding violations for hazardous work conditions and the use of the Premises to host large events. The Board also received four letters of objection citing concerns over congested parking, lack of landscaping, noise emanating from the Premises, trash buildup, and the use of an illegal kitchen.

I.

The Premises are located on the northwest corner of Chevy Chase Street and 80th Road, within an R1-2 zoning district, in Queens. With approximately 123 feet of frontage along Chevy Chase Street, 65 feet of frontage along 80th Road, and 7,990 square feet of lot area, the Premises are occupied by an existing two-story with cellar house of worship.

II.

The Board has exercised jurisdiction over the Premises since July 15, 2008, when, under the subject calendar number, the Board granted a variance, under Z.R. § 72-21, to permit the construction of a new two-story with cellar UG 4 house of worship, contrary to Z.R. §§ 24-10 and 25-30, on condition that any and all work substantially conform to drawings as they apply to the objections, filed with the application; any change in control or ownership of the building require the prior approval of the Board; the building parameters include a maximum floor area ratio of 0.92 as reflected on the BSA-approved plans; the use be limited to a house of worship (UG 4); the accessory uses not include the utilization of a room or other space for the operation of a business engaged in preparing or serving food or beverages for functions, occasions, or events; a 3'-0" wide landscaped strip of landscaping be provided along the lot lines as shown on BSA-approved plans; the conditions be listed 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; 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

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

III.

The applicant seeks an amendment to the variance to modify the layout and occupancy of the house of worship and landscaping.

The applicant proposes to combine the previously approved cellar and the large stage area so that it may increase the occupancy load of the area and add a warming pantry for small gatherings of people to heat up coffee and food before or after services. The applicant further states that the hedges and landscaping, which were originally required by the Board to limit the amount of runoff at the Premises, could not be utilized because the applicant constructed the cellar to grade at the lot lines, providing inadequate depth for landscaping to be effectively planted with tall hedges and allow for water retention. The applicant stated that, instead, it installed area drains throughout the open areas surrounding the building at grade and proposes to maintain trees in above grade planters at both street lines. The applicant notes that these modifications would not affect the previously granted parking waiver pursuant to Z.R. § 25-30 and floor area requirement pursuant to Z.R. § 24-10.

Additionally, the applicant seeks a waiver of Z.R. § 24-34 to legalize a one-story Torah Ark on the first floor that projects into the required front yard along Chevy Chase Street, reducing the depth of the front yard to 8'-3/4", which is less than the 15 feet required.

IV.

The Zoning Resolution vests the Board with wide discretion to "vary or modify [its] provision[s] so that the spirit of the law shall be observed, public safety secured and substantial justice done," Z.R. § 72-21.

A.

First, the applicant resubmits that there are unique physical conditions inherent in the Premises that 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 continue which necessitate an amendment to its original variance. More particularly, the applicant notes that the presence of the Torah Ark in its front yard is a core part of its programmatic need, established in its prior application. Specifically, the applicant states that, programmatically, the Torah Ark must be located on the eastern wall of the house of worship as the congregants must face in that direction during prayers and should all be able to see the ark. Applicant argues that it cannot recess the Torah Ark in order to comply with front yard requirements as it would require shifting the layout of the seating in the sanctuary to accommodate this shift.

Accordingly, 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.

B.

Next, the applicant resubmits, and the Board still

concur that, because this application proposes a not-for-profit religious organization, no showing need be made with respect to realizing a reasonable return.

C.

The applicant further represents that the requested amendment to the variance would not alter the essential character of the neighborhood, impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare. Specifically, the applicant states that the main wall of the house of worship is setback 15 feet from the property line and is otherwise compliant with the front yard requirements of Z.R. § 24-34. The applicant describes the Torah Ark as a half-cylinder which extends outward from a wall that is recessed seven feet from the main wall, facing Chevy Chase Street and extends to a point that is 8'-8-3/4" from the front lot line. The applicant also notes that the only other building on the same block frontage does not provide a front yard along its front lot line on Chevy Chase Street.

Over the course of hearings, the Board expressed concerns over the presence and use of a walk-in refrigerator at the Premises and sufficient landscaping at the Premises. Specifically, regarding the walk-in refrigerator, the Board questioned whether a large walk-in refrigerator space would encourage unpermitted events held at the Premises and requested that the applicant remove it. As per the landscaping, the applicant proposes to redesign the landscaping and provide a raised planter bed along each street line in similar locations as were previously required in the original variance as well additional in-ground planters along the lot lines adjacent to the neighboring properties.

In response, the applicant removed the walk-in refrigerator and proposes to utilize a smaller warming pantry as was originally proposed. Furthermore, in light of Board concerns over the use of the Premises for unpermitted events, the applicant must return to the Board within one year of this approval and provide proof of the total removal of the walk-in refrigerator.

By correspondence dated March 24, 2020, the Fire Department states that it has reviewed the latest submission for this application. Inspectors from the Bureau's Rangehood Unit have been notified of the removal of the kitchen equipment and fire suppression and will conduct an inspection to verify same and rescind any violation orders issued by their unit. The Public of Assembly space in the cellar still does not have an operating permit from the Department of Buildings and the Fire Department would like to know when they will obtain same. The Bureau's Licensed Public Place of Assembly has an outstanding violation order for failure to obtain an operating permit for this space as well as the second floor.

Accordingly, the Board finds that the proposed amendment will not alter the essential character of the neighborhood or district in which the Premises are located; will not substantially impair the appropriate use or development of adjacent property; and will not be detrimental to the public welfare.

D.

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The applicant represents that the above practical difficulties or unnecessary hardship have not been created by the applicant or by a predecessor in title. Specifically, the applicant submits that the practical difficulties and unnecessary hardship affecting the Premises and has necessitated this request for an amendment are due to the unique programmatic needs of the house of worship.

Accordingly, the Board finds that the above practical difficulties or unnecessary hardship have not been created by the applicant or by a predecessor in title.

E.

The applicant notes that the amendment to the variance is the minimum necessary to further continue the use residence at the Premises. The applicant submits that all other bulk requirements not previously waived by the Board will be in full compliance with the Zoning Resolution and any other obstruction, such as the covering over the front yard which extends farther than the Torah Ark, is permitted to the yard requirements.

Accordingly, the Board finds that the proposed variance is the minimum necessary to afford relief within the intent and purposes of the Zoning Resolution.

V.

Additionally, at hearings, the Board raised concerns over the need for a proper survey of the Premises to show the extent of the cellar. In response, the applicant provided an updated survey which demonstrates the location of the interior cellar wall, which is at least 1'-5-1/2" inside of the property line. The applicant also provided plans demonstrating the footprint of the cellar within the property line.

In response to Board concerns over use of the Premises for hosting large events not related to its programmatic needs; the landscaping at the site; and potential construction beyond the property line, the applicant prepared a restrictive declaration, committing to the following:

That the house of worship shall not include the leasing, licensing, or any other grant of permission to utilize a room or other space in such house of worship for the operation of functions, occasions, or events;

That the cellar assembly space shall only be used or occupied by house of worship congregants and their guests for small religious/life events, including but not limited to bar mitzvahs, bat mitzvahs, and brides;

The walk-in refrigerator shall only be used for on-site events purposes and not any storage of materials or food stuffs to be used offsite.

That landscaping shall be installed and maintained, as indicated on Board-approved plans, and shall be replaced as necessary to be maintained in first-class condition at all times;

That no construction is permitted beyond the property line without a revocable consent from the Department of Transportation or as permitted under Chapter 32 (Encroachments into the Public

Right-of-way) of the 2014 New York City Building Code....

VI.

Based on the foregoing, the Board finds that the evidence in the record supports the findings required to be made under Z.R. § 72-21 and that the applicant has substantiated a basis to warrant exercise of discretion.

VII.

Based upon its review of the record, the Board has determined that the requested amendment of the variance to permit changes to the cellar layout and landscaping pursuant to Z.R. § 24-33 and additional waiver to the front yard requirements pursuant to Z.R. § 24-34 are appropriate with certain conditions as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *amends* the resolution, dated July 15, 2008, so that as amended this portion of the resolution shall read: "to amend the variance to legalize the conditions in the cellar space, modify the landscaping requirements, and waive the front yard requirements pursuant to Z.R. § 24-34, *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked "Received April 25, 2021"—Twelve (12) sheets; and *on further condition*:

THAT the following shall be the bulk parameters of the building and the yard dimensions: a total floor area of 7,379.2 square feet; a maximum floor area ratio of 0.92; and a front yard measuring between 8'-8-3/4", all as illustrated on the BSA-approved plans;

THAT the applicant must return to the Board for a compliance hearing by September 13, 2022;

THAT the applicant must record with the City of New York a restrictive declaration which states:

THIS DECLARATION OF RESTRICTIVE COVENANTS (the "Declaration"), dated this 10th day of September, 2021, is entered into by BOKHARIAN COMMUNITIES CENTER INC. (the "Declarant"), a New York not-for-profit corporation, having an office at 43 W 47th Street, suite 203, New York, NY 10036.

WHEREAS, the Declarant is the fee owner of certain land located in the City and State of New York, Borough of Queens, being known and designated as Block 7248, Lot 44 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 Premises is improved with a two-story with cellar house of worship building (the "Existing Building"). The Existing Building was constructed utilizing variance to Floor Area and Parking Regulations, granted under BSA Cal. No. 23-08-BZ.

WHEREAS, Applicant has requested by application assigned BSA Calendar Number 2308-BZIII, that the New York City Board of Standards and Appeals (the "Board") grant an amendment to the prior variance and a new front

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yard variance request under Sections 72-01, 7221, and 72-22 of the New York City Zoning Resolution ("ZR") (the "Amended Variance") to modify the previously approved plans, change the planting requirements, and to allow for an extension of the building to protrude into the front yard; and

WHEREAS, the Board requires Applicant to execute and record in the Office of the City Register of the City of New York this Declaration prior to obtaining building permits for the Premises.

NOW THEREFORE, in consideration of the Board's approval of the Variance, Declarant does hereby declare that the Declarant and its successors and/or assigns shall be legally responsible for compliance with the following restrictions:

1. The house of worship shall not include, as an accessory use, the leasing, licensing, or any other grant of permission to utilize a room or other space in such house of worship for the operation of a business engaged in serving food or beverages for functions, occasions, or events.
2. When not used by the Declarant, the cellar assembly space shall only be used or occupied by house of worship congregants and their guests for small religious/life events, including but not limited to bar mitzvahs, bat mitzvahs, and brises.
3. The walk-in refrigerator shall only be used for on-site events purposes and not any storage of materials or food stuffs to be used offsite.
4. Landscaping shall be installed and maintained, as indicated on Board-approved plans, and 23-08-BZIII shall be replaced as necessary to be maintained in first-class condition at all times; 09/13/2021
5. No construction is permitted beyond the property line without a revocable consent from the Department of Transportation or as permitted under Chapter 32 (Encroachments into the Public Right-of-way) of the 2014 New York City Building Code;
6. This Declaration may not be modified, amended, or terminated without the prior written consent of the Board, except as otherwise expressly set forth herein.
7. 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 Board, and their respective heirs, legal representatives, successors and assigns.
8. 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 authorization or waiver granted by the Board, including, without limitation, the Amended Variance.

9. 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.

THAT the house of worship shall not include the leasing, licensing, or any other grant of permission to utilize a room or other space in such house of worship for the operation of functions, occasions, or events;

THAT the cellar assembly space shall only be used or occupied by house of worship congregants and their guests for small religious/life events, including but not limited to bar mitzvahs, bat mitzvahs, and brises;

THAT landscaping shall be installed and maintained, as indicated on Board-approved plans, and shall be replaced as necessary to be maintained in first-class condition at all times;

THAT the Department of Buildings ensure that the structure of the entire basement is constructed within the property line;

THAT substantial construction shall be completed, as determined by an inspection by the Department of Buildings, by September 13, 2025;

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. 23-08-BZ"), shall be obtained within four years, by September 13, 2025;

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

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

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

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

Adopted by the Board of Standards and Appeals, September 13, 2021.

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18-09-BZIV

APPLICANT – Klein Slowik PLLC, for West 54th Street LLC c/o ZAR Property, owner; Crunch LLC, lessee.

SUBJECT – Application March 29, 2021 – Extension of Time to Obtain a Certificate of Occupancy of a previously approved Special Permit (§73-36) permitting the operation of a physical culture establishment (Crunch Fitness) which expires on May 21, 2020; 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 – Application granted.

THE VOTE –

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

Negative:.....0

Recused: Chair Perlmutter.....1

THE RESOLUTION –

This is an application for a waiver of the Board’s Rules of Practice and Procedures and an extension of time to obtain a certificate of occupancy, pursuant to a special permit, under Z.R. § 73-36, that permitted the operation of a physical culture establishment (“PCE”) and, expired on May 21, 2020.

A public hearing was held on this application on June 15, 2021, after due notice by publication in *The City Record*, and then to decision on September 13, 2021.

The Premises are located on the south side of West 54th Street, between Eighth Avenue and Broadway, in a C6-5 zoning district and in the Special Midtown District, in Manhattan. With approximately 125 feet of frontage along West 54th Street, 101 feet of depth along the western side lot line and 85 feet of depth along the eastern side lot line, and 11,690 square feet of lot area, the Premises are occupied by an existing 12-story plus cellar commercial building.

The Board has exercised jurisdiction over the Premises since July 28, 2009, when, under the subject calendar number, the Board granted a special permit, pursuant to Z.R. § 73-36, to legalize the operation of a PCE, operated as “Gold’s Gym,” on the first, second and third floors of the existing 12-story building on condition that all work substantially conform to approved drawings filed with the application; the term of the grant expire on November 1, 2011; 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 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); 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.

On January 24, 2012, under the subject calendar number, the Board extended the term of the special permit for ten years, to expire on November 1, 2021.

On May 21, 2019, under the subject calendar number, the Board waived its Rules of Practice and Procedures and extended the term of the special permit for five years, to expire on November 1, 2026, and permitted a change in operator of the PCE, to “Crunch,” on condition that the use and operation of the Premises conform to drawings filed with the application; the term of the grant expire on November 1, 2026; there be no change in ownership or operating control of the physical culture establishment without prior application to and approval from this Board; minimum three-foot-wide exit pathways to required exits always be maintained unobstructed, including that from any gymnasium equipment; all massages be provided by New York State-licensed massage therapists; an approved sprinkler system 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 to a FDNY-approved central station—be maintained throughout the PCE space as indicated on the Board-approved plans; a place of assembly permit be obtained for the PCE space and the operator resolve all outstanding objections; Local Law 58/87 compliance shall be as reviewed and approved by DOB; all conditions from prior resolutions not specifically waived by the Board remain in effect; the conditions appear on the certificate of occupancy; a revised certificate of occupancy, also indicating the approval and calendar number (“BSA Cal. No. 18-09-BZ”) be obtained within one year, by May 21, 2020; 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; 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.

The time to obtain a certificate of occupancy having expired, the applicant seeks the subject relief. Because this application was filed more than 30 days after the expiration of the time to obtain a certificate of occupancy, the applicant requests a waiver, pursuant to § 1-14.2 of the Board’s Rules of Practice and Procedures (the Board’s Rules), of § 1-07.3(d)(2), of the Board’s Rules to permit the filing of this application.

The applicant represents that no changes have occurred to the PCE (the PCE is located within portions of the first floor (4,048 square feet of floor area), second floor (7,921 square feet of floor area) and third floor (5,389 square feet of floor area) of the Premises), but massage services are no longer offered at the PCE. The applicant represents that plan examination appointments were scheduled for February through June 2020, but, due to

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shutdowns and stay at home orders associated with COVID-19, had not been able to obtain a certificate of occupancy by May 21, 2020.

The Fire Department states, by letter dated June 10, 2021, that the Premises are protected by a fire suppression system (standpipe and sprinkler) and a fire alarm system that has been inspected and has current permits. The Fire Department's Licensed Public Place of Assembly Unit (LPPA) has inspected the Premises and issued a violation order for failure to obtain a Place of Assembly permit from the Department of Buildings. The Fire Department is aware of the difficulties the applicant has in obtaining the PA permit due to numerous building violations of which Crunch Fitness has no responsibilities for. Based on the foregoing, the Fire Department has no objection to the application, as the Bureau of Fire Prevention will continue to inspect the Premises and enforce all applicable rules and regulations.

Based upon its review of the record, the Board has determined that the requested extension of time to obtain a certificate of occupancy is appropriate with certain conditions as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *waive* its Rules of Practice and Procedures and *amends* the resolution, dated July 28, 2009, as amended through May 21, 2019, so that as amended this portion of the resolution shall read: "to grant a two-year extension of time to obtain a certificate of occupancy, to September 21, 2023; *on condition*:

THAT the term of the grant shall expire on November 1, 2026;

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

THAT an approved sprinkler system 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 to a FDNY-approved central station—shall be maintained throughout the PCE space as indicated on the Board-approved plans;

THAT a place of assembly permit shall be obtained for the PCE space and the operator shall resolve all outstanding objections;

THAT minimum three-foot-wide exit pathways shall be maintained leading to the required exits and that pathways shall be maintained unobstructed, including from any equipment;

THAT accessibility shall be provided pursuant to the standards set forth in applicable accessibility laws, including but not limited to Chapter 11 of the NYC Building Code, the 2009 American National Standards Institute (ANSI) A117.1 and Title III of the Americans with Disabilities Act, 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 certificate of occupancy, also indicating this approval and calendar number ("BSA Cal. No. 18-09-BZ"),

shall be obtained within two years, by September 21, 2023;

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."

Adopted by the Board of Standards and Appeals, September 13, 2021.

2019-299-BZ

APPLICANT – Nasir J. Khanzada, PE, for Adelmo Cioffi, owner.

SUBJECT – Application December 2, 2019 – Reinstatement (§11-411) of a previously approved variance which permitted the operation of an automotive service station (UG 16B) which expired on December 13, 1987; Amendment to permit the conversion of automotive repair bays to accessory convenience store; Waiver of the Board's Rules. C2-3/R6 zoning district.

PREMISES AFFECTED – 82-01 to 82-13 Queens Boulevard, Block 1542, Lot 0001, Borough of Queens.

COMMUNITY BOARD #4Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta5
Negative:.....0

THE RESOLUTION –

This is an application for a waiver of the Board's Rules of Practice and Procedures and a reinstatement, under Z.R. §§ 11-411 and 11-412, of a variance, previously granted by the Board, which permitted the use of the Premises as a gasoline service station with accessory uses and expired on December 13, 1997.

A public hearing was held on this application on March 8, 2021, after due notice by publication in *The City Record*, with a continued hearing on June 15, 2021, and then to decision on September 13, 2021. Vice-Chair Chanda performed an inspection of the Premises and surrounding area. Community Board 4, Queens, recommends approval of this application.

The Premises are bounded by Queens Boulevard to the south and 51st Avenue to the north, within a C2-3 (R6) zoning district, in Queens. With approximately 127 feet of frontage along Queens Boulevard, 131 feet of frontage along 51st Avenue, and 5,021 square feet of lot area, the Premises are occupied by an existing gasoline service station with one-story accessory building (approximately 1,256 square feet of floor area).

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The Board has exercised jurisdiction over the Premises since May 13, 1947, when, under BSA Cal. No. 694-28-BZ, the Board granted a variance, for a term of ten years, to permit the Premises, then-occupied as a gasoline service station on then-tax lot 4, to be extended as proposed, to include tax lot 1, on condition that all existing structures including sign boards be removed from the Premises; the plot with a frontage of approximately 126 feet on Queens Boulevard and approximately 130 feet on 51st Avenue be leveled to the grade of the adjoining streets; the accessory building be designed with face brick and of the arrangement as indicated on plans filed with the application and be set not nearer than four feet to the easterly lot line; pumps be located substantially as shown and no pump nearer than 12'-6" to the street building line; a block of concrete be constructed at the intersection within the building line not less than 12 inches in height and 12 inches in width, extending across the entire frontage at the apex; planting be maintained as indicated properly protected with curbing; the plot, where not occupied by accessory building, pumps, and planting area, be paved with concrete or bituminous paving, which is reasonably impervious; the number of gasoline tanks not exceed six with a capacity of 550 gallons each; signs be restricted to a permanent sign attached to the façade of the accessory building of the type as indicated and the illuminated globes of the pumps, excluding all roof signs and all temporary signs, but permitting the erection of a post standard at the intersection within the building lines for supporting a sign which may be two-faced, advertising only the brand of gasoline on sale and permitting such sign to be illuminated but not to extend beyond the building line for a distance of more than four feet; no sign of the billboard type as shown be constructed; the accessory building otherwise comply with the requirements of the Building Code; the boiler room be separated from the balance of the building by fireproof construction, except that the ceiling may be fire-retarded; the boiler room be enterable only from the exterior; the equipment for lubrication be of the hydraulic type; no greasing pits be installed; any openings other than the door to the boiler room along the easterly wall of the accessory building be filled with glass block without openings therein, as approved for exterior wall construction; along the easterly lot line there be located an ornamental steel fence of the picket type, erected on a masonry base not less than one foot in height to a total height of not less than six feet; cuts be restricted to two curb cuts to Queens Boulevard, each not over 30 feet in width and two to 51st Avenue of similar width; no curb cuts be nearer than five feet to the lot line as extended; all curbs be repaired and any existing curb cuts not incorporated in the proposed curb cuts be restored with new curbing and new sidewalks constructed along Queens Boulevard and 51st Avenue to the satisfaction of the Borough President; any flood lights installed be on pipe standards with metal reflectors so arranged as to reflect downwardly and away from adjoining occupancies; such portable firefighting appliances be maintained as the Fire Commissioner directs; complete working drawings be submitted for approval prior to filing

same with the Building Department; and, all permits required be obtained and all work completed within six months after the approval of plans therein required to be submitted.

On January 20, 1948, under BSA Cal. No. 694-28-BZ, the Board extended the time to obtain permits and complete the work for one year, by January 20, 1949.

On February 1, 1949, under BSA Cal. No. 694-28-BZ, the Board extended the time to complete the work for six months, by August 1, 1949.

On February 26, 1952, under BSA Cal. No. 694-28-BZ, the Board amended the resolution to permit, in addition to the six existing 550-gallon tanks, two additional such tanks as proposed and indicated on plans filed with the application.

On April 30, 1957, under BSA Cal. No. 694-28-BZ, the Board further amended the resolution such that in addition to the six existing tanks and two additional tanks permitted by resolution on February 26, 1952, there may be four additional 550-gallon approved gasoline storage tanks.

On October 15, 1957, under BSA Cal. No. 694-28-BZ, the Board further amended the resolution to extend the term of the variance for ten years, to expire October 15, 1967, on condition that other than as amended the resolution be complied with in all respects, and all permits, including a certificate of occupancy, be obtained and all work completed within six months, by April 15, 1958.

On February 25, 1958, under BSA Cal. No. 694-28-BZ, the Board further amended the resolution by adding that there may be one additional pump island installed and a portion of the planted area may be omitted and such space paved with concrete or bituminous paving, as shown on plans filed with the application, on condition that other than as amended the resolution be complied with in all respects, and all permits, including a certificate of occupancy, be obtained and all work completed within six months, by August 25, 1958.

On October 24, 1967, under BSA Cal. No. 694-28-BZ, the Board further amended the resolution to extend the term of the variance for ten years, to expire October 15, 1977.

On March 25, 1975, under BSA Cal. No. 694-28-BZ, the Board permitted an amendment to the gasoline pump locations.

On November 12, 1975, under BSA Cal. No. 694-28-BZ, the Board permitted an alteration to the accessory building, substantially as shown on plans filed with the application.

On December 13, 1977, under BSA Cal. No. 694-28-BZ, the Board further amended the resolution to extend the term of the variance for ten years, to expire December 13, 1987, on condition that there be no parking of any vehicles within the sidewalk area; other than as amended the resolution be complied with in all respects; and, a new certificate of occupancy be obtained within one year, by December 13, 1978.

On May 10, 1988, under BSA Cal. No. 694-28-BZ, the Board further amended the resolution, under Z.R. § 11-411, to extend the term for ten years, to expire December 13,

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1997, and to remove the car was so as to provide a car lift, on condition that the gasoline station conform to plans filed with the application; there be no parking of vehicles on the sidewalk or in such a manner as to obstruct pedestrian or vehicular traffic; other than as amended the resolution be complied with in all respects; and, a new certificate of occupancy be obtained within one year, by May 10, 1989.

On October 29, 1991, under BSA Cal. No. 694-28-BZ, the Board further amended the resolution to extend the time to obtain a certificate of occupancy for one year, by October 29, 1992.

The term of the variance having expired, the applicant seeks a reinstatement. Because this application was filed more than ten years since the expiration of the term, the applicant requests a waiver, pursuant to § 1-14.2 of the Board's Rules of Practice and Procedures (the Board's Rules), of § 1-07.3(b)(4)(i), of the Board's Rules to permit the filing of this application. The Board's Rules require the applicant to demonstrate that the use has been continuous since the expiration of term, substantial prejudice would result without such a waiver, and the use permitted by the grant does not substantially impair the appropriate use and development of adjacent properties.

In accordance with the Board's Rules, the applicant submits photographs and utility bills demonstrating use of the Premises to continuously cover the period of the expiration of term through the filing of the application. Further, the applicant states that absent a waiver of the Board's Rules, the Premises would have to return to a conforming use, requiring the removal or filling of the underground storage tanks at a significant cost and subject to lengthy FDNY and DEC approvals. Shutting down the subject gasoline service station would cause a negative impact to the community, as the applicant represents that the Premises are one of few stations along Queens Boulevard that supplies the E-85 fuel required for taxi drivers. The applicant additionally submits that the continued use of the Premises as a gasoline service station would not substantially impair the appropriate use and development of adjacent residential properties as screening will be provided by the accessory building with planting on both sides; lighting will be angled away from the neighboring property to ensure there is no light spill at the property line; trash will be located inside the accessory building to prevent adverse odor and pest impacts to adjacent properties; and, the accessory building will be renovated with an enhanced appearance and will benefit the neighborhood.

The applicant also seeks an amendment to permit an enlargement of the accessory building, from 1,256 square feet of floor area to 1,496 square feet of floor area, to remove the auto repair shop and accommodate an accessory convenience store, office, storage area, and trash enclosure. The applicant represents that the proposed enlargement is less than 50 percent of the floor area occupied by the use on December 15, 1961 and is permitted under Z.R. § 11-412.

Additionally, the applicant proposes to occupy a portion of the accessory building with a 723 square-foot accessory convenience store. Pursuant to DOB Technical

Policy and Procedure Notice # 10/99, the accessory retail use will have a maximum retail selling floor area of the lesser of 2,500 square feet or twenty-five percent of the zoning lot area (1,255 square feet).

The applicant proposes to remove the three existing 4000-gallon tanks and replace them with one single-compartment 12,000-gallon tanks and one double-compartment 12,000-gallon tank. A two-dispenser pump island will be replaced with three concrete islands, each with multiple product dispensers, and will be oriented north-south to enhance vehicular entry and egress from the Premises. The westerly curb cut on Queens Boulevard will be reduced to 30 feet and shifted eastward, and the 30-foot easterly curb cut on Queens Boulevard will remain. The easterly curb cut on 51st Avenue will be reduced to 30 feet and shifted westward, and the 30-foot westerly curb cut on 51st Avenue will remain.

The applicant proposes to operate the Premises 24 hours per day, seven days per week. No air pumps or vacuums are proposed, nor are required due to the small size of the lot. Two planting beds near the residential lot line, one on each side of the accessory building, are proposed, as well as landscaping at the intersection of Queens Boulevard and 51st Avenue. A canopy over the dispensers is proposed which will provide light shielding and prevent lighting from reaching balconies of adjacent residential properties.

The Fire Department states, by correspondence dated September 13, 2021, that they have no objection to the application, the Premises have been inspected, and no violations exist at that time.

Based upon its review of the record, the Board has determined that the requested variance reinstatement is appropriate with certain conditions as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *wave* its Rules of Practice and Procedures and *reinstates* the resolution, dated January 20, 1948, under BSA Cal. No. 694-28-BZ, as amended through October 29, 1991, so that as amended this portion of the resolution shall read: "to permit the use of the Premises as a gasoline service station with accessory convenience store, *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked "Received July 26, 2021"—fourteen (14) sheets; and *on further condition*:

THAT the term of the variance shall be for ten years, to expire September 13, 2031;

THAT planting shall be in-ground planting with a curb, as shown on the approved plans, to provide adequate root ball depth;

THAT if more of the original building is removed than shown on the approved plans it will violate the terms of the variance;

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

THAT any graffiti located on the Premises shall be removed within 48 hours;

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

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vehicular traffic;

THAT all signage shall comply with C1 district regulations;

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. 2019-299-BZ”), shall be obtained within four years, by September 13, 2025;

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

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

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

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

Adopted by the Board of Standards and Appeals, September 13, 2021.

863-48-BZ

APPLICANT – Alfonso Duarte, for Dilip Datta, owner.

SUBJECT – Application October 29, 2018 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of an automotive repair and automotive sales establishment (UG 16B) which expired on November 25, 2018; Amendment to remove the use of automotive sales. R2 zoning district.

PREMISES AFFECTED – 259-16 Union Turnpike, Block 8876, Lot 1, Borough of Queens.

COMMUNITY BOARD #13Q

ACTION OF THE BOARD – Laid over to January 24-25, 2022, at 10 A.M., for continued hearing.

169-49-BZ

APPLICANT – Rampulla Associates Architect, LLP, for 5270 Amboy Road, LLC, owner.

SUBJECT – Application April 20, 2020 – Amendment (§11-412) to permit the enlargement of an accessory repair establishment of a previously approved variance permitting the operation of an Automotive Service Station (UG 16B). R3A Special South Richmond District within the Lower Density Growth Management Area.

PREMISES AFFECTED – 5270 Amboy Road, Block 6523, Lot 80, Borough of Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Laid over to April 25-26, 2022, at 10 A.M., for continued hearing.

132-58-BZ

APPLICANT – Nasir J. Khanzada, for Maria Barone, owner; Swaranjit Singh, lessee.

SUBJECT – Application July 6, 2020 – 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 20, 2020; Waiver of the Board’s Rules of Practice and Procedures. C1-2/R3-2 zoning district. Community Board 7, Queens.

PREMISES AFFECTED – 17-45/17-55 Francis Lewis Boulevard, Block 4747, Lot(s) 31, 41, Borough of Queens.

COMMUNITY BOARD #7Q

ACTION OF THE BOARD – Laid over to December 13-14, 2021, at 10 A.M., for continued hearing.

758-84-BZ

APPLICANT – David L. Businelli, for Gina Sgarlato Benfante, owner.

SUBJECT – Application January 7, 2021 – Extension of Term of a variance (§72-21) permitted the operation of two-story and cellar commercial building contrary to use regulations which expired on July 2, 2020; Waiver of the Board’s Rules of Practice and Procedures. R3X zoning district

PREMISES AFFECTED – 1444 Clove Road, Block 658, Lot 20, Borough of Staten Island.

COMMUNITY BOARD #1SI

ACTION OF THE BOARD – Laid over to December 13-14, 2021, at 10 A.M., for deferred decision.

129-92-BZ

APPLICANT – Akerman LLP, for Whitestone Plaza Associates Inc., owner.

SUBJECT – Application December 11, 2020 – Extension of Term of a previously approved Variance (§72-21) which permitted the use of Automobile Laundry (UG 16B) which expired on October 19, 2013; Waiver of the Board’s Rules of Practice and Procedure. C1-2/R3-2 zoning district.

PREMISES AFFECTED – 150-55 Cross Island Parkway, Block 4697, Lot(s) 31, Borough of Queens.

COMMUNITY BOARD #7Q

ACTION OF THE BOARD – Laid over to November 15-16, 2021, at 10 A.M., for postponed hearing.

12-01-BZII

APPLICANT – Greenberg Traurig, LLP, for German Rodriguez, owner.

SUBJECT – Application November 2, 2020 – Amendment or Extension of Term of a previously approved Variance (§72-21) which permitted the development of a one-story commercial building (UG 6) with 93 accessory parking spaces which is set to expire on July 17, 2021. The application seeks to change to remove the Board’s condition of term. R4 zoning district.

PREMISES AFFECTED – 2829 Edson Avenue, Block

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4800, Lot 0018, Borough of Bronx.

COMMUNITY BOARD #12BX

ACTION OF THE BOARD – Laid over to January 24-25, 2022, at 10 A.M., for continued hearing.

72-04-BZ

APPLICANT – Eric Palatnik, P.C, for BWAY-129th Street, Gasoline Corp., owner.

SUBJECT – Application October 18, 2019 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of an Automotive Service Station (UG 16B)(Getty) which expires on June 3, 2020. C1-2/R6 & R6 zoning district.

PREMISES AFFECTED – 141-54 Northern Boulevard, Block 5012, Lot 45, Borough of Queens.

COMMUNITY BOARD #7Q

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 November 15-16, 2021, at 10 A.M., for decision, hearing closed.

61-12-BZII

APPLICANT – Sheppard Mullin Richter & Hampton LLP, for 101 H 216 Lafayette LLC, owner.

SUBJECT – Application November 23, 2020 – Amendment of a previously approved Variance (§72-21) to permit a UG 6 restaurant in a portion of the cellar and first floor, contrary to use regulations (§42-10). The amendment seeks to extend the variance to the entire first floor; Extension of Time to Complete Construction which expired on February 26, 2017; Waiver of the Board’s Rules of Practice and Procedure. M1-5B zoning district.

PREMISES AFFECTED – 216 Lafayette Street, Block 482, Lot 28, Borough of Manhattan.

COMMUNITY BOARD #2M

ACTION OF THE BOARD – Laid over to November 29-30, 2021, at 10 A.M., for continued hearing.

120-13-BZ

APPLICANT – Pryor Cashman, LLP, for Doris Kurlender and Samuel Jacobson, Owner; Spillane Parkside Corp., lessee.

SUBJECT – August 13, 2019 – Extension of Term of a previously approved Special Permit (§73-243) which permitted an accessory drive-thru to an eating and drinking establishment (UG 6) (McDonald’s) which expired on January 14, 2019; Waiver of the Board’s Rules. C1-1/R3-2 zoning district.

PREMISES AFFECTED – 1815 Forest Avenue, Block 1180, Lots 6, 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 Scibetta5
Negative:.....0

ACTION OF THE BOARD – Laid over to November 15-16, 2021, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

2018-68-A thru 2018-90-A

APPLICANT – Sanna & Loccisano Architects, P.C., for Rubicon SGA, LLC, owner.

SUBJECT – Application May 14, 2018 – 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.

PREMISES AFFECTED – 90, 84, 78, 72, 66, 60, 54, 48, 42, 36, 37, 43, 49, 55, 61, 67, 73, 79, 85, 91, 97, 103, 96 Santina Drive, Block 6517, Tentative Lots, 76, 80, 81, 82, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, Borough of Staten Island.

COMMUNITY BOARD #5SI

ACTION OF THE BOARD – Application withdrawn.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta5
Negative:.....0

Adopted by the Board of Standards and Appeals, September 13, 2021.

2018-178-A

APPLICANT – Rampulla Associates Architects, LLP, for Sushanta Mukherjee, owner.

SUBJECT – Application November 15, 2018 – 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.

PREMISES AFFECTED – 2 Oaktree Way aka 300 Ocean Terrace, Block 864, Lot 1 (Ten.3), Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Application granted on condition.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta5
Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings, dated October 24, 2018, acting on Alteration Type New Building Application No. 520359585, reads in pertinent part:

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“1. 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 fronting directly upon a legally mapped street of frontage space contrary to section 502.1 of the 2014 NYC Building Code.”

This is an application under General City Law § 36 to permit, in an R1-1 zoning district, in the Special Natural Area District (NA-1), the construction of a building that does not front on a mapped street.

A public hearing was held on this application on September 17, 2019, after due notice by publication in *The City Record*, with continued hearings on November 26, 2019, January 28, 2020, February 8, 2021, and May 11, 2021, and then to decision on September 13, 2021. Vice-Chair Chanda, Commissioner Ottley-Brown, and Commissioner Scibetta performed inspections of the Premises and surrounding neighborhood. Community Board 2, Staten Island, recommends approval of this application.

The Premises are an irregularly shaped, partial through lot located on the south side of Ocean Terrace, within an R1-1 zoning district and in the Special Natural Area District (NA-1), on Staten Island. With approximately 200 feet of frontage on Ocean Terrace, 402 feet of depth along the westerly side lot line, 390 feet of depth along the easterly side lot line, and 69,871 square feet of lot area, the Premises are currently occupied by an existing single-family, two-story, detached residence.

The applicant proposes to divide the current lot into one zoning lot with two tax lots and construct a new single-family, two-story residence of 5,928 square feet of floor area on the rear portion of the zoning lot. The applicant further proposes to construct a new access driveway, to be named Oaktree Way, with a varying width terminating in a cul-de-sac. The applicant represents that the existing single-family, two-story residence at the Premises would be preserved and maintained on Tentative Lot “1”, while a newly created tax lot, (Tentative Lot “3”) would contain a new two-story, single-family, detached residence with a patio, pool, and driveway. The applicant states that this new residence would have 6,551 square feet of floor area, for a combined FAR of 0.17. The maximum allowable FAR in a R1-1 is 0.5.

Over the course of hearings, the Board raised questions about the relationship between Tentative Lots 1 and 3 regarding Oaktree Way; the maintenance of the private driveway on Oaktree Way; and the missing details in the proposed plans including the proposed garage, number of parking spaces, the proposed surfacing materials for Oaktree Way, and storm water flow mitigation efforts.

In response, the applicant submitted an easement for vehicular and pedestrian egress for the owners of Tentative Lots 1 and 3; a restrictive declaration specifying that the

owner of 2 Oaktree Way would have the sole responsibility to maintain the driveway; revised and updated plans illustrating the proposed attached two car garage; and a Private Driveway Builder’s Pavement Plan which demonstrated that the driveway would be constructed from proposed 8” thick graded stone base and 3” of asphaltic concrete as well as plans to install a street catch basin to collect storm water from the driveway and catch it in a bank of drywells which would prevent new storm water generated from the street from entering the wetland adjacent area.

By letter dated January 16, 2017, the Fire Department states that the Fire Department, Bureau of Operations has reviewed the site plan dated August 10, 2016 for the application and offers no objections. The following conditions shall be complied with:

- The proposed driveway shall have a curb-to-curb width of 20 feet with NO PARKING ANYTIME on either side; signs shall be posted in accordance with NYC Fire Code Chapter 5, section 503.2.7.2;
- The proposed two-story residence shall be fully sprinklered;
- The location of the hydrant shall be as indicated on approved plan;
- Two off-street parking spaces shall be provided and maintained separate from the fire apparatus access road;
- A recorded easement must be in place granting access from the roadway of Lot A through the roadway of Lot B.

It is understood that all legal requirements, including those set forth in the New York City Fire Code and the New York City Construction Codes must be complied with by the applicant. By correspondence dated September 13, 2021, the Fire Department states that it has no objections to the proposed easement and restrictive declaration.

By letter dated February 3, 2017, the Department of City Planning (“CPC”) states that it has completed its review of the revised filed Land Use Application received on November 18, 2016 for the project which seeks the following actions:

- Authorization for Modification of Topographic Features on Tier I Sites pursuant to Z.R. § 105-421 (N 170032 ZAR);
- Authorization for a Development, Enlargement, or Site Alteration on a Tier II Site or Portion of a Zoning Lot Having a Steep Slope or Steep Slope Buffer pursuant to Z.R. § 105-422 (N 170033 ZAR);
- Authorization for Modification of Botanic Environment and Tree Preservation and Planting Requirements pursuant to Z.R. § 105-425 (N 170034 ZAR); and
- Certification for Future Subdivision in the Special Natural Area District pursuant to Z.R. § 105-90 (N 170035 ZCR).

Upon review of the material submitted, CPC states:

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- The applicant is encouraged to ascertain whether they have legal street frontage and access rights to what appears to be a privately owned record portion of Woodhaven Avenue on the neighboring property (40 Woodhaven Avenue). A copy of the SI Borough Topo Unit Map was provided to the applicant team for follow-up research.
- If the proposed new zoning lot has no legal street frontage, the applicant would need to obtain BSA approval for GCL 36 to demonstrate there is legal street frontage for the proposed new zoning lot in advance of the CPC voting on the requested zoning actions.
- Given Ocean Terrace is designated for widening within this site, the applicant is encouraged to liaise with DOT on this issue.

By letter dated March 9, 2021, CPC states that the application submitted for authorizations for a modification of topographic features on Tier I sites; a development, enlargement, or site alteration on a Tier II site or portion of a zoning lot having a steep slope or steep slope buffer, and a modification of botanic environment and tree preservation and planting requirements pursuant to Z.R. §§ 105-421, 105-422, and 105-424 to facilitate the development of a new single-family detached home with an access drive way, pool, and patio was approved by the CPC on January 20, 2021.

By letter dated December 11, 2018, the Department of Environmental Protection (“DEP”) states that based on its review of DEP maps, there are no existing sewers in Ocean Terrace; there are two 12" diameter (dia.) City water mains in Ocean Terrace between Elmhurst Avenue and Tiber Place. There are no existing sewers, nor water mains in Oaktree Way. The Drainage Plan for New Creek, Sheet 2 of 12, dated January 27, 2014, shows 10" dia. sanitary sewer and 18"/24" dia. storm sewer in Ocean Terrace between Elmhurst Avenue and Timber Place. The applicant must submit a letter from the Borough President’s Office for the status of the street, a corporation counsel opinion (“CCO”), if any, and a copy of the official map (alteration map) of the City of New York. In addition, the applicant must submit the copy of the certified Site Connection Proposal (“SCP”), showing how the internal sanitary drain is connected to the City sewer and storm water will be discharged from the property. Applicant must submit an internal water main plan/water service showing connection to the City water main. It is anticipated that the owner will maintain the internal drains and internal water mains and connections. The New York City will not maintain internal drains and connections to the City main. DEP will continue GCL 36 review upon receiving the proposed plan.

Accordingly, 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 October 24, 2018, acting on Alteration Type New Building Application No. 520359585, under the powers vested in the Board by Section 36 of the General City Law, to *permit* the construction of a building 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 December 30, 2019”- three (3) sheets; and *on further condition*:

THAT the proposed driveway shall have a curb-to-curb width of 20 feet with NO PARKING ANYTIME on either side. Signs shall be posted in accordance with NYC Fire Code Chapter 5, section 503.2.7.2;

THAT the proposed two-story residence shall be fully sprinklered;

THAT the location of the hydrant shall be as indicated on approved plan;

THAT two off-street parking spaces shall be provided and maintained separate from the fire apparatus access road;

THAT a recorded easement must be in place granting access from the roadway of Lot A through the roadway of Lot B;

THAT the driveway shall be used to permit and enable present and future owners of Tentative Lot “3”, their heirs, and assigns to pass over the land of Tentative Lot “1” for the purpose of ingress and egress to and from Ocean Terrace and the front of said Tentative Lot “1” for pedestrian, motor vehicle use, or NYC Fire Department access;

THAT the driveway shall, at all time, be maintained and kept clear and unobstructed;

THAT the restrictive declaration can be amended by FDNY request by letter of substantial compliance;

THAT the Department of Environmental Protection must approve the restrictive declaration;

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. 2018-178-A”), shall be obtained within four years, by September 13, 2025;

THAT the Department of Buildings must ensure that the Board-approved plans comply to the maximum extent feasible with all applicable zoning regulations as if the unimproved street were not mapped;

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, 2021.

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2019-69-A & 2019-70-A

APPLICANT – RothkrugRothkrug & SpectorLLP, for 335 Mallory, LLC.

SUBJECT – Application April 3, 2019 – Proposed construction of a new two-family not fronting on a legally mapped street contrary to General City Law Section §36. R3X zoning district.

PREMISES AFFECTED – 341 & 343 Mallory Avenue, Block 3417, Lot(s) 174, 173, Borough of Staten Island.

COMMUNITY BOARD # 2SI

ACTION OF THE BOARD – Application withdrawn.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta5
Negative:.....0

Adopted by the Board of Standards and Appeals, September 13, 2021.

ZONING CALENDARS

2019-162-BZ

CEQR #19-BSA-140K

APPLICANT – Jay Goldstein, Esq., for Agit Abeckaser and 725 6th Ave LLC, owner.

SUBJECT – Application May 30, 2019 – 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 ratio) and ZR §23-47 (rear yard). R2 zoning district.

PREMISES AFFECTED – 3336-3338 Bedford Avenue, Block 7642, Lot(s) 52, 53, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta5
Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated April 27, 2019, acting on DOB Alteration Type I Application No. 321385835, reads in pertinent part:

1. ZR 23-141 The proposed plans are contrary to ZR 23-141 in that the proposed floor area ratio (FAR) exceeds the permitted 0.50.
2. ZR 23-141 The proposed plans are contrary to ZR 23-141 in that the proposed open space ratio (OSR) is less than the required 150%.
3. ZR 23-47 Proposed plans are contrary to ZR 23-47 in that the proposed rear yard is less than 30'-0"

This is an application under Z.R. §§ 73-622 and 73-03 to permit, in an R2 zoning district, the enlargement of an existing two-story, with cellar and attic, single-family

detached residence that does not comply with zoning regulations for floor area ratio (“FAR”), open space ratio (“OSR”) (Z.R. § 23-141), and rear yards (Z.R. § 23-47).

A public hearing was held on this application on December 1, 2020, after due notice by publication in *The City Record*, with a continued hearing on June 15, 2021, and then to decision on September 13, 2021. Vice-Chair Chanda and Commissioner Ottley-Brown performed inspections of the Premises and surrounding neighborhood. Community Board 14, Brooklyn, recommends approval of this application. The Board also received three letters in support of the application.

The Premises are located on the west side of Bedford Avenue, between Avenue L and Avenue M, within an R2 zoning district, in Brooklyn. With approximately 51 feet of frontage along Bedford Avenue, 100 feet of depth, and 5,100 square feet of lot area, the Premises are occupied by an existing two-story, with cellar, single-family detached residence.

The Board notes that its determination herein is subject to and guided by, inter alia, Z.R. §§ 73-01 through 73-04. As a threshold matter, the Board notes that the Premises are within the boundaries of a designated area in which the subject special permit is available. The Board notes further that this application seeks to enlarge an existing detached single-family residence, as contemplated in Z.R. § 73-622.

The existing building is a two-story, with cellar and attic, single-family detached residence with approximately 1,675 square feet of floor area (0.33 FAR), 252% OSR (4,221 square feet of open space), a rear yard with a depth of 22'-4-1/2", and two side yards with widths of 6'-10" and 27'-8-3/4". The applicant seeks to horizontally enlarge the existing building resulting in a two-story, with cellar and attic, detached single-family residence with 0.83 FAR (4,228 square feet of floor area), 60% OSR (approximately 2,537 square feet of open space), a rear yard with a depth of 22'-4" feet at the first floor and 25 feet above, and two side yards with widths of 6'-10" and 6'-2". The applicant proposes to increase the floor area at the first floor, from 879 square feet to 1,929 square feet, and second floor, from 581 square feet to 2,299 square feet, and eliminate the 215 square feet of floor area from the attic.

At the Premises, pursuant to Z.R. §§ 23-141 and 23-47, a maximum of 0.50 FAR is permitted, a minimum of 150% OSR is required, and a rear yard with a minimum depth of 30 feet is required. The applicant represents that the proposed single-family residence as enlarged is consistent with the built character of the neighborhood. In support of this contention, the applicant surveyed single- and two-family residences within 400 feet of the Premises and with the same relevant bulk regulations (the “Study Area”), finding that of the 109 qualifying residences, 87 residences (80 percent) have an FAR of 0.50 or more, ranging from 0.51 to 1.49, and 11 residences have an FAR of 0.83 or greater. With respect to open space ratio, the applicant submitted a lot coverage study demonstrating that 66 residences (60 percent) have greater than 35% lot coverage. The applicant submitted a rear yard study of the subject

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block demonstrating that ten residences have rear yards with less than 30 feet of depth, half of which have a rear yard with a depth less than 23 feet.

At hearing, the Board questioned whether the attic, without floor area, would still be accessible. In response, the applicant confirmed that the proposed attic is inaccessible and provided an attic plan to demonstrate that there will be no occupancy, habitation, or access in the attic.

Based upon its review of the record and inspections of the Premises 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.

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. The proposed modification of bulk regulations will not interfere with any pending public improvement project.

The project is classified as a Type II action pursuant to 6 NYCRR Part 617.5, as noted in CEQR Checklist No. 19BSA140K, dated September 13, 2021.

The Board finds that the evidence in the record supports the findings required to be made under Z.R. §§ 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 make each and every one of the required findings under Z.R. §§ 73-622 and 73-03 to permit the enlargement of an existing two-story, with cellar and attic, single-family detached residence that does not comply with zoning regulations for floor area ratio, open space ratio, and rear yards, contrary to Z.R. §§ 23-141 and 23-47; *on condition* that all work and site conditions shall conform to drawings filed with this application marked “July 9, 2021” – Eighteen (18) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: a maximum of 0.83 FAR (4,228 square feet of floor area), a minimum open space ratio of 60%, and a rear yard with a minimum depth of 22'-4" at the first floor and 25 feet above, as illustrated on the Board-approved plans; and

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

THAT no waivers for sky exposure plane are granted;

THAT the Department of Building shall verify compliance with underlying zoning regulations related to sky exposure plane and all other provisions of the Zoning Resolution not specifically waived by this special permit;

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. 2019-162-BZ”), shall be obtained within four years, by September 13, 2025;

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, 2021.

2020-18-BZ

APPLICANT – Eric Palatnik, P.C. for Albert Hasson, owner.

SUBJECT – Application December 16, 2020 – Request for Re-Hearing of an application requesting a Special Permit (§73-622) to permit the enlargement of an existing single-family home contrary to ZR §23-142 (floor area) which was denied on October 19, 2020. R3-1 zoning district
PREMISES AFFECTED – 920 Shore Boulevard, Block 8746, Lot 107, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Application denied.

THE VOTE –

Affirmative:.....0

Negative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta5

THE RESOLUTION –

This is an application for a request for a reargument, under § 1-12.4 of the Board’s Rules of Practice and Procedures (the “Board’s Rules”), of a special permit application under Z.R. §§ 73-622 and 73-03 to permit, in an R3-1 zoning district, the enlargement of an existing single-family, two-story, detached residence that does not comply with zoning regulations for FAR (Z.R. § 23-142), which was denied on October 19, 2020.

A public hearing was held on this application on April 27, 2021, after due notice by publication in *The City Record*, then to decision on September 13, 2021. Vice-Chair Chanda performed inspections of the Premises and surrounding neighborhood. The Board received four form letters of support.

The Premises are located on the southwest corner of Shore Boulevard and Hastings Street, within an R3-1 zoning district, in Brooklyn. With approximately 108 feet of frontage along Shore Boulevard, 85 feet of frontage along Hastings Street, and 11,016 square feet of lot area, the Premises are occupied by an unenclosed two-story concrete block wall structure.

The Board has exercised jurisdiction over the Premises since February 28, 2017, when under BSA Cal. No. 2016-1211-BZ, the Board granted a special permit, pursuant to Z.R. §§ 73-622 and 73-03, to permit, in an R3-1 district, the

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proposed enlargement of a single-family, detached residence, that does not comply with the zoning requirements for FAR, contrary to Z.R. § 23-142, on condition that all work substantially conform to drawings as they apply to the objections filed with the application; the maximum floor area of the building be 9,529 square feet (0.84 FAR), as illustrated on the BSA-approved plans; the removal of any existing exterior walls indicated to remain on the BSA-approved plans void the special permit; 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 special 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 the plan(s)/configuration(s) not related to the relief granted.

On June 11, 2019, under BSA Cal. No. 2016-1211-BZ, the Board commenced a compliance hearing. In so doing, the Board considered evidence in the record that included photographs and personal inspections by a Board Commissioner and the Board's Compliance Officer as well as admissions on behalf of the applicant. The Board found that the complete demolition of the existing residence had occurred. Because of this demolition, the applicant explicitly violated the Board's condition that removal of any existing exterior walls indicated to remain on the BSA-approved plans would void the special permit. Accordingly, the Board revoked the special permit.

On October 19, 2020, under the subject calendar number, the Board denied an application for a special permit, pursuant to Z.R. § 73-622, to permit the construction and enlargement of a single-family residence that does not comply with zoning regulations for FAR, contrary to Z.R. § 23-142. The Board denied the application as its review of the record and inspections of the Premises and surrounding neighborhood found that the Premises were not occupied by an existing single-family residence and did not meet the threshold requirement for the special permit that there be an existing single- or two-family detached or semi-detached residence to enlarge.

The applicant argues that (1) the Board's denial of the applicant's rights to due process and fundamental fairness, both under the City Administrative Procedure Act ("CAPA"), and the Board's own customary practices; (2) the Board failed to incorporate the Department of Buildings ("DOB") Buildings Bulletin 2016-012, which, the applicant argues, permits the application to be classified as an "Alteration" and still comply with the current Building Code; and (3) there was a residence on the subject site at the time of the hearing and states that the Board should grant their request for rehearing, under § 1-12.5 of the Board's Rules.

The applicant characterizes its request as a motion for "rehearing." The Board's Rules of Practice and Procedures § 1-12.5 states, in 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) and application is filed under a different jurisdictional provision of the law.

After review of the materials submitted, the Board finds that the applicant has not addressed any of the aspects of § 1-12.5, and, instead, the applicant actually makes a request to "reargue."

The Board's Rules of Practice and Procedure § 1-12.4 states, in 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 principles of law, including the Zoning Resolution.

In reviewing its October 19, 2020, decision, the Board finds that it did not misapprehend the relevant facts. The Board indicates that the photographs and testimony in evidence, including from the applicant's attorney, architect, and supporters, corroborated its finding that there was not a single- or two-family residential building located at the Premises which could be enlarged upon grant of the special permit, as required under Z.R. § 73-622.

Furthermore, the applicant asserts that the Board misapplied the meaning of the term "Alteration" because DOB Bulletin 2016-012 permits the 100% teardown to qualify as an "alteration". The Board notes that the record includes a discussion of this bulletin and continues to find that this standard is not used by the Board in its determinations pursuant to Z.R. § 73-622. The DOB Bulletin sets out to clarify how floor surface area is calculated for compliance with Construction Codes and for permit filing and does not pertain to whether there is an existing building as defined by the Zoning Resolution.

Finally, the applicant states that the Board is obliged to rehear or allow for rearguments under CAPA, which, according to the applicant, affords due process of law to applicants as it applies to the orderly conduct of hearings before the Board. The applicant further states that under CAPA, Board hearings must afford applicants the ability to call witnesses, to cross-examine opposing witnesses, and to present oral and written arguments on the law and facts. The applicant concludes that it has not been afforded a fair hearing before the Board because it was not given sufficient opportunity to review the submissions of the opponents to the application and to respond to the Board's questions and concerns. The Board observes that CAPA applies to the Board's conduct and notice requirements during rulemaking but is inapplicable to the Board's conduct during hearings because the Board does not conduct the type of hearings covered by CAPA. Additionally, after the initial hearing where the applicant was able to provide testimony and call witnesses, the Board afforded the applicant the ability to respond to its stated questions and concerns through further submissions, and the applicant did not submit any materials.

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The applicant has failed to demonstrate that the Board has misapprehended the relevant facts or misapplied any controlling principles of law, including the Zoning Resolution.

Based upon its review of the record, the Board has determined that this request for reargument is not eligible for relief under Board Rules of Practice and Procedures § 1-12.4 or § 1-12.5 and that the applicant has not substantiated a basis to warrant exercise of discretion.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *deny* this application. Adopted by the Board of Standards and Appeals, September 13, 2021.

2019-24-BZ

APPLICANT – Eric Palatnik, P.C., for Crystal Bay Imports, LTD, owner.

SUBJECT – Application January 31, 2019 – Special Permit (§73-49) to permit accessory parking on the roof of an under-construction DOB-approved Use Group 9A automotive sales use establishment contrary to ZR §36-11. C2-2/R4 zoning district.

PREMISES AFFECTED – 2721 Nostrand Avenue, Block 7666, Lot 20, Borough of Brooklyn.

COMMUNITY BOARD #18BK

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 November 15-16, 2021, at 10 A.M., for decision, hearing closed.

2019-95-BZ

APPLICANT – Slater & Beckerman, P.C., for Caspcar III LLC, owner.

SUBJECT – Application May 15, 2019 – Variance (§72-21) to permit the construction of a six-story mixed-use building with conforming commercial use on the ground floor and residential uses on the upper floors contrary to ZR §32-10. C8-2 zoning district.

PREMISES AFFECTED – 19 Maspeth Avenue aka 220 Conselyea Street, Block 2893, Lot(s) 1 & 59, Borough of Brooklyn.

COMMUNITY BOARD #1BK

ACTION OF THE BOARD – Laid over to February 7-8, 2022, at 10 A.M., for adjourned hearings.

2019-173-BZ

APPLICANT – Eric Palatnik, P.C., for PMG LI, LLC, owner.

SUBJECT – Application June 12, 2019 – 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. C2-4/R6A Special Downtown Jamaica District.

PREMISES AFFECTED – 187-01 Hillside Avenue, Block 9960, Lot 19, Borough of Queens.

COMMUNITY BOARD #8Q

ACTION OF THE BOARD – Laid over to November 15-16, 2021, at 10 A.M., for continued hearing.

2019-265-BZ & 603-71-A

APPLICANT – Sheldon Lobel, P.C., for Faith Community Church International Inc., owner.

SUBJECT – Application September 12, 2019 – Variance (72-21) to permit the conversion and enlargement of a one-story plus mezzanine House of Worship (UG 4) Faith Community Church) contrary to ZR 24-34 & 104-461 (front yards) and ZR 24-35 & 107-464 (side yards). C1-1/R2 Special South Richmond District.

PREMISES AFFECTED – 35 Giffords Lane, Block 4624, Lot 20, Borough of Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Laid over to February 7-8, 2022, at 10:00 A.M. for adjourned hearing.

2019-278-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 9201 Fith LLC, owner.

SUBJECT – Application October 21, 2019 – Special Permit (§73-44) to permit the reduction of required accessory off-street parking spaces for a UG 6B office use and ambulatory diagnostic or treatment facilities (UG 4) (PRC-B1 parking category) contrary to ZR §36-21. C2-3/R6B & R5B Special Bay Ridge District.

PREMISES AFFECTED – 9201 5th Avenue, Block 6109, Lot 23, Borough of Brooklyn.

COMMUNITY BOARD #10BK

ACTION OF THE BOARD – Laid over to January 10-11, 2022, at 10 A.M., for adjourned hearings.

2020-1-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 31 West 27th Street Property Investors IV, LLC, owner; Equinox West 27th Street, Inc., lessee.

SUBJECT – Application January 3, 2020 – Special Permit (§73-36) to permit the operation of a physical culture establishment (Equinox) within an existing commercial building §42-10. M1-6 zoning district. Madison Square North Historic District.

PREMISES AFFECTED – 31 West 27th Street, Block 829, Lot 16, Borough of Manhattan.

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COMMUNITY BOARD #5M

ACTION OF THE BOARD – Laid over to December 13-14, 2021, at 10 A.M., for deferred decision.

2020-14-BZ

APPLICANT – Akerman LLP, for 34-10 12th Realty LLC, owner.

SUBJECT – Application January 30, 2020 – Variance (§72-21) to permit the enlargement of a one-story, non-conforming manufacturing establishment (UG 17) contrary to ZR §§22-10 and 52-41. R5 zoning district.

PREMISES AFFECTED – 34-10 12th Street, Block 326, Lot 29, Borough of Queens.

COMMUNITY BOARD #1Q

ACTION OF THE BOARD – Laid over to June 6-7, 2022, at 10 A.M., for adjourned hearings.

2020-43-BZ

APPLICANT – Law Office of Christopher Wright PLLC, for Zan Optics Products Inc., owner.

SUBJECT – Application May 21, 2020 – Variance (§72-21) to permit the legalization of 2 residential units on the 2nd and 3rd floors of an existing 3 story building contrary to ZR §42-10. M1-2 zoning district.

PREMISES AFFECTED – 982 39th Street, Block 5583, Lot 0068, Borough of Brooklyn.

COMMUNITY BOARD #12BK

ACTION OF THE BOARD – Laid over to January 10-11, 2022, at 10 A.M., for continued hearing.

2020-70-BZ

APPLICANT – Law Office of Lyra J. Altman, for The Albert Dweck Iri Trust FBO Morris Dweck, owner.

SUBJECT – Application September 11, 2020 – Special Permit (§73-622) to permit the enlargement of a single-family residences into one single-family residence. R4-1 zoning district.

PREMISES AFFECTED – 1903 Homecrest Avenue, Block 7291, Lot 0168, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to September 27-28, 2021, at 10 A.M., for deferred decision.

2020-76-BZ

APPLICANT – Law Office of Jay Goldstein, for 8904 5th Avenue LLC, owner; The Learning Experience d/b/a TLE, lessee.

SUBJECT – Application September 25, 2020 – Special Permit (§73-19) to permit the operation of a day care facility (TLE) contrary to ZR §32-10. C8-2 Special Bay Ridge Purpose District.

PREMISES AFFECTED – 8902 5th Avenue (8902-8906 5th Avenue, 442-452 89th Street), Block 6066, Lot 26, Borough of Brooklyn.

COMMUNITY BOARD #10BK

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 September 27-28, 2021, at 10 A.M., for decision, hearing closed.

2020-84-BZ

APPLICANT – Goldman Harris II LLC, for Institute for Community Living Inc., owner.

SUBJECT – Application October 28, 2020 – Variance (§72-21) to permit the development of income restricted supportive and affordable housing building contrary to floor area (§23-153) and density (§23-22). Special Permit (§73-623) seeking waivers of height, setback (§23-662(a)) and rear yard (§23-471 and §23-52) regulations for a Quality Housing Building. R6 zoning district.

PREMISES AFFECTED – 161 Emerson Place, Block 1909, Lot 0001, Borough of Brooklyn

COMMUNITY BOARD #2BK

ACTION OF THE BOARD – Laid over to November 29-30, 2021, at 10 A.M., for adjourned hearings.

2020-87-BZ

APPLICANT – Eric Palatnik, PC., for 30 West 32nd Street, owner; NY Spa 32 Inc., lessee.

SUBJECT – Application November 13, 2020 – Special Permit (§73-36) to permit the operation of a physical culture establishment (Spa 32) contrary to ZR §32-10. C6-4 zoning district.

PREMISES AFFECTED – 30 West 32nd Street, Block 00833, Lot 0061, Borough of Manhattan.

COMMUNITY BOARD #5M

ACTION OF THE BOARD – Laid over to December 6-7, 2021, at 10 A.M., for adjourned hearings.

Carlo Costanza, Executive Director

BULLETIN

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Volume 106, Nos. 38-39

October 4, 2021

DIRECTORY

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Thursday, September 23, 2021

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Affecting Calendar Numbers:

853-53-BZ	2402/16 Knapp Street, Brooklyn
803-61-BZ	1416 Hylan Boulevard, Staten Island
339-02-BZ	146-65 Springfield Boulevard, Queens
114-07-BZ	7-05 152 nd Street, Queens
2017-286-BZII	22-06 31st Street, Queens
2019-255-A	621 Alonzo Road, Queens
2019-206-BZ	51-22 Roosevelt Avenue, Queens
2019-67-BZ	2781 Coyle Street, Brooklyn
2019-257-BZ	179 East 79 th Street, Manhattan
2019-258-A	179 East 79th Street, Manhattan
2020-25-BZ	142-30 13 th Avenue, Manhattan
2020-65-BZ	1215-1217 East 22nd Street, Brooklyn

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New Case Filed Up to September 23, 2021

2021-61-BZ

4080 Ocean Avenue, Block 8731, Lot(s) 0034, Borough of **Brooklyn, Community Board: 15**. Special Permit (§73-622) to permit the enlargement of a single-family home contrary to underlying bulk requirements. R3-1 zoning district. R3-1 district.

2021-62-BZ

730 Fifth Avenue, Block 1272, Lot(s) 7503, Borough of **Manhattan, Community Board: 5**. Special Permit (§73-36) to permit the operation of physical culture establishment (M3 Concept) to be located in a building that is being converted from office to a hotel with residential use on the upper floors contrary to ZR §§32-10 & 81-13. C5-3, C5-P (MID) zoning district. C5-3, C5-P, MID 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

**TELECONFERENCE PUBLIC HEARINGS
OCTOBER 18-19, 2021, MONDAY-TUESDAY
10:00 A.M. and 2:00 P.M.**

NOTICE IS HEREBY GIVEN of teleconference public hearings, Monday, October 18, 2021, at 10:00 A.M. and 2:00 P.M., and Tuesday October 19, 2021, at 10:00 A.M. and 2:00 P.M., to be streamed live through the Board's website (www.nyc.gov/bsa), with remote public participation, on the following matters:

SPECIAL ORDER CALENDAR

837-85-AIII

APPLICANT – William Gati, for Cesar A Linares, owner.
SUBJECT – Application December 14, 2020 – Extension of term to allow the continued operation of a medical office (UG4) in an existing frame structure contrary to Section C26-254.0 of the 1938 Building Code which expired on December 17, 2020. R2 Zoning District.
PREMISES AFFECTED – 166-78 73rd Avenue, Block 6974, Lot 19, Borough of Queens.
COMMUNITY BOARD #8Q

914-86-BZ

APPLICANT – Klein Slowik, PLLC, for Union Temple of Brooklyn, owner; Eastern Atlantic Inc., lessee.
SUBJECT – Application September 30, 2020 – Extension of Term of a previously granted Variance (§72-21) for the continued operation of a Physical Culture Establishment (Eastern Athletic) which expired on May 19, 2017; Extension of Time to obtain a Certificate of Occupancy which expired on December 14, 2011; Amendments to the Board's conditions on term, Amendment to enlarge the mezzanine; Waiver of the Rules. R8X zoning district.
PREMISES AFFECTED – 1-19 Eastern Parkway, Block 1172, Lot 6, Borough of Brooklyn.
COMMUNITY BOARD #8BK

13-01-BZ

APPLICANT – Greenberg Traurig LLP, for Extra Spaces Properties Two LLC, owner.
SUBJECT – Application March 22, 2021 – Amendment of a previously approved Variance (§72-21) which permitted a five-story (UG 16) self-storage facility which will expire on July 17, 2021. Amendment to legalize minor deviations from the BSA approved plans for parking, landscaping, interior floor plans, and accessory building signs. Request for an extension of Term for twenty (20) years. R4 zoning district.
PREMISES AFFECTED – 2875 Edson Avenue, Block 4800, Lot 6, Borough of Bronx.
COMMUNITY BOARD #12BX

36-11-BZII

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 270 Greenwich Street Associates, owner for Soul Cycle Tribeca lessee.
SUBJECT – Application January 13, 2021 – Extension of Term of a previously approved Special Permit (§73-36) permitting the operation of a Physical Culture Establishment (SoulCycle) which expired on January 15, 2020, Waiver of the Board's Rules of Practice and Procedures. C6-3 zoning district.
PREMISES AFFECTED – 270 Greenwich Street, Block 142, Lot 7501, Borough of Manhattan.
COMMUNITY BOARD #1M

2016-4337-BZIII

APPLICANT – Eric Palatnik, P.C., for Dr. Joshua Schiller and Ms. Vivian Lee, owners
SUBJECT – Application May 7, 2021 – Extension of Time to Complete Construction of a previously approved Special Permit (§73-69) to permit the enlargement of an existing single-family home which expires on September 19, 2021. R5 zoning district.
PREMISES AFFECTED – 127 Vanderbilt Street, Block 5264, Lot 51, Borough of Brooklyn.
COMMUNITY BOARD #7BK

APPEALS CALENDAR

2020-67-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, Carol & Jean Perrotto, owners.
SUBJECT – Application September 4, 2020 – Application filed pursuant to General City Law (“GCL”) §35, to allow the proposed development of a property within the mapped but unbuilt portion of a street; Waiver of the applicable height and setback regulations pursuant to 72-01 (g). R3X Special Richmond District.
PREMISES AFFECTED – 1 Ballard Avenue, Block 6046, Lot 3, Borough of Staten Island.
COMMUNITY BOARD #3SI

ZONING CALENDAR

2019-179-BZ

APPLICANT – Eric Palatnik, P.C., for Lee Yuen Fung Trading Co., Inc., owner.
SUBJECT – Application June 20, 2019 – Variance (§72-21) to permit the development of a twelve (12) story mixed-use building containing commercial use at the ground floor and twelve residential condominium units above contrary to ZR §42-00. M1-6 zoning district.
PREMISES AFFECTED – 118 West 28th Street, Block 00803, Lot 0051, Borough of Manhattan.

CALENDAR

COMMUNITY BOARD #5M

2020-77-BZ

APPLICANT – AMP Architecture, PLLC Anthony Portillo & Douglas Scharadin for Gerald Maya, owner.

SUBJECT – Application September 29, 2020 – Variance (§72-21) to permit the enlargement of an existing building contrary to ZR 23-45 (front yard setback). R3-1 zoning district.

PREMISES AFFECTED – 68 Austin Avenue, Block 3116, Lot 89, Borough of Staten Island.

COMMUNITY BOARD #2SI

2020-81-BZ

APPLICANT – Michael Scaduto AIA, PLLC, for Beerinder Rodey, owner.

SUBJECT – Application October 9, 2020 – Variance (§72-21) to permit parking contrary to ZR §25-20 for a two-family (2) home. R5 zoning district.

PREMISES AFFECTED – 220 East 2nd Street, Block 5324, Lot 28, Borough of Brooklyn.

COMMUNITY BOARD #12BK

Margery Perlmutter, Chair/Commissioner

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**PUBLIC HEARINGS
THURSDAY MORNING
SEPTEMBER 23, 2021, 10:00 A.M.**

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

SPECIAL ORDER CALENDAR

853-53-BZ

APPLICANT – Eric Palatnik, P.C., Knapp, LLC, owner, Bolla EM Realty, LLC, lessee.

SUBJECT – Application November 15, 2019 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of an automotive service station (UG 16B) which expires on October 23, 2019. C2-2/R3-2 zoning district.

PREMISES AFFECTED – 2402/16 Knapp Street, Block 7429, Lot 0010, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to February 7-8, 2022, at 10 A.M., for continued hearing.

803-61-BZ

APPLICANT – Eric Palatnik, P.C., for Martin Blessinger, owner; BP Products North America Inc., lessee.

SUBJECT – Application November 15, 2019 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of an automotive service station (UG 16B) which expires on July 27, 2020. C2-1/R3-2 zoning district.

PREMISES AFFECTED – 1416 Hylan Boulevard, Block 3350, Lot 30, Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Laid over to January 10-11, 2022, at 10 A.M., for continued hearing.

339-02-BZ

APPLICANT – Eric Palatnik, P.C., for WF Industrial III LLC, owner.

SUBJECT – Application June 1, 2021 – Amendment to modify the Board's condition of term pursuant to (§ 1-07.3(3) (ii)) of the Board's Rules of Practice and Procedures for a previously granted Variance (§72-21) which permitted warehouse and office uses contrary to underlying use regulations which expired on February 25, 2013; Amendment to legalize the addition of mezzanine increasing the degree of non-conformance; Waiver of the Board's Rules. R3-1 and R3-2 zoning districts.

PREMISES AFFECTED – 146-65 Springfield Boulevard, corner of Springfield Boulevard and 147th Avenue, Block 13363, Lot 6. Borough of Queens.

COMMUNITY BOARD # 13Q

ACTION OF THE BOARD – Laid over to November 15-16, 2021, at 10 A.M., for continued hearing.

114-07-BZ

APPLICANT – Eric Palatnik, P.C., for Sullivan Mountain Real Estate, LLC, owner.

SUBJECT – Application March 18, 2019 – Amendment of a previously approved Special Permit (§73-19) which permitted the operation of a day-care center (Kiddie Academy)(UG3). The amendment seeks an enlargement to the existing day care facility, a modification in the approved floor area, a change in the number of parking spaces, as well as request to permit a proposed outdoor play area on the roof. M1-1/R2A zoning district.

PREMISES AFFECTED – 7-05 152nd Street, Block 4531, Lot 35, Borough of Queens.

COMMUNITY BOARD #7Q

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 November 15-16, 2021, at 10 A.M., for decision, hearing closed.

2017-286-BZII

APPLICANT – Eric Palatnik, P.C., for Ditmars 31st Street Associates LLC, owner.

SUBJECT – Application December 18, 2020 – Amendment of a previously approved Special Permit (§73-36) which permitted the operation of a Physical Culture Establishment (*The Rock Health & Fitness*) to be located within the cellar level of a proposed three-story retail building. The Amendment seeks to permit the enlargement of the facility to include the first floor. C4-2A/R5D zoning district.

PREMISES AFFECTED – 22-06 31st Street, Block 844, Lot 40, Borough of Queens.

COMMUNITY BOARD #1Q

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 November 15-16, 2021, at 10 A.M., for decision, hearing closed.

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APPEALS CALENDAR

2019-255-A

APPLICANT – Shmuel D. Flaum, for Mendy Samuel Blau, owner.

SUBJECT – Application September 5, 2019 – Proposed enlargement of an existing single-family home with a portion located within the bed of a mapped street contrary to General City Law §36 and within the street widening line contrary to General City Law §35. R3X zoning district.

PREMISES AFFECTED – 621 Alonzo Road, Queens. Block 15510, Lot 0011

COMMUNITY BOARD #14Q

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 November 15-16, 2021, at 10 A.M., for decision, hearing closed.

ZONING CALENDAR

2019-206-BZ

CEQR #20-BSA-018Q

APPLICANT – Akerman LLP, for HW LIC One LLC, owner.

SUBJECT – Application August 22, 2019 – Special Permit (§73-66) to permit the construction of a development that exceeds the height limits established contrary ZR §61-20. C2-3/R6 zoning district.

PREMISES AFFECTED – 51-22 Roosevelt Avenue, Block 1320, Lot 0012, Borough of Queens.

COMMUNITY BOARD # 2Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta5
Negative:0

THE RESOLUTION –

The decision of the Department of Buildings, dated July 31, 2019, acting on New Building Application No. 421738515, reads in pertinent part: “Proposed 17 stories structure . . . exceeded and not permitted as-of-right per Z.R. 61-21 (Restriction on Highest Projection of Building or Structure). Secure BSA’s approval per Z.R. 73-66 (Height Regulations Around Airports).”

This is an application for a special permit under Z.R. §§ 73-66 and 73-03 to permit—within an R6 (C2-3) zoning district—the development of a 21-story mixed-use building that would not comply with height restrictions applicable near major airports (Z.R. § 61-21).

A public hearing was held on this application on June

15, 2021, after due notice by publication in *The City Record*, and then to decision on September 23, 2021.

Community Board 2, Queens, as well as a New York City Councilmember, recommend disapproval of this application and cite concerns over the height of the proposed building being out of context with the character of the neighborhood and potential negative impacts to transportation and community infrastructure.

I.

The Premises are located at the southeast corner of Roosevelt Avenue and 51st Street, within an R6 (C2-3) zoning district, in Queens. With approximately 244 feet of frontage along Roosevelt Avenue, 70 feet of frontage along 51st Street, and 25,579 square feet of lot area, they are currently vacant.

The applicant proposes to develop a 21-story mixed-use building with a total of 122,780 square feet of floor area (62,158 square feet residential, 11,387 square feet community facility, and 49,235 square feet commercial) that would rise to a building height of 210 feet above curb level (310 feet NAVD88), including the height of parapet wall atop the mechanical bulkhead that will be equipped with safety lighting as required by the FAA (the “Proposed Building”).

The Proposed Building could not be constructed as of right because the Premises are located within a “flight obstruction area” for LaGuardia Airport and because the Proposed Building would penetrate LaGuardia Airport’s 1:40 outer approach surface by 44 feet at its highest point. Z.R. § 61-21.

II.

The Zoning Resolution vests the Board with discretion to “permit the construction, *enlargement*, or reconstruction of a *building or other structure* in excess of the height limits established under Sections [61-21](#) (Restriction on Highest Projection of Building or Structure) or [61-22](#) (Permitted Projection Within any Flight Obstruction Area).” Z.R. § [73-66](#) (emphasis in original to indicate defined terms).

A.

As a preliminary matter, the applicant must provide “a site plan, with elevations, showing the proposed *building or other structure* in relation to such maximum height limits.” *Id.* The record reflects, and the Board acknowledges, that the applicant has done so in this application.

B.

The Board also notes that this application has been “refer[red] . . . 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.” *Id.*

Having reviewed application materials for construction of the Proposed Building, the Federal Aviation Administration (“FAA”) issued five Determinations of No Hazard to Air Navigation on December 3, 2018, under Aeronautical Study No. 2018-AEA-12167-OE at latitude 40-44-38.25N, longitude 73-54-46.75W, 210 feet above ground level, and 310 feet above mean sea level (“Building Point 1”), under Aeronautical Study No. 2018-AEA-12168-

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OE at latitude 40-44-37.50N, longitude 73-54-46.85W, 210 feet above ground level, and 310 feet above mean sea level (“Building Point 2”), under Aeronautical Study No. 2018-AEA-12169-OE at latitude 40-44-36.45N, longitude 73-54-46.70W, 210 feet above ground level, and 310 feet above mean sea level (“Building Point 3”), under Aeronautical Study No. 2018-AEA-12170-OE at latitude 40-44-36.70N, longitude 73-54-49.60W, 210 feet above ground level, and 310 feet above mean sea level (“Building Point 4”), and under Aeronautical Study No. 2018-AEA-17171-OE at latitude 40-44-37.35N, longitude 73-54-49.45W, 210 feet above ground level, and 310 feet above mean sea level (“Building Point 5”) (collectively, the “FAA No Hazard Determinations”). The reviewed materials include a survey and five study points at the corners of the zoning lot keyed to maximum heights in NAVD88, and the applications were also circulated to the Port Authority of New York and New Jersey.

The FAA No Hazard Determinations conclude that the Proposed Building “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” based on an “aeronautical study [that] considered and analyzed the impact on existing and proposed arrival, departure, and en route procedures for aircraft operating under both visual flight rules and instrument flight rules; the impact on all existing and planned public-use airports, military airports and aeronautical facilities; and the cumulative impact resulting from the studied structure when combined with the impact of other existing or proposed structures.”

However, the FAA No Hazard Determinations also specify the following conditions:

Any construction that requires the use of a crane for this structure should be e-filed with the FAA at least 90-120 days prior to crane operations exceeding the structure height.

When a crane is e-filed with the FAA, it is recommended that a lift plan, jump schedule, crane specifications documents, and marking and lighting plan be attached with the e-filed proposal to ensure the FAA evaluation is completed as expeditiously as possible.

Additionally, based upon IFR impacts, either a 1A or 2C survey may be requested prior to crane determinations being issued based upon those impacts.

Accordingly, the record reflects, and the Board acknowledges, that the Federal Aviation Administration has issued a satisfactory report that the Proposed Building “will [not] constitute a danger to the safety of air passengers or disrupt established airways.” Z.R. § 73-66.

C.

The applicant submits that the Proposed Building “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.” Z.R. 73-66.

In support of this contention, the applicant notes the FAA No Hazard Determinations’ conclusion that the Proposed Building “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.” The applicant submits that this conclusion reflects a thorough technical review by an expert “federal agency with exclusive jurisdiction over commercial airports and the flight space that surrounds them”—which makes the Federal Aviation Administration “uniquely qualified to make determinations about potential hazards to airports, air space, air passengers and nearby structures.”

Additionally, the Port Authority of New York and New Jersey states, by letter dated January 20, 2021, that it has no additional comments to the FAA No Hazard Determinations but “request[s] that all conditions stated in the determination be followed and that the proposed development project adhere to the heights stipulated in the FAA’s determination. . . . [S]eparate studies must be submitted to the FAA for any equipment (i.e., cranes) that exceeds the overall heights as described in the determinations prior to any construction. Studies for this equipment should be filed at least 90-120 days prior to the start of operations.”

Accordingly, the Board believes it appropriate to defer to the Federal Aviation Administration’s determinations as to any potential hazards posed by proposed construction, and the Board finds that the Proposed Building would not constitute a hazard to its occupants, to other buildings in the vicinity, or to the safety of air passengers and would not disrupt established airways.

D.

In addition to the foregoing, this application is subject to and guided by Section 73-01 through 73-04 of the Zoning Resolution, including the general findings of Section 73-03.

The applicant submits that the advantages to the community from construction of the Proposed Building, the creation of new transit-oriented housing, outweigh any disadvantages. The applicant states that there would be no hazards associated with the increased height to be authorized by this application, as reflected in the FAA No Hazard Determinations. The applicant submits that the surrounding area would be similarly affected by a building constructed to the maximum height permitted without the special permit.

The applicant states that the Proposed Building would increase the available housing inventory in the surrounding area, which currently has a low rental vacancy rate of 3.2 percent. In addition, the Proposed Building would provide opportunities for commercial growth and employment in the area with new local retail, office, and medical office space. The commercial and community facility uses in the Proposed Building would serve the surrounding area with new places to shop, dine, work, and seek medical care, accessible by the subway and several bus lines.

The applicant represents that the Proposed Building is

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a benefit to the area as it would also enhance the pedestrian experience along Roosevelt Avenue with active ground floor uses, in contrast to the prior industrial use and fenced surface parking lot at the Subject Site. The Proposed Building is designed using alternate front setback regulations at its Roosevelt Avenue frontage to increase light and air at street level, rather than being built to the street line.

The Board, however, notes that its review, herein, is limited to the request for an increase in height above that allowed as of right in the vicinity of airports. Additionally, all conditions contained in the FAA No Hazard Determinations have been adopted and incorporated into the Board's grant herein, so any act violating the FAA No Hazard Determinations further constitutes a violation of this decision and the Zoning Resolution.

Accordingly, the Board finds that, under the conditions and safeguards imposed, any hazard or disadvantages to the community at large due to this special permit is outweighed by the advantages to be derived by the community, and the proposed project will not interfere with any pending public improvement project.

III.

With respect to environmental review, the project is classified as a Type II action pursuant to 6 NYCRR Part 617.5, as noted in CEQR Checklist No. 20BSA018Q, dated September 23, 2021.

IV.

Based on the foregoing, the Board finds that the evidence in the record supports the findings required to be made under Z.R. §§ 73-66 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 make each and every one of the required findings under Z.R. §§ 73-66 and 73-03 to *permit*—within an R6 (C2-3) zoning district—the development of a 21-story mixed-use building that would not comply with height restrictions applicable near major airports (Z.R. § 61-21); *on condition* that all work, operations, and site conditions shall conform to drawings filed with this application marked “Received May 21, 2021”—Ten (10) sheets; and *on further condition*:

THAT the maximum bulk parameters of the building shall be as follows: a maximum building height of 210 feet above ground level, and 310 feet above mean sea level (310 feet NAVD88), as illustrated on the Board-approved drawings;

THAT the above condition shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 2019-206-BZ”), shall be obtained within four years, by September 23, 2025;

THAT all conditions imposed by the Federal Aviation Administration in its Determinations of No Hazard to Air Navigation under Aeronautical Study Nos. 2018-AEA-12167-OE, 2018-AEA-12168-OE, 2018-AEA-12169-OE, 2018-AEA-12170-OE, 2018-AEA-17171-OE, issued

December 3, 2018, shall be followed, including:

Any construction that requires the use of a crane for this structure should be e-filed with the FAA at least 90-120 days prior to crane operations exceeding the structure height.

When a crane is e-filed with the FAA, it is recommended that a lift plan, jump schedule, crane specifications documents, and marking and lighting plan be attached with the e-filed proposal to ensure the FAA evaluation is completed as expeditiously as possible.

Additionally, based upon IFR impacts, either a 1A or 2C survey may be requested prior to crane determinations being issued based upon those impacts.

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 23, 2021.

2019-67-BZ

APPLICANT – Sheldon Lobel, P.C., for Sheperd DT Corp., owner.

SUBJECT – Application March 29, 2019 – Variance (§72-21) to permit the development of a six-story, three-family residential building contrary to ZR §§ 23-32 (minimum lot area), 23-45 (front yard), and 23-631 (street wall, setback and total height). R5 zoning district.

PREMISES AFFECTED – 2781 Coyle Street, Block 8805, Lot 105, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to December 13-14, 2021, at 10 A.M., for continued hearing.

2019-257-BZ

APPLICANT – Sheldon Lobel, P.C., for 179 Tenants Corp., owner.

SUBJECT – Application September 6, 2019 – Special Permit (§73-621) to permit a 390 square foot enlargement of an existing super's apartment contrary to ZR §§ 12-10 & 23-152. C1-5/R10A & R10A zoning districts.

PREMISES AFFECTED – 179 East 79th Street, Block 1508, Lot 0031, Borough of Manhattan.

COMMUNITY BOARD # 8M

THE VOTE TO CLOSE HEARING –

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

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Commissioner Scibetta5
Negative:.....0
ACTION OF THE BOARD– Laid over to December
13-14, 2021, at 10 A.M., for decision, hearing closed.

2019-258-A

APPLICANT – Sheldon Lobel, P.C., for 179 Tenants Corp.,
owner.

SUBJECT – Application September 6, 2019 – Request to
permit a 390 square foot enlargement of an existing super’s
apartment contrary Multiple Dwelling Law (MDL) and
Housing and Maintenance Code (HMC). C1-5/R10A &
R10A zoning districts.

PREMISES AFFECTED – 179 East 79th Street, Block
1508, Lot 0031, Borough of Manhattan.

COMMUNITY BOARD # 8M

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
November 15-16, 2021, at 10 A.M., for decision, hearing
closed.

2020-25-BZ

APPLICANT – Sheldon Lobel, P.C., for Angela Guarino,
owner.

SUBJECT – Application March 27, 2020 – Variance (§72-
21) to legalize an existing single-family house contrary to
ZR §§23-45 & 23-48 (side and front yard requirements. R1-
2 zoning district.

PREMISES AFFECTED – 142-30 13th Avenue, Block
4435, Lot 27, Borough of Queens.

COMMUNITY BOARD #7Q

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 December
13-14, 2021, at 10 A.M., for decision, hearing closed.

2020-65-BZ

APPLICANT – Law Office of Lyra J. Altman, for 1215
East 22nd LLC by David Herzka, owner.

SUBJECT – Application August 21, 2020 – Special Permit
(§73-622) to permit the enlargement and combination of
two single-family residences into one single-family
residence. R2) zoning district.

PREMISES AFFECTED – 1215-1217 East 22nd Street,
Block 7622, Lot 24, 26, Borough of Brooklyn.

COMMUNITY BOARD #14BK

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 December
13-14, 2021, at 10 A.M., for decision, hearing closed.

Carlo Costanza, Executive Director

BULLETIN

OF THE NEW YORK CITY BOARD OF STANDARDS AND APPEALS

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August 2, 2021

DIRECTORY

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42-09-BZIII	441-467 Prospect Avenue, Brooklyn
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2017-240-BZ	310 Lenox Avenue, Manhattan
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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

**TELECONFERENCE PUBLIC HEARINGS
NOVEMBER 15-16, 2021, MONDAY-TUESDAY
10:00 A.M. and 2:00 P.M.**

NOTICE IS HEREBY GIVEN of teleconference public hearings, Monday, November 15, 2021, at 10:00 A.M. and 2:00 P.M., and Tuesday November 16, 2021, at 10:00 A.M. and 2:00 P.M., to be streamed live through the Board's website (www.nyc.gov/bsa), with remote public participation, on the following matters:

SPECIAL ORDER CALENDAR

360-49-BZ

APPLICANT – Eric Palatnik, P.C., for Leemilts Petroleum Inc., owner.
SUBJECT – Application June 5, 2020 – Extension of Term of a previously approved variance permitting the operation of an Automotive Service Station (UG 16B) which expired on May 2, 2006; Waiver of the Board's Rules. R4-1 zoning district.
PREMISES AFFECTED – 69-05 Eliot Avenue, Block 2838, Lot 38, Queens.
COMMUNITY BOARD #5Q

221-88-BZII

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for Long Island Jewish Medical Center, owner.
SUBJECT – Application February 25, 2021 – Amendment to the Board's condition of term of a previously approved Special Permit (73-49) which permitted open parking on the roof of an accessory parking garage which expired on December 6, 2013. R7-1 zoning district.
PREMISES AFFECTED – 102-01 60th Road, Block 2131, Lot 16, Borough of Queens.
COMMUNITY BOARD #6Q

129-92-BZ

APPLICANT – Akerman LLP, for Whitestone Plaza Associates Inc., owner.
SUBJECT – Application December 11, 2020 – Extension of Term of a previously approved Variance (§72-21) which permitted the use of Automobile Laundry (UG 16B) which expired on October 19, 2013; Waiver of the Board's Rules of Practice and Procedure. C1-2/R3-2 zoning district.
PREMISES AFFECTED – 150-55 Cross Island Parkway, Block 4697, Lot(s) 31, Borough of Queens.
COMMUNITY BOARD #7Q

215-06-BZIV

APPLICANT – Eric Palatnik, P.C., for Blue Hills Fuels, LLC, owner; BP Products North America Inc. lessee.
SUBJECT – Application September 30, 2020 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of an Automotive Service Station (UG 16B) (Amoco) with accessory uses which expired on July 21, 2021. C1-2/R4 zoning district.
PREMISES AFFECTED – 202-06 Hillside Avenue, Block 10496, Lot 52, Borough of Queens.
COMMUNITY BOARD #12Q

49-11-BZ

APPLICANT – Akerman LLP, for A&G Real Estate, LLC, owner Barry's Bootcamp NYC, LLC, lessee.
SUBJECT – Application October 26, 2020 – Extension of Term of a previously approved Special Permit (§73-36) permitting the operation of a physical cultural establishment (Barry's Bootcamp Fitness Center) located on the cellar and first floor of an existing building which is set to expire on July 12, 2021. C6-3A zoning district.
PREMISES AFFECTED – 135 West 20th Street, Block 796, Lot 18, Borough of Manhattan.
COMMUNITY BOARD #4M

78-11-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, Ayer Re Development, LLC, owner,
SUBJECT – Application February 26, 2021 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) permitting the construction of a four-story mixed-use building which expired on March 10, 2019. C8-1 zoning district.
PREMISES AFFECTED – 78-70 Winchester Boulevard, Block 7880, Lot 550, Borough of Queens.
COMMUNITY BOARD #13Q

2016-4249-BZ

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for YWA Amsterdam LLC, owner
SUBJECT – Application August 24, 2021 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) permitting the construction of a four-story mixed-use building which expired on March 10, 2019. C8-1 zoning district.
PREMISES AFFECTED – 2420 Amsterdam Avenue, Block 2152, Lot 83, Borough of Manhattan.
COMMUNITY BOARD #12M

CALENDAR

2017-4-A

APPLICANT – Eric Palatnik, P.C., for Lavan Muthu, owner.

SUBJECT – Application July 13, 2021 – Extension of Time to Complete Construction of a previously approved General City Law § 35 waiver to construct a two-story mixed-use commercial and residential building within the bed of a mapped street which expires on July 25, 2021. C1-3/R4 Special Hillside Preservation District.

PREMISES AFFECTED – 339 Victory Boulevard, Block 115, Lot 63, Borough of Staten Island.

COMMUNITY BOARD #1SI

2021-16-BZ

APPLICANT – Rosenberg & Estis, P.C by Frank E Chaney, Esq., for Property 1 Holdings LLC, owner.

SUBJECT – Application February 24, 2021– Variance (§72-21) to permit the development of a building to contrary to ZR §23-692(d)(2), a/k/a the “sliver law,” to allow the proposed building to exceed the maximum allowable building height by 6.07 feet, and (b) ZR §23-62(g)(3)(i) to allow the elevator and stair bulkheads to exceed the maximum allowable area for permitted obstructions by 148.64 square feet. R8A/C2-4 zoning district.

PREMISES AFFECTED – 302 W 128th Street, Block 1954, Lot 136, Borough of Manhattan.

COMMUNITY BOARD #10M

ZONING CALENDAR

Margery Perlmutter, Chair/Commissioner

2019-304-BZ & 2019-305-A

APPLICANT – Sheldon Lobel, P.C., for 82 Willis, LLC, owner

SUBJECT – Application December 19, 2019 – Variance (§72-21) to permit the development of a fifteen-story residential building (UG 2) contrary to ZR §42-00 (use); ZR §§23-662(a) and 123-662 (b)) (height). Waiver of General City Law §36 to permit the construction not fronting on a mapped city street. M3-1 and M1-5/R8A (MX-1) zoning district.

PREMISES AFFECTED – 180 East 132nd Street, Block 2260, Lot 180, Borough of Bronx.

COMMUNITY BOARD #1BX

2021-8-BZ

APPLICANT – Victor Han AIA, PC, for Gavriel Mullakandarov, owner.

SUBJECT – Application January 14, 2021 – Special Permit (§73-621) to permit an enlargement of an existing one-family residence. R2A zoning district

PREMISES AFFECTED – 79-26 214th Street, Block 7770, Lot 18, Borough of Queens.

COMMUNITY BOARD #11Q

2021-36-BZ & 2020-90-A

APPLICANT – Terminus Group, LLC, for CeeJay Real Estate Development Corp., owner.

SUBJECT – Application June 2, 2021 – Variance (§72-21) to permit the development of a two-family detached home (UG 2) contrary to ZR §23-461(a) (side yard), R3X Zoning District. Proposed construction of a two-family building located within the bed of a mapped street, contrary to General City Law Section 35 and waiver of 72-01-(g). Lower Density Growth Management Area.

PREMISES AFFECTED – 244 Gansevoort Boulevard, Block 761, Lot 45, Borough of Staten Island.

COMMUNITY BOARD #2SI

MINUTES

PUBLIC HEARINGS
MONDAY-TUESDAY, SEPTEMBER 27, 2021
10:00 A.M.

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

SPECIAL ORDER CALENDAR

490-72-BZ

APPLICANT – Gerald J. Caliendo, RA, AIA, for Eran Gohari, owner

SUBJECT – Application August 5, 2020 – Extension of Time to Obtain a Certificate of Occupancy of a previously approved variance (§72-21) which permitted the operation of a commercial bank (UG6) which expired on February 5, 2020; Waiver of the Board’s Rules of Practice of Procedures. 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 December 13-14, 2021, at 10 A.M., for postponed hearing.

81-74-BZIV

APPLICANT – Gerald J. Caliendo, RA, AIA, for 57 Avenue Market Inc., owner.

SUBJECT – Application August 4, 2020 – Extension of Time to Obtain a Certificate of Occupancy for a previously approved variance (§72-21) which permitted the operation of a supermarket (UG 6) which expired on July 23, 2020. C1-2/R6A & R6B zoning district.

PREMISES AFFECTED – 97-27 57th Avenue, Block 1906, Lot 1, Borough of Queens.

COMMUNITY BOARD #4Q

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 November 15-16, 2021, at 10 A.M., for decision, hearing closed.

6-09-BZ

APPLICANT – Rampulla Associates Architects for Joseph Romeo, owner.

SUBJECT – Application June 18, 2020 – Extension of Term of a previously approved Variance (§72-21) which permitted the use of Automotive Repair (UG 16B) which will expire on November 9, 2020. C4-1 Special South Richmond Development and Special Growth Management Districts.

PREMISES AFFECTED – 24 Nelson Avenue, Block 31, Lot 5429, 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 Scibetta5
Negative:.....0

ACTION OF THE BOARD – Laid over to November 15-16, 2021, at 10 A.M., for decision, hearing closed.

24-09-BZ

APPLICANT – Bryan Cave Leighton Paisner LLP, for Meadow Park Rehabilitation and Health Care Center, owner.

SUBJECT – Application July 26, 2019 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) permitting the enlargement of a community facility (Meadow Park Rehabilitation and Health Care Center) which expired on July 26, 2015; Waiver of the Board’s Rules. R3-2 zoning district.

PREMISES AFFECTED – 78-10 164th Road, Block 6851, Lot(s) 9, 11, 12, 23, 14, Borough of Queens.

COMMUNITY BOARD #8Q

ACTION OF THE BOARD – Laid over to November 29-30, 2021, at 10 A.M., for continued hearing.

42-09-BZIII

APPLICANT – Sheldon Lobel, P.C., for Arrow Linen Supply Co., Inc., owner.

SUBJECT – Application June 5, 2020 – Extension of Term of a previously approved variance (expired July 12, 1992) which permitted the extension of a legal non-conforming commercial laundry use (Arrow Linen Supply) within a residential zoning district which expired on August 11, 2019; Extension of Time to Obtain a Certificate of Occupancy which expired on February 11, 2010; Waiver of the Board’s Rules. R5B zoning district.

PREMISES AFFECTED – 441-467 Prospect Avenue, Block 1113, Lot(s) 61,73, Borough of Brooklyn,

COMMUNITY BOARD #3BK

ACTION OF THE BOARD – Laid over to December 13-14, 2021, at 10 A.M., for continued hearing.

220-14-BZII thru 221-14-BZII

APPLICANT – Hirschen Singer & Epstein LLP, for Post Industrial Thinking LLC, owner.

SUBJECT – Application January 7, 2021 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) to permit the construction of two 3-story single family residences which expired on January 12, 2020; Waiver of the Board’s Rules of Practice and Procedures. M1-1 zoning district.

PREMISES AFFECTED – 8-10 Underhill Avenue, Block

MINUTES

1122, Lot 37, Borough of Brooklyn.

COMMUNITY BOARD #8BK

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 November 29-30, 2021, at 10 A.M., for decision, hearing closed.

2017-213-BZ

APPLICANT – Hirschen Singer & Epstein, LLP, for Dynamic Youth Community, Inc., owner.

SUBJECT – Application October 21, 2020 – Amendment of a previously approved variance (ZR 72-21) for a six-story with cellar, community-facility building (Use Group 3), contrary to use and bulk regulations. Amendment to reduce the size of the cellar level, modify interior program, and change certain finishing materials. C8-2 ZD/Special Ocean Parkway District.

PREMISES AFFECTED – 1808 Coney Island Avenue, Block 6592, Lot 39, Borough of Brooklyn.

COMMUNITY BOARD #12BK

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 November 15-16, 2021, at 10 A.M., for decision, hearing closed.

2017-240-BZ

APPLICANT – Troutman Pepper LLC, for 310 Lenox Avenue LLC & RM 310 Lenox LLC., owner.

SUBJECT – Application February 12, 2021 – Extension of Term of a previously approved Special Permit (§73-244) permitting an eating and drinking establishment without restrictions and no limitation on entertainment and dancing (UG 12A) (Red Rooster Harlem Restaurant located on the cellar level which expires on expiring March 27, 2021. C4-4A (Special 125th Street District).

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

COMMUNITY BOARD #10M

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 November 29-30, 2021, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

2021-11-BZY

APPLICANT – Kenneth K. Loweinstein, for 559 Development, LLC, owner.

SUBJECT – Application January 21, 2021 – Extension of Time to Complete Construction and Obtain a Certificate of Occupancy (§11-332) for a period of two years from December 20, 2020.

PREMISES AFFECTED – 38-59 11th Street, Block 00473, Lot 559, Borough of Queens.

COMMUNITY BOARD #1Q

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 November 29-30, 2021, at 10 A.M., for decision, hearing closed.

ZONING CALENDAR

2020-76-BZ

CEQR #21-BSA-018K

APPLICANT – Law Office of Jay Goldstein, for 8904 5th Avenue LLC, owner; The Learning Experience d/b/a TLE, lessee.

SUBJECT – Application September 25, 2020 – Special Permit (§73-19) to permit the operation of a day care facility (TLE) contrary to ZR §32-10. C8-2 Special Bay Ridge Purpose District.

PREMISES AFFECTED – 8902 5th Avenue (8902-8906 5th Avenue, 442-452 89th Street), Block 6066, Lot 26, Borough of Brooklyn.

COMMUNITY BOARD #10BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta5
Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated August 27, 2020, acting on New Building Application No. 321385620, reads in pertinent part:

“Proposed Use Group 3 School is not permitted in C8-2 zoning district, contrary to 32-10, and requires a special permit from the Board of Standards and Appeals Pursuant to ZR section 73-19.”

This is an application under Z.R. §§ 73-19 and 73-03 to permit, on a site located within a C8-2 zoning district, the operation of a Use Group (“UG”) 3 school, contrary to Z.R. § 32--10. This application is brought on behalf of The

MINUTES

Learning Experience (the “School”), a child day care center.

A public hearing was held on this application on March 23, 2021, after due notice by publication in *The City Record*, with continued hearings on June 15, 2021, and September 14, 2021, and then to decision on September 27, 2021. Vice-Chair Chanda and Commissioner Ottley-Brown performed inspections of the Premises and surrounding neighborhood. Community Board 10, Brooklyn, recommends approval of this application.

The Premises are located on the southwest corner of the intersection of 5th Avenue and 89th Street, within a C8-2 zoning district and in the Special Bay Ridge District, in Brooklyn. With approximately 75 feet of frontage along 5th Avenue, 107 feet of frontage along 89th Street, and 8,001 square feet of lot area, the Premises are currently occupied by a six-story, mixed used, community facility and commercial building.

The applicant proposes to utilize the entire first and second floors and portion of the third floor of the building for the school. The applicant represents that the school would have a dedicated entrance, internal stair, and exclusive elevator to maintain complete separation from the other uses of the building. The applicant seeks a special permit to allow the operation of a school in the C8-2 district, where UG 3 schools are not permitted as of right. Although currently unoccupied, the applicant states that the building would include commercial uses at the first floor, along 5th Avenue, and a UG 4 community facility on portions of the third and fourth floors. Additionally, the applicant states that the remainder of the fourth floor, entire fifth floor, and part of the sixth floor would be used for commercial offices.

As a threshold matter, the Board notes that the Premises are within the boundaries of a designated area in which the subject special permit is available.

As to whether the School qualifies as a school for purposes of Z.R. § 73-19, the applicant states that the School meets the Z.R. § 12-10(c) definition of “school” and represents that it would operate under a permit issued pursuant to NYC Health Code § 47.03, as would the universal pre-K component of the proposed daycare. The applicant states that it would comply with all of the necessary Department of Health and Mental Hygiene requirements for the operation of a group child care service for children within New York City, including providing constant competent supervision; maintaining minimum staff-child ratios and adhering to the maximum group sizes; implementing all required fire safety measures; implementing a written safety plan; and hiring qualified staff. The applicant represents that it will apply for the required permit from the NYC Department of Health and Mental Hygiene for the proposed new daycare at the Premises as is required for a certificate of occupancy. Accordingly, the Board has determined that the School’s operations fall within the scope of this special permit.

With respect to Z.R. § 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. Here, the applicant states that it was unable to find an appropriate site of adequate size in the neighborhood within a zoning district where the proposed UG 3 use would be permitted as of right. The applicant states that in order to pursue its programmatic needs, the School requires a building to serve approximately 150 students, providing a minimum of 30 square feet of space for each child in a classroom, spanning six different age groups in multiple classrooms with approximately 5,000 to 7,000 square feet for playgrounds, elevators, stairwells, and columns. The School further requires accessory rooms, offices, and common spaces and, as such, seeks a site with, at a minimum, 13,482 square feet of floor area.

The applicant notes that the School is a for-profit daycare operator which uses demographic information including the population of appropriate aged children and median household incomes in site selection. The applicant represents, that the School chose to search for a site in the Bay Ridge area of Brooklyn because (1) the area has the density and household incomes to support this type of school; and (2) it is sufficiently far from the School’s other locations and other similar daycare centers to avoid excessive market competition.

The applicant represents that no sites are available within the surrounding area, including R5B, R6A R6B, and C4-2A zoning districts, that would provide approximately 10,000 square feet of space with an additional 3,000 to 5,000 square feet of outdoor playground space, that did not require substantial improvement or were available for lease or purchase within its price range. 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. Accordingly, the Board finds that the requirements of Z.R. § 73-19(a) are met.

Z.R. § 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. The applicant represents that the School is located within 400 feet of the boundary of a district where the School is permitted as of right. Specifically, the applicant notes that the Premises are immediately adjacent to C4-2A and R6B zoning districts, north of 89th Street, and R5B and R6A zoning districts, south of 89th Street, where school use is permitted as of right. The applicant submitted a radius diagram which reflects that the Premises are located within 400 feet of C4-2A, R5B, R6A, and R6B zoning districts. Accordingly, the Board finds that the requirements of Z.R. § 73-19(b) are met.

Z.R. § 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. Here, the applicant notes that the school would be located within a new building which will provide adequate separation from any potential noise that will be generated by the surrounding non-residential district. The applicant

MINUTES

studied the surrounding area to determine that there is adequate separation for the proposed daycare center from noise, traffic, and other potential adverse effects. More specifically, the applicant's analysis indicates the Premises and nearby residences would fall within acceptable levels for residential, commercial, and community-facility uses, and the applicant represents that the following window-wall attenuation is required to ensure that the students will be adequately separated from the noise of the non-residential district: 31 dB(A) composite window-wall attenuation is required along the western façade of the building at the first floor level; 28 dB(A) composite window-wall attenuation is required along the western façade of the building at the 3rd floor level, 28 dB(A) window-wall attenuation is required for the eastern (5th Avenue) facade of the building at the first through fourth floor levels, no additional attenuation other than those provided by standard building materials are required on the northern or southern building facades, and in order to maintain an interior noise level of 45 dB(A) with a closed window condition, an alternate means of ventilation will be provided. Additionally, the applicant noted that because the school serves young children, who will not be left unaccompanied by an adult, the students will be monitored and safe from traffic when coming to or leaving the Premises. The applicant further studied air quality, concluding the facility would not be adversely affected by the surrounding area pursuant to acceptable New York City and State levels. Accordingly, the Board finds that the requirements of Z.R. § 73-19(c) are met.

Z.R. § 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. Over the course of hearings, the Board raised concerns over the safety of the maneuverability of the School with respect to child drop-offs and pick-ups and the lack of available parking at the site. The applicant represents that at arrival time, parents and guardians would be required to physically bring their children into the building, sign both themselves and their children into a computer, and then escort their children directly into the classroom, with the reverse procedure upon dismissal. The applicant, further, represents that students would not be allowed to be left outside of the building to walk in alone or walk in accompanied solely by another child. The applicant notes that the length of the procedure will not allow the parents and guardians to double park. Moreover, the applicant states that it intends to request the New York City Department of Transportation erect a "no-standing" sign along the 89th Street frontage to ensure that the street is kept open for parents and guardians to temporarily park during drop off and pick up. Parents and guardians bringing students to the School via private transport would park along 89th Street and then bring the students into and out of the building.

The applicant represents that students will only use the main entrance on 89th Street, at both arrival and dismissal, and vehicles accessing the non-School uses at the Premises will park in the building's cellar, which they will access via

a curb cut on 5th Avenue. The applicant states that this process will prevent interference with access to the 89th Street entrance or play yard.

By correspondence dated February 16, 2021, the Department of Transportation ("DOT") School Safety division states that it has no comments on the application because it does not fall within their K-12 focus area.

Accordingly, the Board finds that the requirements of Z.R. § 73-19(d) are met.

By letter dated June 10, 2021, the Fire Department states that it has reviewed the plans and note that the proposed Premises will be provide with a sprinkler system throughout and an application for a fire alarm system has been filed with the Bureau of Fire Prevention Technical Management Unit for review. The Fire Department requests that the Board direct the architect to revise the note on Plan 3 of 11, that the "panic hardware will be provided on the stair side". Based upon the foregoing, the Fire Department has no objection to the application. The Bureau of Fire Prevention will continue to inspect these Premises and enforce all applicable rules and regulations.

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.

The proposed special permit use will not interfere with any pending public improvement project.

The project is classified as an Unlisted action pursuant to Section 617.2 of 6 NYCRR. The Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final EAS CEQR No. 21BSA018K, dated September 27, 2021. The EAS documents that the project as proposed would not have significant adverse impacts on land use, zoning, and public policy; socioeconomic conditions; community facilities and services; open space; shadows; historic resources; urban design and visual resources; neighborhood character; natural resources; waterfront revitalization program; infrastructure; hazardous materials; solid waste and sanitation services; energy; traffic and parking; transit and pedestrians; air quality; noise; or public health.

By correspondence dated March 5, 2021, the Landmarks Preservation Commission ("LPC") states that the property contains no architectural significance and no archaeological significance.

By letter dated July 19, 2021, the Department of Environmental Protection ("DEP") states that it has reviewed the June 2021 Phase II Soil Vapor, Indoor and Outdoor Air Quality Assessment (Phase II) prepared on behalf of the applicant for the proposed project. During the May 2021 fieldwork, three sub-slab soil vapor samples, four indoor air samples, and one outdoor air sample were collected and analyzed for volatile organic compounds ("VOCs") by United States Environmental Protection Agency Method TO-15. It should be noted that the Phase II

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investigation was conducted without DEP approval.

The sub-slab soil vapor analytical results revealed that several VOCs (1,2,4-trichlorobenzene, 1,2,4-trimethylbenzene, 1,3,5-trimethylbenzene, 1,3-butadiene, 1,4-dioxane, 2-butanone, 2-hexanone, 4-methyl-2-pentanone, acetone, benzene, carbon disulfide, chloromethane, cyclohexane, dichlorodifluoromethane, ethylbenzene, isopropanol, methyl methacrylate, methylene chloride, n-heptane, n-hexane, o-xylene, p-&m-xylenes, p-ethyltoluene, propylene, tetrahydrofuran, and toluene) were detected.

The indoor analytical results revealed that several VOCs (1,2,4-trimethylbenzene, 1,3,5-trimethylbenzene, 1,3-butadiene, 1,4-dioxane, 2-butanone, 2-hexanone, 4-methyl-2-pentanone, acetone, benzene, carbon tetrachloride, chloromethane, cyclohexane, dichlorodifluoromethane, ethyl acetate, ethyl benzene, isopropanol, methyl methacrylate, methylene chloride, n-heptane, n-hexane, o-xylene, p-&m-xylenes, p-ethyltoluene, PCE, toluene, and trichlorofluoromethane) were detected.

The outdoor air analytical results revealed that several VOCs ((1,2,4-trimethylbenzene, 2butanone, 4-methyl-2-pentanone, acetone, benzene, carbon tetrachloride, chloromethane, cyclohexane, dichlorodifluoromethane, ethyl acetate, ethyl benzene, isopropanol, methyl methacrylate, methylene chloride, n-heptane, n-hexane, o-xylene, p-&m-xylenes, pethyltoluene, PCE, toluene, and trichlorofluoromethane) were detected.

Based on the analytics results and mechanical ventilation of the parking garage as per the New York City Mechanical Code, DEP has no further requirements for the proposed project.

By letter dated, August 18, 2021, DEP, Bureau of Environmental Planning and Analysis has reviewed the Air Quality and Noise Chapters of the EAS and support materials and finds:

Air Quality:

Based on the air quality analysis performed, the proposed project will not have significant adverse impact on the surrounding environment. The total project generated traffic would not include any trucks. The peak-hour project generated would not exceed the threshold of 170 vehicular trips and would, therefore, not have a significant air quality impact pertaining to mobile sources. Based on the stationary screening performed for HVAC systems, the project passes the screen and will, therefore, not result in significant adverse air quality impacts.

As it pertains to industrial sources, the screening analysis determines that conditions associated with the proposed project would not result in any violations of the ambient air quality standards. Therefore, the proposed project would not result in any potentially significant adverse impacts.

By letter dated September 13, 2021, DEP, Bureau of Environmental Planning and Analysis states that it has reviewed the Noise Chapter of July 13, 2021 EAS and

support materials and finds:

Noise:

Based on the noise measurements performed, the proposed project will not have a significant adverse impact on the surrounding environment. In addition, the proposed project will not be adversely affected by noise from the surrounding environment. It is noted that an abnormal reading was recorded with an L_{eq} of 70.9 dBA which was higher than the L_{10} of 67.5 dBA at Location 1, MD time period. After reviewing photographs, filed notes taken at the location and a conversation with the consultant, DEP concludes that the recorded high L_{eq} of 70.9 dBA is not representative of typical noise in the area. There is no evidence of any noise source near the monitor site that would cause the reading. Project-generated traffic would not double vehicular traffic on nearby roadways and, therefore, would not result in a perceptible increase in the vehicular noise. There would be no significant adverse noise impacts from mobile sources.

Based on stationary source analysis performed for the HVAC system, the building mechanical systems will be designed to meet all applicable noise regulations (NYC Noise Control Code) and would, therefore, not result in any significant noise impacts.

As it pertains to stationary source (playground) analysis, the proposed playground will not be in direct line-of-sight to any noise sensitive receptors. Therefore, the proposed surface playground will not result in any significant adverse impacts to nearby receptors.

In conclusion, the Proposed Project will not result in any significant adverse noise impacts.

By letter dated September 13, 2021, the DOT Office of Project Analysis/CEQR Traffic Engineering and Planning Division states that, following the 2020 *CEQR Technical Manual* Level 1 and Level 2 Screening Assessments, NYC DOT concurs with the lead agency's determination that detailed traffic and pedestrian analyses are not warranted. In addition, New York City Transit ("NYCT") will continue to monitor the bus stop on 5th Avenue, in which the building's curb cut is located. If NYCT Road Operations notices any conflicts with the operations of the day care at this location, NYCT will reassess the location of the bus stop in the future. The pick-up and drop-off area would be designated on the south side of 89th Street, in front of the proposed daycare center, and the parking regulation sign would be modified accordingly. The applicant should inform NYC DOT six months prior to the completion and occupancy of the proposed project.

No other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable. Based on the foregoing, the Board has determined that the proposed action will not have a

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significant adverse impact on the environment.

The Board finds that the evidence in the record supports the findings required to be made under Z.R. §§ 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 Z.R. §§ 73-19 and 73-03 to *permit*, on a located within a C8-2 zoning district, the operation of a school, contrary to Z.R. § 32-10; *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked “Received September 24, 2021” – Eleven (11) sheets; and *on further condition*:

THAT the applicant shall inform NYC DOT six months prior to the completion and occupancy of the proposed project;

THAT a 31 dB(A) composite window-wall attenuation is required along the western façade of the building at the first floor level; 28 dB(A) composite window-wall attenuation is required along the western façade of the building at the 3rd floor level, 28 dB(A) window-wall attenuation is required for the eastern (5th Avenue) facade of the building at the first through fourth floor levels;

THAT in order to maintain an interior noise level of 45 dB(A) with a closed window condition, an alternate means of ventilation will be provided;

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. 2020-76-BZ”) shall be obtained within four years, by September 27, 2025;

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 27, 2021.

2019-32-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 801 Co-Op City Boulevard Realty LLC, owner; Co-Op Medical Realty LLC, lessee.

SUBJECT – Application February 11, 2019 – Project: Special Permit (§73-44) to permit the reduction of required accessory off-street parking spaces for an ambulatory diagnostic or treatment facility (UG 4) (PRC-B1 parking category) contrary to ZR §36-21. C4-1 zoning district.

PREMISES AFFECTED – 801 Co-Op City Boulevard, Block 5141, Lot 0280, Borough of Bronx.

COMMUNITY BOARD #10BX

ACTION OF THE BOARD – Laid over to January 10-11, 2022, at 10 A.M., for continued hearing.

2020-70-BZ

APPLICANT – Law Office of Lyra J. Altman, for The Albert Dweck Irri Trust FBO Morris Dweck, owner.

SUBJECT – Application September 11, 2020 – Special Permit (§73-622) to permit the enlargement of a single-family residences into one single-family residence. R4-1 zoning district.

PREMISES AFFECTED – 1903 Homecrest Avenue, Block 7291, Lot 0168, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to November 15-16, 2021, at 10 A.M., for deferred decision.

Carlo Costanza, Executive Director

BULLETIN

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October 15, 2021

DIRECTORY

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SHAMPA CHANDA, *Vice-Chair*

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NASR SHETA

SALVATORE SCIBETTA

Commissioners

Carlo Costanza, *Executive Director*

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HEARINGS HELD -	TELECONFERENCE PUBLIC HEARINGS
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Monday-Tuesday, October 4-5, 2021**

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96-99-BZ, 98-99-BZ
100-99-BZ & 102-99-BZ
238-07-BZ 5-17 47th Avenue, Queens
378-45-BZ 116-60 Sutphin Boulevard, Queens
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2020-89-BZ 111 Langham Street, Brooklyn
2021-9-BZ 145-163 Wolcott Street, Brooklyn
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DOCKETS

New Case Filed Up to October 4-5, 2021

2021-63-BZ

46-06 Ditmars Boulevard, Block 00768, Lot(s) 0045, Borough of **Queens, Community Board: 4**. 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/R4 zoning district. C2-2 in 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

**TELECONFERENCE PUBLIC HEARINGS
NOVEMBER 29-30, 2021, MONDAY & TUESDAY
10:00 A.M. and 2:00 P.M.**

NOTICE IS HEREBY GIVEN of teleconference public hearings, Monday, November 29, 2021, at 10:00 A.M. and 2:00 P.M., and Tuesday November 30, 2021, at 10:00 A.M. and 2:00 P.M., to be streamed live through the Board's website (www.nyc.gov/bsa), with remote public participation, on the following matters:

SPECIAL ORDER CALENDAR

887-54-BZ

APPLICANT – Eric Palatnik, P.C, for Napa Realty Corp., owner.

SUBJECT – Application May 21, 2020 – Extension of Term (§11-411) for the continued use of gasoline station (BP Amoco) with accessory convenience store which expires on June 15, 2020. C2-2/R6B zoning district.

PREMISES AFFECTED – 218-01 Northern Boulevard, Block 6321, Lot 21, Borough of Queens.

COMMUNITY BOARD #11Q

808-55-BZ

APPLICANT – Eric Palatnik, P.C, for 35 Bell Realty Inc., owner.

SUBJECT – Application September 29, 2020 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of an Automotive Service Station (UG 16B) (Amoco) with accessory uses which expired on March 27, 2021. C2-2/R4 zoning district.

PREMISES AFFECTED – 35-04 Bell Boulevard, Block 6169, Lot 6, Borough of Queens.

COMMUNITY BOARD #11Q

827-55-BZ

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

SUBJECT – Application July 15, 2020 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of an Automotive Service Station (UG 16B) which is set to expire on January 31, 2021. R3-2/C1-3 zoning district.

PREMISES AFFECTED – 245-20 139th Avenue, Block 1361, Lot 23, Borough of Queens.

COMMUNITY BOARD #13Q

548-69-BZ

APPLICANT – Eric Palatnik, P.C, for BP Products North America Inc., owner.

SUBJECT – Application July 29, 2020 – Extension of Term of a previously approved variance (§72-21) which permitted the operation of an automotive service station (UG 16B) which expires on May 25, 2021; Extension of Time to Obtain a Certificate of Occupancy which expired on June 6, 2018; Waiver of the Board's Rules of Practice and Procedures. C2-3/R6B zoning district.

PREMISES AFFECTED – 107-10 Astoria Boulevard, Block 1694, Lot 1, Borough of Queens.

COMMUNITY BOARD #3Q

435-74-BZ

APPLICANT – Eric Palatnik, P.C, for Theresa Townsley, owner.

SUBJECT – Application January 22, 2020 – Extension of Term of a previously approved Variance (§72-21) which permitted the operation of an automotive service station (UG 16B) which expired on January 14, 2020. R3-1 zoning district.

PREMISES AFFECTED – 552 Midland Avenue, Block 3804, Lot 18, Borough of Queens.

COMMUNITY BOARD #2SI

227-10-BZ

APPLICANT – Eric Palatnik, P.C, for Power Test Realty Corporation, owner.

SUBJECT – Application June 12, 2020 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of an Automotive Service Station (UG 16B) to expire on September 20, 2021. C2-2/R3-2 zoning district.

PREMISES AFFECTED – 204-12 Northern Boulevard, Block 7301, Lot 11, Borough of Queens.

COMMUNITY BOARD #11Q

99-14-BZ

APPLICANT – Greenberg Traurig, LLP, by Jay A. Segal, for Arisa Realty Co X LLC., owner.

SUBJECT – Application August 11, 2020 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) to facilitate the construction of a new 21-story which expired on October 29, 2021. C6-4 Special Hudson Yards District.

PREMISES AFFECTED – 432-434 West 31st Street, Block 728, Lot 55, Borough of Manhattan.

COMMUNITY BOARD #4M

CALENDAR

2017-243-BZ

APPLICANT – Eric Palatnik, P.C., for Blue Hills Fuel LLC, owner; PMG, lessee.

SUBJECT – Application July 13, 2021 – Extension of Time to Obtain a CO of a previously approved variance permitting the operation of an automotive service station with accessory uses which expired on October 29, 2020; Waiver of the Board’s Rules of Practice and Procedures. R2A zoning district.

PREMISES AFFECTED – 29-16 Francis Lewis Boulevard - aka 29-29 172nd Street, Block 4938, Lot 1 Borough of Queens.

COMMUNITY BOARD #7Q

2021-31-BZ

APPLICANT – Friedman & Gotbaum, for Loyola School, owner.

SUBJECT – Application May 13, 2021 – Project: Variance (§72-21) to permit the expansion of existing school (Loyola School) contrary to ZR §§77-24 & 24-11 (lot coverage). R10, Special Park Improvement District, Park Avenue Historic District.

PREMISES AFFECTED – 65 East 83rd Street, Block 1495, Lot 0032, Borough of Manhattan.

COMMUNITY BOARD #8M

Margery Perlmutter, Chair/Commissioner

APPEALS CALENDAR

170-93-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for JABE Contracting LLC, owner.

SUBJECT – Application August 25, 2020 – Proposed enlargement of a commercial building not fronting on a legally mapped street, contrary to General City Law §36. M3-1 zoning district/Special South Richmond District.

PREMISES AFFECTED – 220 Industrial Loop, Block 7206, Lot 130, Borough of Staten Island.

COMMUNITY BOARD #3SI

ZONING CALENDAR

2019-264-BZ

APPLICANT – Eric Palatnik, P.C., for Congregation Lev Bais Yaakov, owner.

SUBJECT – Application September 11, 2019 – Variance (§72-21) to permit the development of school (UG 3) (Congregation Lev Bais Yaakov) contrary to ZR §33-121 (FAR) and ZR §33-431 (height of front wall and sky exposure). C1-2/R4 zoning district.

PREMISES AFFECTED – 3568 Nostrand Avenue, Block 7386, Lot 129, Borough of Brooklyn.

COMMUNITY BOARD #15BK

2019-277-BZ

APPLICANT – Jay Goldstein, Esq., for Bukharian Jewish Congregation of Hillcrest, owner.

SUBJECT – Application October 17, 2019 – Variance (§72-21) to permit the construction of a three-story plus cellar House of Worship (UG 4) (*Bukharian Jewish Congregation of Hillcrest*) contrary to ZR §24-11 (FAR); ZR §24-34 (front yard); ZR §24-521 (height) and ZR §24-35 (side yard). R2A zoning district.

PREMISES AFFECTED – 81-04 166th Street, Block 7026, Lot 0021, Borough of Queens.

COMMUNITY BOARD #8Q

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**PUBLIC HEARINGS
MONDAY-TUESDAY MORNING
OCTOBER 4-5, 2021, 10:00 A.M.**

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

SPECIAL ORDER CALENDAR

92-99-BZ, 94-99-BZ, 96-99-BZ, 98-99-BZ, 100-99-BZ, 102-99-BZ

APPLICANT – Goldman Harris LLC for Walden Terrace Inc., owner.

SUBJECT – Application June 30, 2020 – Application to extend the term of a variance allowing transient parking at the above-referenced Premises pursuant to §1-07.1(a)(2); extend the Applicant’s time to obtain Certificate of Occupancy pursuant to §1-07.1(a)(3); waiver pursuant to §1-07.3(d)(2). R7-1 Zoning District.

PREMISES AFFECTED – 98-09, 98-25, 98-41, 64th Road, 98-51, 98-33, 98-19 64th Avenue, Block 2101, Lot (s)0001, 0016, 0024, Block 2100, lot (s)0029, 0021, 0015, Borough of Queens.

COMMUNITY BOARD #6Q

ACTION OF THE BOARD – Application granted.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta5

Negative:.....0

THE RESOLUTION –

This is an application for a waiver under the Board’s Rules of Practice and Procedures; an extension of term of a waiver previously granted by the Board pursuant to Multiple Dwelling Law (“MDL”) § 60, which permitted transient parking; and an extension of time to obtain a certificate of occupancy.

A public hearing was held on this application on March 22, 2021, after due notice by publication in *The City Record*, with a continued hearing on June 14, 2021, and then to decision on October 4, 2021. Vice-Chair Chanda performed inspections of the Premises and surrounding neighborhood. Community Board 6, Queens recommends approval of this application.

I.

The Premises comprise of six tax lots on two separate tax blocks, in an R7-1 zoning district, in Queens. Tax Lots 15, 21, and 29 are located on Tax Block 2100, and Tax Lots 1, 16, 24 are located on Tax Block 2101. Tax Block 2100 is bounded by 98th Street to the west, 63rd Drive to the north, 99th Street to the east, and 64th Avenue to the south. Tax Block 2101 is bounded by 98th Street to the west, 64th Avenue to the north, 99th Street to the east, and 64th Road to the south. The Premises are improved with two eight-story residential buildings that are connected by an

accessory parking garage at the cellar level, which operate as a single parking garage.

The Board has exercised jurisdiction over the Premises since February 14, 1968, when, under BSA Cal. Nos. 723-67-BZ, 724-67-A, 725-67-BZ, 726-67-A, 727-67-BZ, 728-67-A, 729-67-BZ, 730-67-A, 731-67-BZ, 732-67-A, 733-67-BZ, and 734-67-A the Board granted a variance, pursuant to MDL § 60(3), to permit, in an R7-1 district, in an existing multiple dwelling, the use of transient parking in part of the existing accessory garage, for a term of ten years, to expire on February 14, 1978, on condition that the building conform to the drawings filed with the application; the vehicles parked in the transient space be pleasure-type cars only and not exceed 14 in number; the ramp in this building be discontinued; the ramps in Buildings Nos. 4 (Cal. 725-67-BZ) and 6 (Cal. 727-67-BZ) be arranged for ingress and egress; there be no signs except one non-illuminated sign not exceeding 10 square feet in area, marked “garage”, on the exterior of the Premises; the parking be by attendants only; the rate sign required by the Department of Licenses state the maximum number of transient cars permitted by this resolution; the provisions of MDL § 60(1b) and all other laws, rules, and regulations applicable be complied with; and an amended certificate of occupancy for the garage portion of the building be obtained within one year, by February 14, 1969.

On May 30, 2000 under the subject calendar numbers, the Board amended the variance to permit the continued use of portions of the cellar of the subject Premises for transient parking for a period of less than one week, which is contrary to Z.R. § 25-412, on condition that all work substantially conform to drawings as they apply to the objections filed with the application; the term of the variance be ten years, to expire on May 30, 2010; the use of transient spots be limited to the number reflected in the approved plans; a recapture sign be maintained conspicuously within the garage indicating the tenants’ rights to recapture the subject parking spaces upon 30 day notification to the operator; the Premises be maintained free of debris and graffiti; a new certificate of occupancy be obtained within one year of the date of the grant, by May 30, 2001; the above referenced conditions appear on a new certificate of occupancy; the development as approved is 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.

On October 25, 2011 under the subject calendar numbers, the Board amended the variance to permit the extension of the terms of the grant for an additional ten years to expire on May 30, 2020, and to grant an extension of time to obtain a certificate of occupancy to October 25, 2012, on condition that all work substantially conform to drawings filed with the application; all residential leases indicate that spaces devoted to transient parking can be recaptured by residential tenants on 30 days’ notice to the owner; a sign providing the same information about tenant recapture rights be located in a conspicuous place within the

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garage, permanently affixed to the wall; the above conditions and all relevant conditions from prior resolutions appear on the certificate of occupancy; a new certificate of occupancy be obtained by October 25, 2012; the layout of the parking lot be as approved by the Department of Buildings; the approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; 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.

II.

The term of the variance having expired, the applicant now seeks an extension. The applicant also seeks an extension of time to obtain a certificate of occupancy, specifically for BSA Cal Nos. 92-99-BZ, 94-99-BZ, 96-99-BZ, 100-99-BZ. Because this application was filed more than 30 days after the expiration of the time to obtain a certificate of occupancy, the applicant requests a waiver, pursuant to § 1-14.2 of the Board's Rules, of § 1-07.3(d)(2), of the Board's Rules to permit the filing of this application.

III.

The Board notes that the requested waiver is of MDL § 60(1)(b) pursuant to the Board's authority granted under MDL § 60(3). The Multiple Dwelling Law vests the Board with "the power to make rules to supplement the requirements of this section and, after public hearing, may grant variances of local laws, resolutions, code provisions or regulations which are more restrictive than the provisions of this section, subject to such conditions as, in the opinion of such agency, will best promote health, safety and welfare and carry out the permissive intent of this section. A. MDL § 60(3).

IV.

Over the course of hearings, the Board expressed concern that the recapture signage throughout the Premises lacked clarity and were not conspicuous within the garage. In response, the applicant provided photographs and updated plans which included additional recapture signs posted at the Premises with clearer language.

By correspondence dated December 24, 2020, the Fire Department states that the Bureau of Fire Prevention has reviewed the above noted application. The Premises have a fire suppression system (sprinkler and flow systems) that has been tested, and FDNY permits are current. Based upon the foregoing, the Fire Department has no objection to the application. The Bureau of Fire Prevention will continue to inspect these Premises and enforce all applicable rules and regulations.

Based upon its review of the record, the Board has determined that the waiver of the Board's Rules, extension of the term of the variance, and extension of time to obtain a certificate of occupancy, appropriate with certain conditions as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *waive* its Rules of Practice and

Procedures and amend the resolution, dated February 14, 1968, as amended through October 25, 2011, so that as amended this portion of the resolution shall read "to extend the term of the grant for ten years, from May 30, 2020 to expire on May 30, 2030, and to grant an extension of time to obtain a certificate of occupancy to October 4, 2022; *on condition* that all work, site conditions and operations shall conform to the drawings filed with this application marked 'Received March 9, 2021 - (5) Five sheets' and on *further condition*:

THAT the term of the variance will be for ten years, to expire on May 30, 2030;

THAT all residential leases indicate that spaces devoted to transient parking can be recaptured by residential tenants on 30 days' notice to the owner;

THAT a sign providing the same information about tenant recapture rights be located in a conspicuous place within the garage, permanently affixed to the wall;

THAT the Premises be maintained free of debris and graffiti;

THAT a certificate of occupancy, also indicating this approval and calendar numbers ('BSA Cal. Nos. 92-99-BZ, 94-99-BZ, 96-99-BZ, 100-99-BZ'), shall be obtained within one year, by October 4, 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 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 4, 2021.

238-07-BZ

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for Graduate Center Foundation Housing Corporation, LIC, owner.

SUBJECT – Application September 22, 2020 – Extension of Time to Complete Construction of a previously approved variance (§72-21) which allowed the construction of a 12-story mixed-use residential/commercial building and a 6-story graduate student housing building which expired on September 23, 2020. M1-4 and M1-4/R6A Special Long Island City Purpose District.

PREMISES AFFECTED – 5-17 47th Avenue, Block 00028, Lot(s) 12,15,17,18,121, 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, Commissioner Sheta, and

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Commissioner Scibetta5
Negative:.....0
THE RESOLUTION –

This is an application for an extension of time to complete construction of a previously approved variance, granted pursuant to Z.R. § 72-21, which permitted the construction of a 12-story mixed-use residential and commercial building and a 6-story graduate student housing building and expired on September 23, 2020.

No public hearings were held on this application as the applicant requested two adjournments and then requested a withdrawal on October 4, 2021.

The Premises are bound by 5th Street to the west, 46th Road to the north, 47th Avenue to the South, and Vernon Boulevard to the east and are partially within an M1-4 (R64) zoning district and partially within an M1-4 zoning district, in the Special Long Island City Mixed-Use District, in Queens. With approximately 203 feet of frontage on 47th Street, 265 feet of frontage on 46th Road, 66,838 square feet of lot area, the Premises are occupied by an existing 12-story mixed-use residential and commercial building.

The Board has exercised jurisdiction over the Premises since September 23, 2008, when, under the subject calendar number, the Board granted a variance, pursuant to Z.R. § 72-21, to permit the proposed construction of a 12-story mixed-use residential/commercial retail building and a 6-story student dormitory building and faculty housing building connected by a cellar-level accessory parking garage that does not comply with zoning parameters for use, FAR, lot coverage, building height, minimum distance between building segments, court, front setback, and rear yard setback contrary to Z.R. §§ 42-00, 117-21, 23-145, 24-632, 23-633, and 23-711, on condition that any and all work substantially conform to drawings as they apply to the objections noted and filed with the application; the proposed Zoning Lot have a maximum FAR of 5.23; the building within the M1-4 (R6A) portion of the zoning lot have the following parameters: a floor area of 163,920 square feet; a front set back of 10'-0" above the maximum base height; a total height of 129'-8"; a rear setback of 15'-0" at a height of 109'-0"; a minimum distance between windows of 50'-0" and between windows and a wall of 35'-0"; and a corner lot coverage of 84.5 percent; and the building within the M1-4 portion of the Zoning Lot have a floor area of 183,480 square feet and an outer court measuring 50'-0" in width and 80'-0" in depth; a RAP and CHASP be submitted to DEP for review and approval; the applicant submit its Remedial Work Plan to DEP; the emission stack of the building within the M1-4 portion of the Zoning Lot be located at least 160 feet from the façade of the building within the M1-4 (R6-4) portion of the zoning lot; a minimum of 35 dBA window/wall attenuation be provided; the issuance of building permits be conditioned on DEP review and approval of the specifications and sample material of its proposed vapor barrier; the issuance of the building permits be conditioned on the receipt of a DEP Notice to Proceed; the issuance of a permanent certificate of occupancy be conditioned on the issuance by DEP of a Notice of

Satisfaction; DEP review and approval is required prior to the approval by DOB of any changes to the BSA-approved site plan or building plans; construction be substantially completed in accordance with the requirements of Z.R. § 72-23; the approval is 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 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.

By letter dated June 10, 2009, the Board stated that it had no objection to certain modifications to the approved plans and to acknowledge that although the project was originally filed at DOB under a single building permit application (NB# 402661945), the project was subsequently filed as two separate buildings, with the Mixed-Use Building retaining the original application number, and the Dormitory Building filed under NB # 420061111, on condition that the Department of Buildings ensure compliance with all applicable provisions of the Zoning Resolution, Building Code, or any other relevant law.

By letter dated December 8, 2009, the Board stated that it had no objection to the issuance of a temporary and permanent certificate of occupancy for the Mixed-Use Building prior to the construction of the Dormitory Building and the connection between two buildings, on condition that the Department of Buildings ensure compliance with all applicable provisions of the Zoning Resolution, Building Code, or any other relevant law.

On February 15, 2011, under the subject calendar number, the Board amended the resolution to permit the independent construction of the Mixed-Use Building and Dormitory Building, such that either Building may be constructed prior to the construction and occupancy of the other building and the connection between the buildings on condition that the use and operation of the site comply with the BSA-approved plan associated with the prior grant; the Dormitory Building be limited to graduate student and faculty housing with approximately 21 faculty housing units and 228 student dormitory suites (housing 380 students); any change to the program be subject to Board review and approval and that the process for such review be determined by the Board; all conditions from the prior resolutions not specifically waived by the Board remain in effect; this 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 other relevant laws under its jurisdiction irrespective of plan(s) and/or configuration(s) not related to the relief granted.

On July 24, 2012, under the subject calendar number, the Board amended the resolution to grant an extension of time to complete construction and obtain a certificate of

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occupancy for a term of four years to expire on September 23, 2016, on condition that the use and operation of the site comply with BSA-approved plans associated with the prior grant; substantial construction be completed and a certificate of occupancy obtained by September 23, 2016; any change to the program be subject to Board review and approval and that the process for such review be determined by the Board; 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.

On February 25, 2014, under the subject calendar number, the Board amended the resolution to permit modifications including (1) the elimination of the cellar level of the Dormitory Building, which includes accessory parking for 91 automobiles and approximately 6,600 square feet of amenity and storage space, (2) a reduction in floor area for the Dormitory Building from 183,472 square feet to 177,693 square feet, (3) the elimination of the seventh floor, (4) reduction in size of the stair, elevator, and mechanical bulkheads, and reduction in building height, (5) addition of balconies on the fifth and sixth floors, and (6) minor modifications to interior layouts and roof, on condition that any and all work substantially conform to drawings filed with the application; all conditions from prior resolutions not specifically waived by the Board remain in effect; the approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction 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) and/or configuration(s) not related to the relief granted.

On June 11, 2016, under the subject calendar number, the Board amended the resolution to grant an extension of time to complete construction to September 23, 2020, on condition that the use and operation of the site comply with BSA-approved plans associated with the prior grant; substantial construction be completed and a certificate of occupancy obtained by September 23, 2020; all conditions from the prior resolution not specifically waived by the Board remain in effect; the approval is limited to the relief granted by the Board in response to specifically cited and filed DOB/other jurisdiction objection(s) only; and DOB ensure compliance with all other applicable provisions of the Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdictions irrespective of plan(s) and/or configuration(s) not related to the relief granted.

The applicant now seeks an extension of time to complete construction of the six-story graduate student and faculty housing building. In addition to having completed

construction on the 12-story mixed-use residential and commercial building, the applicant states that it has completed all required environmental remediation at the Premises and has undertaken significant progress toward construction of the graduate student and faculty housing building.

However, by correspondence, dated September 29, 2021, the applicant requested to withdraw the application without prejudice.

Therefore, it is Resolved, that this application is hereby *withdrawn* without prejudice.

Adopted by the Board of Standards and Appeals, October 4, 2021.

378-45-BZ

APPLICANT – Davidoff Hatcher & Citron, LLP, for Leemilts Petroleum, Inc., owner; Atlantis GRC Realty LLC, lessee.

SUBJECT – Application December 28, 2018 – Amendment (§11-412) of a previously approved variance permitting the operation of an Automotive Service Station (UG 16B) seeking to permit a change in the configuration of existing gasoline pumps, the addition of a canopy and the conversion of an accessory lubricatorium to an accessory convenience store with a drive-through. C2-3/R5D zoning district.

PREMISES AFFECTED – 116-60 Sutphin Boulevard, Block 12008, Lot(s) 0034, Borough of Queens.

COMMUNITY BOARD #12Q

ACTION OF THE BOARD – Laid over to November 29-30, 2021, at 10 A.M., for a adjourned hearing.

467-58-BZIII

APPLICANT – Walter T. Gorman, P.E., P.C., for (GTY-CPG) Leasing, Inc., owner; Global Partners LP, lessee.

SUBJECT – Application December 24, 2020 – Extension of Term (§11-411) of a previously approved variance permitting the operation of an Automotive Service Station (UG 16B) which expired on December 14, 2019, Waiver of the Board’s Rules of Practice and Procedures. R3-2, R4B and R3X zoning districts.

PREMISES AFFECTED – 172-11 Northern Boulevard, Block 5363, Lot 1, Borough of Queens.

COMMUNITY BOARD # 7Q

ACTION OF THE BOARD – Laid over to December 13-14, 2021, at 10 A.M., for postponed hearing.

523-58-BZ

APPLICANT – Glen V. Cutrona, AIA, for Yehuda LLC, owner; Farmers Mini Mart Inc., lessee.

SUBJECT – Application August 26, 2019 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of an automotive service station (UG 16B) which expired on May 7, 2014; Waiver of the Board’s Rules. C1-3/R5D zoning district.

PREMISES AFFECTED – 117-30 Farmers Boulevard,

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Block 12448, Lot 0031, Borough of Queens,
COMMUNITY BOARD #12Q

ACTION OF THE BOARD – Laid over to January 24-25, 2022, at 10 A.M., for adjourned hearing.

282-79-BZ

APPLICANT – David L Businelli, for 1745 Forest Avenue Corp., Anthony DiLeo, President, owner; 1745 Operating LLC, lessee.

SUBJECT – Application June 11, 2019 – Amendment to a condition of term for a previously approved Variance (§72-21) which permitted an accessory off-site parking facility accessory to an eating and drinking establishment located on the opposite side of the street which expired on July 24, 2009; Waiver of the Board’s rules. R3A zoning district.

PREMISES AFFECTED – 840 Richmond Avenue, Block 1147, Lot(s) 1, 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 November 29-30, 2021, at 10 A.M. for decision, hearing closed.

584-82-BZ

APPLICANT – Sheldon Lobel, P.C., for 64th Street Third Avenue Associates, LLC, owner.

SUBJECT – Application August 15, 2020 – Amendment of a previously approved Variance (§72-21) permitting the construction of a required plaza at a height in excess of 5 feet above the curb level. The seeks modifications to the layout of a Privately Owned Public Space (“POPS”). R8B and C1-9 zoning districts.

PREMISES AFFECTED – 200 East 64th Street, Block 1418, Lot 45, Borough of Manhattan.

COMMUNITY BOARD #8M

ACTION OF THE BOARD – Laid over to February 28, 2022, at 10 A.M., for continued hearing.

7-95-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Redmont Realty Company, LLC, owner; TSI Whitestone, LLC dba New York Sports Club, lessee.

SUBJECT – Application August 30, 2016 – Extension of Term of a previously approved variance (§72-21) which permitted the operation of a Physical Culture Establishment (*New York Sports Club*) which expired on August 8, 2016; Amendment to permit a change in hours of operation. C1-2/R3-2 zoning district.

PREMISES AFFECTED – 153-37 Cross Island Parkway, Block 4717, Lot 16, Borough of Queens.

COMMUNITY BOARD #7Q

ACTION OF THE BOARD – Laid over to January 24-25, 2022, at 10 A.M., for adjourned hearing.

42-97-BZ

APPLICANT – Law Offices of Marvin Mitzner LLC, for NDC Elmhurst, LLC, owner.

SUBJECT – Application October 18, 2019 – Extension of Term of a previously approved Variance (§72-21) which permitted the construction and use of a one-story and cellar retail drug store (UG 6) which expired on March 3, 2018; Amendment to permit the elimination of a term since the use is now permitted with the exception of a portion located in a R6B zoning district; Waiver of the Board’s Rules. C1-3 and R6B zoning districts.

PREMISES AFFECTED – 93-20 Astoria Boulevard, Block 1367, Lot 48, Borough of Queens.

COMMUNITY BOARD #3Q

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 November 29-30, 2021, at 10 A.M. for decision, hearing closed.

299-99-BZ

APPLICANT – Glen V. Cutrono, AIA, for M & V LLC, owner.

SUBJECT – Application August 7, 2019 – Extension of Term (11-411) of a previously approved variance which permitted the operation of automotive service station (UG 16B) (Getty) which will expire on July 25, 2020. C2-4/R6A zoning district.

PREMISES AFFECTED – 8-16 Malcom X Boulevard, Block 1599, Lot 40, Borough of Brooklyn.

COMMUNITY BOARD #3BK

ACTION OF THE BOARD – Laid over to January 24-25, 2022, at 10 A.M., for adjourned hearing.

160-08-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for HJC Holding Corp., owner.

SUBJECT – Application February 5, 2021 – Extension of Term of a previously approved Variance (§72-21) permitting commercial storage of motor vehicles/buses (UG 16C) with accessory fuel storage and motor vehicles sales and repair(UG 16B) which expired on July 13, 2013; Amendment to eliminate the accessory fuel storage and motor vehicles sales and repair use; Extension of Time to obtain a Certificate of Occupancy which expired on January 13, 2012; Waiver of the Board’s Rules of Practice and Procedures. R4 zoning district.

PREMISES AFFECTED – 651-671 Fountain Avenue, Block 4527, Lot 0000, Borough of Brooklyn.

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COMMUNITY BOARD #5BK

ACTION OF THE BOARD – Laid over to December 13-14, 2021, at 10 A.M., for continued hearing.

226-10-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Orb Management LTD, owner; Equinox Hudson Street, Inc., lessee.

SUBJECT – Application January 29, 2011 – Extension of Term of a previously approved Special Permit (§73-36) permitting a Physical Culture Establishment (Equinox Fitness) on the first, ninth and tenth floors of an existing 10-story mixed-use building which expired on January 1, 2021. M1-5 zoning district.

PREMISES AFFECTED – 421 Hudson Street, Block 601, Lot 7501, Borough of Manhattan.

COMMUNITY BOARD #2M

ACTION OF THE BOARD – Laid over to January 10-11, 2022, at 10 A.M., for postponed hearing.

189-12-BZ

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for 98 Montague LLC, owner.

SUBJECT – Application August 25, 2020 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) to permit the conversion of an existing building into a transient hotel (UG 5), contrary to use regulations (§22-00) which expired on July 23, 2020. C1-3/R7-1 and R6 (LH-1) zoning districts. Property is located within the Brooklyn Heights Historic District.

PREMISES AFFECTED – 98 Montague Street, Block 248, Lot 15, Borough of Brooklyn.

COMMUNITY BOARD #2BK

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 November 29-30, 2021, at 10 A.M. for decision, hearing closed.

2017-100-BZ

APPLICANT – Friedman & Gotbaum LLP, for Trustees of the Spence School Inc., owner.

SUBJECT – Application July 27, 2021 – Amendment of a previously variance for the Spence School Inc., a non-profit private school, to facilitate the transfer of unused development rights from the variance site for incorporation into a new as-of-right commercial development. C8-4 zoning district.

PREMISES AFFECTED – 412 East 90th Street, Block 1569, Lot 35, Borough of Manhattan.

COMMUNITY BOARD #8M

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 October 18-19, 2021, at 10 A.M. for decision, hearing closed.

2017-261-BZ

APPLICANT – Davidoff Hatcher & Citron LLP, for Congregation Chabad-In-Reach-Aliya, owner.

SUBJECT – Application September 5, 2017 – Variance (§72-21) to permit the development of a five-story and cellar house of worship (UG 4) (*Congregation Chabad-In-Reach-Aliya*) contrary to ZR §24-11 (Lot Coverage) and ZR §24-36 (Required 30 Foot Rear Yard). R6 zoning district.

PREMISES AFFECTED – 527 East New York Avenue, Block 1332, Lot 74, Borough of Brooklyn.

COMMUNITY BOARD #9BK

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 October 18-19, 2021, at 10 A.M. for decision, hearing closed.

APPEALS CALENDAR

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 January 10-11, 2022, at 10 A.M., for deferred decision.

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

THE VOTE TO CLOSE HEARING –

MINUTES

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 29-30, 2021, at 10 A.M. for decision, hearing closed.

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 04699, Lot 22, Borough of Queens.

COMMUNITY BOARD #7Q

ACTION OF THE BOARD – Laid over to January 10-11, 2022, at 10 A.M., for deferred decision.

2018-188-A & 2018-189-A

APPLICANT – Sheldon Lobel, P.C., for 3861 Realty LLC, owner.

SUBJECT – Application November 21, 2018 – Proposed construction of two two-story, single-family detached residential buildings seeking waivers of General City Law § 35, which are partially within the bed of a mapped but unbuilt portion of Clover Place. R1-2 zoning district.

PREMISES AFFECTED – 194-28 & 194-32 Dunton Avenue, Block 10509, Lot 160, Lot 61, Borough of Queens.

COMMUNITY BOARD #8Q

ACTION OF THE BOARD – Laid over to January 10-11, 2022, at 10:00 A.M. for adjourned hearing.

2019-190-A

APPLICANT – Sheldon Lobel, P.C., for 40-17 28th Avenue LLC, owner.

SUBJECT – Application July 15, 2019 – Appeal of a New York City Department of Buildings determination dated June 14, 2019, that parking garage with 150 parking spaces or less do not require reservoir spaces at this location and that ZR 36-521 does not require commissioner approval for parking garage layouts between 200 and 300 square feet per space if the applicant certifies and states on the Certificate of Occupancy that the garage will be fully attended. C2-2/R5 zoning district.

PREMISES AFFECTED – 40-17 28th Avenue a/k/a 25-92 41st Street, Block 684, Lot 1, Borough of Queens.

COMMUNITY BOARD #1Q

ACTION OF THE BOARD – Laid over to January 24-25, 2022, at 10 A.M., for deferred decision.

ZONING CALENDAR

2017-262-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for Delson Developments, LLC, owner.

SUBJECT – Application September 7, 2017 – Variance (§72-21) to permit the construction of three-story plus cellar residential building contrary to ZR §42-00. M1-1 zoning district.

PREMISES AFFECTED – 18 Stanwix Street, Block 03162, Lot 0007, Borough of Brooklyn.

COMMUNITY BOARD #4BK

ACTION OF THE BOARD – Laid over to December 13-14, 2021, at 10 A.M., for adjourned hearing.

2019-192-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 16 Harrison Place Partners LLC, owner.

SUBJECT – Application July 18, 2019 – Variance (§72-21) to permit the construction of a cellar and four-story residential building contrary to ZR §42-10. M1-2 zoning district.

PREMISES AFFECTED – 16 Harrison Place, Block 3093, Lot 13, Borough of Brooklyn.

COMMUNITY BOARD #1BK

ACTION OF THE BOARD – Laid over to January 10-11, 2022, at 10 A.M., for continued hearing.

2019-263-BZ

APPLICANT – Eric Palatnik, P.C., for Andrew Lester, owner.

SUBJECT – Application September 11, 2019 – Special Permit (§73-243) to permit an eating and drinking establishment (Starbucks) with an accessory drive-thru contrary to ZR §32-10. C1-2/R3-2 zoning district.

PREMISES AFFECTED – 2122 Richmond Avenue, Block 2102, Lot 120, Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Laid over to March 28-29, 2022, at 10 A.M., for continued hearing.

2019-294-BZ

APPLICANT – The Law Offices of Marvin B. Mitzner LLC, for GM7 Realty LLC, owner.

SUBJECT – Application November 15, 2019 – Variance (§72-21) to permit the construction of a mixed-use residential building (UG 2) with ground floor commercial (UG 6) contrary to underlying bulk requirements. C2-4/R7D zoning district.

PREMISES AFFECTED – 241-243 Throop Avenue, Block 1756, Lot 6, Borough of Brooklyn.

COMMUNITY BOARD #3BK

ACTION OF THE BOARD – Laid over to January 24-25, 2022, at 10 A.M., for adjourned hearing.

MINUTES

2020-88-BZ

APPLICANT – Sheldon Lobel, P.C., for 315 Berry St Corp., owner; Microgrid Networks, lessee.

SUBJECT – Application November 16, 2020 – Special Permit (§73-14) to permit the construction of an electric utility substation (UG 6D) on the roof of an existing building contrary to ZR §22-10. R6 zoning district.

PREMISES AFFECTED – 315 Berry Street, Block 2430, Lot 2, Borough of Brooklyn.

COMMUNITY BOARD #1BK

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 January 10-11, 2022, at 10 A.M. for decision, hearing closed.

2021-12-BZ

APPLICANT – Terminus Group LLC, for Igor Yakubov, owner.

SUBJECT – Application January 22, 2021 – Variance (§72-21) to permit the construction of a single-family dwelling contrary to ZR 23-45 (Front Yard Regulations). R3A Special Hillside Preservation District.

PREMISES AFFECTED – 250 Westervelt Avenue, Block 41, Lot 25, 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 November 29-30, 2021, at 10 A.M. for decision, hearing closed.

PUBLIC HEARINGS
MONDAY-TUESDAY AFTERNOON
OCTOBER 4-5, 2021, 2:00 P.M.

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

2017-269-BZ

APPLICANT – David L. Businelli, R.A., for Grasmere Avenue LLC, owner; Auto Pro Collision Inc., lessee.

SUBJECT – Application September 20, 2017 – Variance (§72-21) to permit the legalization of a one-story enlargement of an existing non-conforming Automotive Repair Facility (UG 16B) contrary to ZR §22-10. R3-2 zoning district.

PREMISES AFFECTED – 65 Grasmere Avenue, Block 03163, Lot 0001, Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Laid over to March 1-2, 2022, at 10 A.M., for postponed hearing.

2020-89-BZ

APPLICANT – Eric Palatnik, P.C., for Arkadiy Shukhat, owner.

SUBJECT – Application November 18, 2020 – Special Permit (§73-622) to permit the enlargement of an existing single-family home. R3-1 zoning district.

PREMISES AFFECTED – 111 Langham Street, Block 8755, Lot 12, Borough of Brooklyn.

COMMUNITY BOARD #15BK

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 November 29-30, 2021, at 10 A.M. for decision, hearing closed.

2021-9-BZ

APPLICANT – Stroock & Stroock & Lavan LLP, for Red Hook JV LLC, owner.

SUBJECT – Application January 15, 2021 – Variance (§72-21) to permit the development of a 15-story mixed-use residential, commercial and manufacturing building contrary to ZR §42-10 (Use), ZR §43-12 (FAR) and ZR §43-28 (Rear Yard). M2-1 zoning district.

PREMISES AFFECTED – 145-163 Wolcott Street, Block 574, Lot(s) 1, 23 and 24, Borough of Brooklyn.

COMMUNITY BOARD #6BK

ACTION OF THE BOARD – Laid over to February 28, 2022, at 10 A.M., for continued hearing.

MINUTES

2021-15-BZ

APPLICANT – Kramer Levin Naftalis & Frankel LLC, for 81 Beaver Development LLC, owner.

SUBJECT – Application February 22, 2021 – Variance (§72-21) to permit the residential conversion of an existing manufacturing building contrary to §ZR 42-10. M1-1 district.

PREMISES AFFECTED – 81 Beaver Street, Block 3135, Lot 27, Borough of Brooklyn.

COMMUNITY BOARD #4BK

ACTION OF THE BOARD – Laid over to December 13-14, 2021, at 10 A.M., for continued hearing.

2021-30-BZ

APPLICANT – Sheldon Lobel, P.C., for Mesorah Publications, LTD, owner; Brooklyn Rise Charter School, lessee.

SUBJECT – Application May 5, 2021 – Variance (§72-21) to permit the development of a school (UG 3) (Brooklyn Rise Charter School) contrary to ZR §42-10 (use), ZR §43-26 (rear yard), ZR §43-43 (street wall height, setback and sky exposure plane). M1-2 Zoning District.

PREMISES AFFECTED – 222 44th Street, Block 736, Lot(s) 13, Borough of Brooklyn.

COMMUNITY BOARD #7BK

ACTION OF THE BOARD – Laid over to December 13-14, 2021, at 10 A.M., for continued hearing.

Carlo Costanza, Executive Director

BULLETIN

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Volume 106, Nos. 42-43

October 29, 2021

DIRECTORY

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Monday-Tuesday, October 18-19, 2021**

Morning Calendar371

Affecting Calendar Numbers:

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528-71-BZ	133-40 150 th Street, Queens
332-79-BZ	43-20 Little Neck Parkway, Queens
837-85-AIII	166-78 73rd Avenue, Queens
914-86-BZ	1-19 Eastern Parkway, Brooklyn
90-91-BZ	630-636 City Island Avenue, Bronx
13-01-BZ	2875 Edson Avenue, Bronx
6-04-BZ	7118-7124 Third Avenue, Brooklyn
42-08-BZ	182 Girard Street, Brooklyn
36-11-BZII	270 Greenwich Street, Manhattan
2016-4337-BZIII	127 Vanderbilt Street, Brooklyn
2019-276-A	15 Stuart Lane, Queens
2020-67-A	1 Ballard Avenue, Staten Island
2017-261-BZ	527 East New York Avenue, Brooklyn
2017-317-BZ	1693 Flatbush Avenue, Brooklyn
2016-4463-BZ	6202 14 th Avenue (1372-1384 62 nd St., 1370 62 nd St, 6210 14 th Avenue), Brooklyn
2018-13-BZ	30-32 Village Road North, Brooklyn
2018-26-BZ	79-03 Roosevelt Avenue, Queens
2020-45-BZ & 127-15-BZ	135-35 Northern Boulevard, Queens
2020-55-BZ	1284 East 19th Street, Brooklyn
2020-70-BZ	

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Affecting Calendar Numbers:

2019-179-BZ	118 West 28th Street, Manhattan
2020-77-BZ	68 Austin Avenue, Staten Island
2020-81-BZ	220 East 2nd Street, Brooklyn

DOCKETS

New Case Filed Up to October 18-19, 2021

2021-64-BZ

205-207 Gravesend Neck Road, Block 7154, Lot(s) 3 and 4, Borough of **Brooklyn, Community Board: 15**. Special Permit (§73-622) to permit the enlargement of a single-family home contrary to underlying bulk requirements. R4 zoning district. R4 district.

2021-65-BZ

71-03 80th Street, Block 3810, Lot(s) 350, Borough of **Queens, Community Board: 5**. Special Permit (§73-36) to permit the operation of physical culture establishment to be located on the first floor of an existing 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

**TELECONFERENCE PUBLIC HEARINGS
DECEMBER 13-14, 2021, MONDAY-TUESDAY
10:00 A.M. and 2:00 P.M.**

NOTICE IS HEREBY GIVEN of teleconference public hearings, Monday, December 13, 2021, at 10:00 A.M. and 2:00 P.M., and Tuesday December 14, 2021, at 10:00 A.M. and 2:00 P.M., to be streamed live through the Board's website (www.nyc.gov/bsa), with remote public participation, on the following matters:

SPECIAL ORDER CALENDAR

397-47-BZ

APPLICANT – Walter T. Gorman, P.E., P.C., for Park Service Station Realty, LLC, owner.
SUBJECT – Application March 31, 2021 – Amendment of a previously approved variance permitting the operation of an Automotive Service Station (UG 16B). The amendment seeks to permit the installation of a new canopy and the relocation of air and vacuum tower. R3-1 zoning district.
PREMISES AFFECTED – 64-01/11 Woodhaven Boulevard, Block 3136, Lot 24, Borough of Queens.
COMMUNITY BOARD #6Q

467-58-BZ

APPLICANT – Walter T. Gorman, P.E., P.C., GTY-CPG (QNS/BX) Leasing, Inc., owner; Global Partners, LP, lessee.
SUBJECT – Application December 24, 2020 – Extension of Term (§11-411) of a previously approved variance permitting the operation of an Automotive Service Station (UG 16B) which expired on December 14, 2019, Waiver of the Board's Rules of Practice and Procedures. R3-2, R4B and R3X zoning districts.
PREMISES AFFECTED – 172-11 Northern Boulevard, Block 5363, Lot 1, Borough of Queens.
COMMUNITY BOARD #7Q

490-72-BZ

APPLICANT – Gerald J. Caliendo, RA, AIA, for Eran Gohari, owner.
SUBJECT – Application August 5, 2020 – Extension of Time to Obtain a Certificate of Occupancy of a previously approved variance (§72-21) which permitted the operation of a retail or service establishment (UG 6) which expired on February 5, 2020; Waiver of the Board's Rules of Practice and Procedures. R4 zoning district.
PREMISES AFFECTED – 4200 Baychester Avenue, Block 5023, Lot 29, Borough of Bronx.
COMMUNITY BOARD #12BX

758-84-BZ

APPLICANT – David L. Businelli, for Gina Sgarlato Benfante, owner.
SUBJECT – Application January 7, 2021 – Extension of Term of a variance (§72-21) permitted the operation of two-story and cellar commercial building contrary to use regulations which expired on July 2, 2020; Waiver of the Board's Rules of Practice and Procedures. R3X zoning district
PREMISES AFFECTED – 1444 Clove Road, Block 658, Lot 20, Borough of Staten Island.
COMMUNITY BOARD #1SI

17-92-BZ

APPLICANT – Eric Palatnik, P.C., for E & O Realty, owner; Cugine Foods, LLC, lessee.
SUBJECT – Application July 13, 2021 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) permitting the operation of an eating and drinking establishment with accessory drive thru which expired on December 6, 2017; Waiver of the Board's Rules of Practice and Procedures. R5 zoning district.
PREMISES AFFECTED – 60-06/12 Northern Boulevard, Block 1183, Lot 1, Borough of Queens.
COMMUNITY BOARD #2Q

307-00-BZ

APPLICANT – Sheldon Lobel, P.C., for Amerasia Bank, owner.
SUBJECT – Application May 12, 2021 – Extension of Term of a previously approved Variance (§72-21) to permit the operation of non-commercial art gallery, community facility space and office use (UG 6) on floors two through five within a 5 story mixed-use building contrary to underlying use regulation which expires on July 10, 2021. C1-2/R6 zoning district.
PREMISES AFFECTED – 41-02 Main Street, Block 5041, Lot 30, Borough of Queens.
COMMUNITY BOARD #7Q

194-02-BZ

APPLICANT – Akerman LLP, for Shore Plaza LLC, owner; for PFNY, lessee.
SUBJECT – Application April 9, 2021 – Extension of Term of a previously granted special permit (§73-36) for the continued operation of a physical culture establishment (Planet Fitness) which expires on December 1, 2021. C4-3 zoning district.
PREMISES AFFECTED – 1775 South Avenue, Block 2800, Lot 37, Borough of Staten Island.
COMMUNITY BOARD #2SI

CALENDAR

9-11-BZ

APPLICANT – Akerman, LLP, for Riverdale Equities, LTD, owner; PFDNY LLC, lessee.

SUBJECT – Application March 26, 2021 – Extension of Term of a previously granted special permit (§73-36) for the continued operation of a physical culture establishment (Planet Fitness) which expires on June 14, 2021; Amendment to hours of operation. C4-4 zoning district.

PREMISES AFFECTED – 2129 White Plains Road, Block 4286, Lot 35, Borough of Bronx.

COMMUNITY BOARD #11BX

55-11-BZ

APPLICANT – Akerman LLP, for Acadia 2914 Third Ave LLC, owner; PFDNY LLC, lessee.

SUBJECT – Application March 29, 2021 – Extension of Term of a previously approved Special Permit (§73-36) which allowed the operation of a physical culture establishment (Planet Fitness) which expires on August 16, 2021; Amendment to reflect a correction in floor area. C4-4 zoning district.

PREMISES AFFECTED – 2914 Third Avenue, Block 2362, Lot 13, Borough of Bronx.

COMMUNITY BOARD #1SI

57-11-BZ

APPLICANT – Akerman, LLP, for Theresa Annex, LLC, owner; PFDNY LLC, lessee.

SUBJECT – Application March 26, 2021 – Extension of Term of a previously approved Special Permit (§73-36) which allowed the operation of a physical culture establishment (Planet Fitness) which expires on August 23, 2021. C6-3/C4-4D.

PREMISES AFFECTED – 208 West 125th Street, Block 1930, Lot 37, Borough of Manhattan

COMMUNITY BOARD #1M

2017-20-BZII

APPLICANT – Rothkrug Rothkrug & Spector LLP, for GtO Holding LLC, owner; Harbor Fitness Park Slope, Inc., lessee.

SUBJECT – Application September 17, 2020 – Amendment of a previously approved Variance (§72-21) which permitted the operation of a physical cultural establishment (Harbor Fitness Park Slope). The amendment seeks to legalize the enlargement of the establishment at the first floor; Extension of Time to Obtain a Certificate of Occupancy which expired on July 16, 2020. C4-3A/R6B zoning district.

PREMISES AFFECTED – 550 Fifth Avenue, Block 10417, Lot(s) 7501, Borough of Brooklyn.

COMMUNITY BOARD #6BK

APPEALS CALENDAR

2020-39-A

APPLICANT – AVID Architecture, for Danny Lin, owner.
SUBJECT – Application May 4, 2020 – Proposed construction of a single-family residence, within the bed of a mapped street, contrary to General City Law §35. R3A zoning district.

PREMISES AFFECTED – 235 Oder Avenue, Block 2887, Lot 19, Borough of Staten Island.

COMMUNITY BOARD #1SI

ZONING CALENDAR

2020-33-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 437 88 LLC, owner.

SUBJECT – Application April 9, 2020 – Special Permit (§73-36) to permit the operation of a physical cultural establishment (Blink Fitness) to be located within the cellar, first and second floors of an existing building contrary to ZR §32-10. C8-2 and C4-2A Special Bayridge zoning districts.

PREMISES AFFECTED – 2020-33-BZ- 437 88th Street, Block 06050, Lot 45, Borough of Brooklyn.

COMMUNITY BOARD #10BK

2020-44-BZ

APPLICANT – Eric Palatnik, P.C., for Bolla City Holdings Corp., owner.

SUBJECT – Application May 22, 2020 – Special Permit (§73-211) to permit the operation of an Automotive Service Station (UG 16B) with accessory uses contrary to ZR §32-10. C2-2/R4 zoning district.

PREMISES AFFECTED – 2228 Gerritsen Avenue, Block 7370, Lot 10, Borough of Brooklyn.

COMMUNITY BOARD #15BK

2020-86-BZ

APPLICANT – Pryor Cashman LLP, for 15 Parkville LLC, owner.

SUBJECT – Application November 11, 2020 – Special Permit (§73-44) to permit the reduction of required accessory off-street parking spaces for a UG 6B office use and ambulatory diagnostic or treatment facilities (UG 4) (PRC-B1 parking category) contrary to ZR §44-42. M1-1 and R5 zoning district.

PREMISES AFFECTED – 15 Parkville Avenue, Block 5441, Lot(s) 22, 23, Borough of Brooklyn.

COMMUNITY BOARD #12BK

CALENDAR

2021-19-BZ

APPLICANT – Sheldon Lobel, P.C., for ABIC International Corp., owner.

SUBJECT – Application March 16, 2021– Special Permit (§73-66) to allow for a waiver of height restrictions around airports contrary to ZR 61-21. C4-2 & C4-3 zoning districts.

PREMISES AFFECTED – 36-21 Prince Street, Block 4971, Lot 10, Borough of Queens.

COMMUNITY BOARD #7Q

2021-41-BZ

APPLICANT – Akerman LLP, for Inwood HT Equities LLC, owner.

SUBJECT – Application June 23, 2021– Variance (§72-21) to permit the development of a nine (9) story residential building contrary to height (ZR §23-662(a)) and parking (ZR §25-23). R7A & R7-2/C2-4 Special Inwood District.

PREMISES AFFECTED – 22-38 Cumming Street, Block 2237, Lot(s) 16 & 18, Borough of Manhattan.

COMMUNITY BOARD #12M

Margery Perlmutter, Chair/Commissioner

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**PUBLIC HEARINGS
MONDAY-TUESDAY MORNING
OCTOBER 18-19, 2021, 10:00 A.M.**

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

SPECIAL ORDER CALENDAR

2017-100-BZ

APPLICANT – Friedman & Gotbaum LLP, for Trustees of the Spence School Inc., owner.

SUBJECT – Application July 27, 2021 – Amendment of a previously variance for the Spence School Inc., a non-profit private school, to facilitate the transfer of unused development rights from the variance site for incorporation into a new as-of-right commercial development. 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.

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

Negative:.....0

Recused: Commissioner Ottley-Brown.....1

THE RESOLUTION –

This is an application to reopen and amend a variance and special permit—previously granted by the Board under Z.R. §§ 72-21 and 73-19 for the construction of a school building contrary to zoning regulations for use, open areas, and rear yards (Z.R. §§ 32-31, 33-292, and 33-26)—to allow a merger of the Premises with adjacent tax lot 29 and to facilitate the transfer of approximately 13,700 square feet of unused development rights appurtenant to the Premises.

This application has been brought on behalf of the Trustees of the Spence School, Inc. (the “School”), the owner of the Premises.

A public hearing was held on this application on October 4, 2021, after due notice by publication in *The City Record*, and then to decision on October 18, 2021. Community Board 8, Manhattan, takes no position on this application.

The Premises are located on the south side of East 90th Street, between First Avenue and York Avenue, in a C8-4 zoning district, in Manhattan. With approximately 149 feet of frontage along East 90th Street, 101 feet of depth, and 15,005 square feet of lot area, the Premises are occupied by an existing six-story school (approximately 53,717 square feet of floor area).

The Board has exercised jurisdiction over the Premises since April 17, 2018, when, under the subject calendar number, the Board granted a variance, under Z.R. § 72-21, and a special permit, under Z.R. § 73-19, to permit the

construction of a Use Group 3 school building contrary to applicable use regulations set forth in Z.R. § 32-31 and applicable open area and rear yard regulations set forth in Z.R. §§ 33-292 and 33-26, on condition that all work substantially conform to drawings filed with the application; the following 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 be provided, as illustrated on the Board-approved plans; Spence school 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; 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.)—be submitted to DEP for review and approval; substantial construction be completed pursuant to Z.R. § 72-23; a certificate of occupancy be obtained within four years; 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; 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.

Now, the applicant seeks an amendment to merge the Premises with adjacent tax lot 29, to facilitate the transfer of unused development rights, and to reflect minor variations to the existing site plan.

The applicant asserts that the proposed transfer of unused development rights is consistent with *Bella Vista v. Bennett*, 89 N.Y.2d 565 (1997), which recognizes the Board’s authority to review requests for the transfer of development rights from sites subject to Board jurisdiction. As a preliminary matter, the applicant notes that a zoning lot merger had not been part of the School’s long-term plan at the time of its acquisition of the Premises in 2011 or its original application, and, since then and today, the Premises and adjacent tax lot 29 have remained under separate ownership, unlike in *Bella Vista*, where the adjacent property was held in common with the property granted a variance; the School was unable to control the timing and nature of the development on the adjacent lot. The applicant states that there have been no land use actions in the immediate vicinity of the Premises since the 2017 variance approval that could foster a foreseeable change in market

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outlook regarding the use or value of the Premises unused development rights. Thus, the uses and density permitted on the Premises have remained unchanged since the 2017 variance and the school could not have foreseen or anticipated the use of the development rights.

Next, the applicant posits that, since the School is a non-profit organization, financial hardship was not relevant to the School's original application, and the Board did not ascribe a monetary value to the unused development rights. Accordingly, the School, by requesting the transfer of development rights, could not be undermining the Board's grant of a variance, as was the case in *Bella Vista*.

The applicant represents that the transfer of the unused development rights from the Premises would not undermine any of the Board's findings under Z.R. § 72-21. The applicant notes that the Board made all of the findings required pursuant to Z.R. § 72-21 in approving the variance and that use of the development rights is not necessary for the School to satisfy its programmatic needs. Specifically, the excess floor area is a product of voluntarily limiting floor area by constructing a school building (community facility use) that did not use the maximum permissible floor area available and constrained floor area of the school building due to height limitations of the variance.

Therefore, an amendment to the variance to facilitate the transfer of the unused development rights from the Premises to a larger development site would not undermine the integrity of the Board's earlier findings with regards to Z.R. §§ 72-21(c) or 72-21(e).

Accordingly, the Board finds that the proposed transfer does not implicate or affect the basis for its findings pursuant to Z.R. § 72-21, specifically the (c) and (e) findings, at the time that they were made.

As discussed at hearing, the Board notes that there should be no light and air easement benefitting the adjacent property in the event that the School seeks to use the 30,115.5 square feet of development rights at some future date, which could be hampered by such an easement. The applicant notes that there would be a temporary access easement to maintain Code-required rooftop protection during construction but that there would be no form of permanent easement over the School's property.

Based upon its review of the record, the Board has determined that the proposed amendment is appropriate with the conditions set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals *reopens* and *amends* the resolution, adopted on April 17, 2018, so that as amended this portion of the resolution shall read: "to *permit* the transfer of 13,700 square feet of development rights appurtenant to the Premises; *on condition* that all work, operations, and site conditions shall conform to drawings filed with this application marked 'July 27, 2021' – One (1) sheet; and *on further condition*:

THAT there shall be no light and air easement over the School benefitting an adjacent property;

THAT all conditions from prior approvals 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, also indicating this approval and calendar number ('BSA Cal. No. 2017-100-BZ') shall be obtained within four years, by October 18, 2025;

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 18, 2021.

528-71-BZ

APPLICANT – Eric Palatnik, P.C. for PMG NE LLC, owner.

SUBJECT – Application May 29, 2018 – Amendment of a previously approved Variance (§72-21) which permitted the operation of an Automotive Service Station (UG 16B) which expired on October 3, 1982. The Amendment is filed pursuant to §1-07.3 (b)(4)(ii) of the Board's Rules of Practice and Procedures to requests a modification of the term specified as a condition of the Board's resolution. The application seeks to legalize modifications to signage, landscaping, site layout and the accessory

PREMISES AFFECTED – 133-40 150th Street, Block 12116, Lot 0001, Borough of Queens.

COMMUNITY BOARD # 12Q

ACTION OF THE BOARD – Laid over to January 24-25, 2022, at 10 A.M., for deferred decision.

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

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Shelta, and Commissioner Scibetta5
Negative:.....0

ACTION OF THE BOARD – Laid over to January 10-11, 2022, at 10 A.M., for decision, hearing closed.

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837-85-AIII

APPLICANT – William Gati, for Cesar A Linares, owner.
SUBJECT – Application December 14, 2020 – Extension of term to allow the continued operation of a medical office (UG4) in an existing frame structure contrary to Section C26-254.0 of the 1938 Building Code which expired on December 17, 2020. R2 Zoning District.

PREMISES AFFECTED – 166-78 73rd Avenue, Block 6974, Lot 19, Borough of Queens.

COMMUNITY BOARD #8Q

ACTION OF THE BOARD – Laid over to January 10-11, 2022, at 10 A.M., for postponed hearing.

914-86-BZ

APPLICANT – Klein Slowik, PLLC, for Union Temple of Brooklyn, owner; Eastern Atlantic Inc., lessee.

SUBJECT – Application September 30, 2020 – Extension of Term of a previously granted Variance (§72-21) for the continued operation of a Physical Culture Establishment (Eastern Athletic) which expired on May 19, 2017; Extension of Time to obtain a Certificate of Occupancy which expired on December 14, 2011; Amendments to the Board’s conditions on term, Amendment to enlarge the mezzanine; Waiver of the Rules. R8X zoning district.

PREMISES AFFECTED – 1-19 Eastern Parkway, Block 1172, Lot 6, Borough of Brooklyn.

COMMUNITY BOARD #8BK

ACTION OF THE BOARD – Laid over to February 7-8, 2022, at 10 A.M., for continued hearing.

90-91-BZ

APPLICANT – Sheldon Lobel, P.C., for 630-636 City Island Avenue Realty Corp., owner.

SUBJECT – Application July 20, 2018 – Amendment of a previously approved Variance (§72-21) which permitted the enlargement of a legal non-conforming uses with parking located within a two-story mixed-use commercial and residential building contrary to district use regulations. The amendment proposes to occupy a 1,576 square foot retail store with a new eating and drinking establishment, divide an existing residential dwelling into two dwelling units and allow 35 accessory attended parking spaces in the rear; Extension of Term which expired on June 21, 2014; Waiver of the Rules. R3A Special City Island District.

PREMISES AFFECTED – 630-636 City Island Avenue, Block 5636, Lot 19, Borough of Bronx.

COMMUNITY BOARD #10BX

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Shelta, and Commissioner Scibetta5

Negative:.....0

ACTION OF THE BOARD – Laid over to February 7-8, 2022, at 10 A.M., for decision, hearing closed.

13-01-BZ

APPLICANT – Greenberg Traurig LLP, for Extra Spaces Properties Two LLC, owner.

SUBJECT – Application March 22, 2021 – Amendment of a previously approved Variance (§72-21) which permitted a five-story (UG 16) self-storage facility which will expire on July 17, 2021. Amendment to legalize minor deviations from the BSA approved plans for parking, landscaping, interior floor plans, and accessory building signs. Request for an extension of Term for twenty (20) years. R4 zoning district.

PREMISES AFFECTED – 2875 Edson Avenue, Block 4800, Lot 6, Borough of Bronx.

COMMUNITY BOARD # 12BX

ACTION OF THE BOARD – Laid over to January 24-25, 2022, at 10 A.M., for continued hearing.

6-04-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Glenmore Associates, owner; TSI Third Ave, LLC dba New York Sports Club, lessee.

SUBJECT – Application November 16, 2017 – Extension of Term of a variance granted pursuant to §72-21 allow the operation of a physical culture establishment located in a C1-3/R6B, Special Bay Ridge zoning district.

PREMISES AFFECTED – 7118-7124 Third Avenue, Block 5890, Lot(s) 43, Borough of Brooklyn.

COMMUNITY BOARD #1BK

ACTION OF THE BOARD – Laid over to February 7-8, 2022, at 10 A.M., for continued hearing.

42-08-BZ

APPLICANT – Eric Palatnik, P.C., for Grigoriy Katsura, owner.

SUBJECT – Application September 11, 2020 – Amendment of a previously approved Special Permit (§73-622) which permitted the enlargement of an existing home; Extension of Time to Complete Construction which expired on September 18, 2019; Waiver of the Board’s Rules of Practice and Procedures. R3-1 zoning district.

PREMISES AFFECTED – 182 Girard Street, Block 8749, Lot 0275, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to January 10, 2022, at 10 A.M., for continued hearing.

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36-11-BZII

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 270 Greenwich Street Associates, owner for Soul Cycle Tribeca lessee.

SUBJECT – Application January 13, 2021 – Extension of Term of a previously approved Special Permit (§73-36) permitting the operation of a Physical Culture Establishment (SoulCycle) which expired on January 15, 2020, Waiver of the Board’s Rules of Practice and Procedures. C6-3 zoning district.

PREMISES AFFECTED – 270 Greenwich Street, Block 142, Lot 7501, Borough of Manhattan.

COMMUNITY BOARD #1M

ACTION OF THE BOARD – Laid over to January 24-25, 2022, at 10 A.M., for continued hearing.

2016-4337-BZIII

APPLICANT – Eric Palatnik, P.C., for Dr. Joshua Schiller and Ms. Vivian Lee, owners

SUBJECT – Application May 7, 2021 – Extension of Time to Complete Construction of a previously approved Special Permit (§73-69) to permit the enlargement of an existing single-family home which expires on September 19, 2021. R5 zoning district.

PREMISES AFFECTED – 127 Vanderbilt Street, Block 5264, Lot 51, Borough of Brooklyn.

COMMUNITY BOARD #7BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Shelta, and Commissioner Scibetta5
Negative:.....0

ACTION OF THE BOARD – Laid over to November 15, 2021, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

2019-276-A

APPLICANT – Pryor Cashman LLP, for Bill Lecomplex, owner.

SUBJECT – Application October 16, 2019 – Proposed enlargement of an existing two-story with cellar single-family home located on the bed of a mapped street contrary to General City Law §35. R1-2 zoning district.

PREMISES AFFECTED – 15 Stuart Lane, Block 8103, Lot 62, Borough of Queens.

COMMUNITY BOARD #11Q

ACTION OF THE BOARD – Laid over to January 10-11, 2022, at 10 A.M., for continued hearing.

2020-67-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, Carol & Jean Perrotto, owners.

SUBJECT – Application September 4, 2020 – Application filed pursuant to General City Law (“GCL”) §35, to allow the proposed development of a property within the mapped but unbuilt portion of a street; Waiver of the applicable height and setback regulations pursuant to 72-01 (g). R3X Special Richmond District.

PREMISES AFFECTED – 1 Ballard Avenue, Block 6046, Lot 3, Borough of Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Laid over to January 10-11, 2022, at 10 A.M., for continued hearing.

ZONING CALENDAR

2017-261-BZ

CEQR #15-BSA-029K

APPLICANT – Davidoff Hatcher & Citron LLP, for Congregation Chabad-In-Reach-Aliya, owner.

SUBJECT – Application September 5, 2017 – Variance (§72-21) to permit the development of a five-story and cellar house of worship (UG 4) (*Congregation Chabad-In-Reach-Aliya*) contrary to ZR §24-11 (Lot Coverage) and ZR §24-36 (Required 30 Foot Rear Yard). R6 zoning district.

PREMISES AFFECTED – 527 East New York Avenue, Block 1332, Lot 74, Borough of Brooklyn.

COMMUNITY BOARD #9BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta5
Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated September 21, 2020 acting on Alteration Type 1 Application No. 340740719, reads in pertinent part:

1. The proposed lot coverage exceeds the maximum lot 65% permitted pursuant to ZR 24-11 for the interior portion of the lot.
2. The proposed community facility building does not provide the required 30-foot rear yard for the interior portion of the lot pursuant to ZR 24-36.

This is an application for a variance, pursuant to Z.R. § 72-21, to allow, within an R6 zoning district, the enlargement of an existing two-story plus cellar, community facility that does not comply with the zoning requirements for lot coverage (Z.R. § 24-11) and rear yards (Z.R. § 24-36).

A public hearing was held on this application on July 23, 2019, after due notice by publication in *The City Record*, with continued hearings on November 19, 2019, January 14,

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2020, November 30, 2020, March 22, 2021, and October 5, 2021 and then to decision on October 18, 2021. Community Board 9, Brooklyn, recommends approval of this application. The Board received one form letter of support and two letters of support from a City Council Member and the Brooklyn Borough President. The Board also received two letters of objection to this application, citing concerns over increased traffic and noise, reduction of light and air to the surrounding properties, and fire egress hazards.

I.

The Premises are located at the intersection of East New York Avenue and Brooklyn Avenue on the northeast corner, within an R6 zoning district, in Brooklyn. With approximately 44 feet of frontage along East New York Avenue, 50 feet of depth, and 2,209 square feet of lot area, the Premises are currently occupied by an existing two-story with cellar, community facility.

II.

The applicant proposes to construct a new five-story plus cellar community facility (Use Group "UG" 4A) with 4.74 FAR (922 sq. ft. at the cellar level used as a fitness space and for a religious bath; 1,078 sq. ft. at the first floor comprising of a house of worship and a warming kitchen; 1,453 sq. feet at the second floor used as a multi-purpose room; 1,970 sq. ft at the third floor comprised of a study room, a library, music ministry and studio space, and a computer room; 888 sq. ft. at the fourth floor comprised of three classrooms and two mentoring rooms; and 888 sq. ft. at the fifth floor comprised of three offices, a conference room, and a classroom), a wall height and total height of 50 feet, a lot coverage of 2,016 sq. ft., and a rear yard measuring 0'-0".

In the subject R6 zoning district, the Zoning Resolution requires a maximum lot coverage of 65% above the portion of the building measuring 23 feet in height or 1,436 sq. ft. for the subject building, *see* Z.R. §§ 24-11 and 24-33, and a rear yard with a minimum depth of 30 feet, *see* Z.R. § 24-36. Accordingly, the applicant seeks the relief requested herein.

III.

The Zoning Resolution vests the Board with wide discretion to "vary or modify [its] provision[s] so that the spirit of the law shall be observed, public safety secured and substantial justice done," Z.R. § 72-21.

A.

First, the applicant submits that there are unique physical conditions inherent in the Premises—namely, its small lot size and shallow lot depth—that 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. More particularly, the applicant notes that the subject site currently has a lot depth of 50'-0", and the portion of the lot beyond 100 feet of the corner may only be developed to a depth of 20'-0", characteristics which limit the applicant's ability to develop the Premises to meet its programmatic needs and are not commonly found in the surrounding area.

In support of this contention, the applicant surveyed

lots within 400 feet of the Premises (the "Study Area") finding 13 properties comparably shallow to the subject Premises, measuring 50'-0" or less in depth. The applicant states that 12 out of the 13 lots are distinguishable from the subject site because they contain semi-attached residences on shallow lots, which were all constructed as a single development; predate the current provisions of the Zoning Resolution; and are not occupied by a community facility use, which typically require larger footprints.

The applicant also submitted as-of-right drawings demonstrating that strict conformance with Z.R. §§ 24-11 and 24-36 would result in a building which could only be 36'-3" deep, and combined with stairs, elevators, and other required circulation space above the first floor, the resulting small classrooms, study rooms, and multipurpose rooms would be impractical for its proposed use and projected number of students. The applicant represents that compliance with underlying zoning regulations would not permit the usable development of the Premises unless a variance were granted.

Accordingly, 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.

B.

Next, the applicant submits, and the Board concurs that, because the applicant is a not-for-profit religious institution, no showing need be made with respect to realizing a reasonable return.

C.

The applicant further represents that the requested variance would not alter the essential character of the neighborhood, impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare. Specifically, the applicant states that the surrounding area contains a diverse mix of buildings and building use, noting that the three adjacent properties include a five-story mixed-use commercial and residential building, a one-story commercial building, and a two-story, two-family residence with an accessory garage in the rear. Additionally, the proposed building height of 50 feet is less than the maximum permitted height of 60 feet and will have an open area 10 feet in width, used as a driveway and for parking by the residence.

Accordingly, the Board finds that the proposed variance will not alter the essential character of the neighborhood or district in which the Premises are located; will not substantially impair the appropriate use or development of adjacent property; and will not be detrimental to the public welfare.

D.

The applicant represents that the above practical difficulties or unnecessary hardship have not been created by the applicant or by a predecessor in title. Specifically, the applicant submits that the practical difficulties and unnecessary hardship affecting the Premises are due to the unique physical conditions of the subject lot, which have

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limited the applicant's ability to meet its programmatic needs. Over the course of hearings, the Board raised concerns that the hardship complained of in the instant application may be self-created due to the previous common ownership between lots 1, 73, and 74. In response, the applicant submitted the full ownership history of the three lots, which demonstrated that although all three lots were in common ownership at various times, all three lots were developed on their own and reiterated that it is the applicant's programmatic needs which has necessitated the hardship complained of in the current application before the Board.

Accordingly, the Board finds that the above practical difficulties or unnecessary hardship have not been created by the applicant or by a predecessor in title.

E.

The applicant notes that the variance request is the minimum necessary to develop a residence at the Premises. The applicant submits that all other bulk requirements will be in full compliance with the Zoning Resolution.

Accordingly, the Board finds that the proposed variance is the minimum necessary to afford relief within the intent and purposes of the Zoning Resolution.

IV.

The project is classified as an Unlisted action pursuant to Section 617.2 of 6 NYCRR. The Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final EAS CEQR No. 15BSA029K, dated October 18, 2021. The EAS documents that the project as proposed would not have significant adverse impacts on land use, zoning, and public policy; socioeconomic conditions; community facilities and services; open space; shadows; historic resources; urban design and visual resources; neighborhood character; natural resources; waterfront revitalization program; infrastructure; hazardous materials; solid waste and sanitation services; energy; traffic and parking; transit and pedestrians; air quality; noise; or public health.

V.

Based on the foregoing, the Board finds that the evidence in the record supports the findings required to be made under Z.R. § 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 make each and every one of the required findings under Z.R. § 72-21 to *permit*, the construction of a five-story plus cellar, community facility that does not comply with the zoning requirements for lot coverage (Z.R. § 24-11) and rear yards (Z.R. § 24-36); *on condition* that all work and site conditions shall conform to drawings filed with this application marked "Received January 13, 2020"—Fourteen (14) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: a lot coverage of 2,016 sq. ft. and a rear yard measuring 0'-0";

THAT a certificate of occupancy, also indicating this

approval and calendar number ("BSA Cal. No. 2017-261-BZ"), shall be obtained within four years, by October 18, 2025;

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 18, 2021.

2017-317-BZ

APPLICANT – Sheldon Lobel, P.C., for 1693 Flatbush LLC, owner.

SUBJECT – Application December 13, 2017 – 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. PREMISES AFFECTED – 1693 Flatbush Avenue, Block 7598, Lot 51, Borough of Brooklyn.

COMMUNITY BOARD #18BK

ACTION OF THE BOARD – Application withdrawn without prejudice.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Shelta, and Commissioner Scibetta5
Negative:0

THE RESOLUTION –

The decision of the Department of Buildings ("DOB"), dated November 16, 2017, acting on Application Type Alteration 1 No. 321273974, reads in pertinent part:

Objection #1 - ZR 33-121 – Proposed floor area is contrary to ZR Max FAR=1.0

Objection #2 - ZR 33-431 – Proposed height of front wall is contrary to max 30 ft or 2 story

Objection #3 - ZR 36-21 – Proposed number of parking spaces is contrary to ZR Min 53

This is an application under Z.R. § 72-21 for a variance to permit, in a C2-2 (R5) zoning district, the development of a 5 1/2-story plus cellar commercial office building that does not comply with the zoning requirements for floor area (Z.R. § 36-121), street wall, setback, and sky exposure plane (Z.R. § 33-431), and parking (Z.R. § 36-21).

A public hearing was held on this application on January 28, 2020, after due notice by publication in *The City Record*, with a continued hearing on August 25, 2020 and then to decision on October 18, 2021. Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta performed inspections of the

MINUTES

Premises and surrounding neighborhood. Community Board 18, Brooklyn, recommends approval of this application on condition that the property is well lit and maintained at all times. The Board received one form letter of support.

The Premises are a triangularly-shaped lot located on the southwest corner of Flatbush Avenue and East 34th Street, within a C2-2 (R5) zoning district, in Brooklyn. With approximately 72 feet of frontage along Flatbush Avenue, 5 feet of frontage along East 34th Street, 100 feet of depth, and 4,414 square feet of lot area, the Premises are currently vacant.

The applicant proposes to construct a new 5 1/2 story plus cellar Use Group (“UG”) 6 commercial office building with a total floor area of 19,890 square feet (4.50 FAR) (3,030 square feet of commercial and mechanical space in the cellar; an open parking lot with 18 attended parking spaces and approximately 1,165 square feet of commercial area relating to the lobby and stairwells on the first floor; 4,034 square feet of commercial floor area, with approximately 2,954 square feet of commercial space in two distinct office spaces of 1,604 square feet and 1,350 square feet, on each floor from two through five; and 2,598 square feet of commercial floor area, consisting of approximately 1,613 square feet in one office space and an open roof terrace).

At the Premises, a maximum floor area of 4,414.5 square feet (1.0 FAR) for commercial use is permitted and a maximum floor area of 8,831 square feet (2.0 FAR) for community facility use is permitted, pursuant to Z.R. § 33-121; a maximum height of 30 feet or two stories for commercial use is permitted and a maximum 35 feet or three stories for community facility use is permitted, pursuant to Z.R. § 33-431; and one parking spot per 300 square feet is required, pursuant to Z.R. § 36-21.

The project is classified as an Unlisted action pursuant to Section 617.2 of 6 NYCRR. The Board conducted an environmental review of the proposed action and has documented relevant information about the project in the EAS CEQR No. 118BSA074K.

By letter dated October 4, 2019, the New York City Department of Environmental Protection (“DEP”), Bureau of Sustainability states that it has reviewed the July 2019 Environmental Assessment Statement, the October 2017 Phase I Environmental Site Assessment (“Phase I”), the July 2017 Phase II Environmental Site Assessment (“Phase II”), and the July 2019 Remedial Action Plan (“RAP”), and Construction Health and Safety Plan (“CHASP”) prepared on behalf of the applicant. The October 2017 Phase I report revealed that historical on-site and surrounding area land uses consisted of a variety of residential, commercial, and industrial uses including gasoline filling stations, residential dwellings, auto sales, used car sales, car rentals, storage of used and junk automobiles, mixed-used buildings, auto repair shops, parking lots, a police station, dry cleaners, a household chemicals manufacturer, a contractors storage yard, a school, a coal company, an ice company, etc. Regulatory databases identified eight spills within 1/8 mile; 16 underground storage tank sites and 24 aboveground

storage tank sites within 1/4 mile; 24 leaking storage tank sites and one brownfield site within 1/2 mile of the subject property.

During the July 2017 field work, four soil borings were advanced (B-1 to B-4). Two soil samples were collected from each boring location. One soil sample was collected from the surface at a depth of zero to two feet below grade surface (“bgs”), and another deeper soil sample was collected at a depth of 10-12 feet bgs. Groundwater was encountered at an average depth of 22 feet bgs. Two temporary ground water monitoring wells (GW-1 and GW-2) were installed and one groundwater sample was collected from each well. Soil and groundwater samples were analyzed for volatile organic compounds (“VOCs”) by United States Environmental Protection Agency (“EPA”) Method 8260, semi-volatile organic compounds (“SVOCs”) by EPA Method 8270, pesticides by EDA Method 8081, polychlorinated biphenyls (“PCBs”) by EPA Method 8082, and Target Analyte List (“TAL”) metals (filtered and unfiltered for groundwater samples). Three soil vapor samples (SV-1 to SV-3) were collected and analyzed for VOCs by EPA Method TO-15.

The soil analytical results revealed that SVOCs and PCBs were either non-detect (“ND”) or below their New York State Department of Environmental Conservation (“NYSDEC”) 6 NYCRR Part 375 Unrestricted Use Soil Cleanup Objectives (“SCOs”). One VOC (acetone) one pesticide (4,4’-DDE) and several other metals (cadmium, copper, lead, nickel, and zinc) were detected above their NYSDEC Unrestricted Use SCOs.

The groundwater analytical results revealed that VOCs, pesticides, and PCBs were either ND or below their respective NYSDEC Technical and Operational Guidance Series (1.1.1) Class GA Ambient Water Quality Standards and Guidance Values (“AWQS”). One SVOC (chrysene) and several other metals (chromium, manganese, nickel, selenium, and sodium) were detected above their NYSDEC AWQS.

The soil vapor analytical results revealed that several VOCs (1,2,4 trimethylbenzene, 1,3-butadiene, 2-butanone, acetone, benzene, carbon tetrachloride, chloroform, ethyl benzene, methyl methacrylate, methylene chloride, n-heptane, n-hexane, o-xylene, p- & m-xylenes, p-ethyltoluene, propylene, styrene, tetrachloroethylene (“PCE”), toluene, and trichloroethylene (“TCE”)) were detected. PCE and TCE were detected above their Air Guideline Values in the New York State Department of Health’s October 2006 Guidance for Evaluating Soil Vapor Intrusion in the State of New York.

The July 2019 RAP proposes the removal and closure of underground storage tanks in accordance with applicable local, state and federal laws and regulations; excavation, transportation, and off-site disposal of soil in accordance with applicable laws and regulations; stockpiled soil will be covered with appropriately anchored plastic tarps; dust control; air monitoring; if de-watering into New York City sewer drains is anticipated during the proposed construction, a New York City Department of Environmental Protection

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Sewer Discharge Permit must be obtained prior to the start of any de-water activities; construction of a cover system consisting of the six-inch thick concrete building slab and two feet of imported certified clean soil in landscaped areas and surrounding paved surfaces; and installation of a vapor barrier system consisting of Stego Wrap 20-mil or similar vapor barrier system below the slab throughout the full building area and outside all sub-grade foundation sidewalls. The July 2019 CHASP addresses worker and community health and safety during redevelopment.

Based on their review of the submitted documentation, DEP as the following comments and recommendations to BSA:

RAP

- BSA should instruct the applicant that the proposed vapor barrier system should be used unless an amendment is approved by DEP.

DEP finds the July 2019 RAP and CHASP for the proposed project acceptable, as long as the aforementioned information is incorporate into the RAP. BSA should instruct the applicant that at the completion of the project, a Professional Engineer (“P.E.”) certified Remedial Closure Report should be submitted to DEP for review and approval for the proposed project. The P.E. certified Remedial Closure should indicate 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 requirements in any landscaped/grass covered areas not capped with concrete/asphalt, etc.).

Over the course of hearings, the Board expressed concerns regarding whether the applicant had met the necessary findings under Z.R. § 72-21 and described the application as premature. With regards to Z.R. § 72-21(a), the Board stated that the applicant’s claimed hardship of environmental contamination needed to be supported with verifiable investigations and cost estimates. The applicant provided tests studying the environmental contamination at the Premises which the Board stated were inconclusive as to the level of contamination present at the site. The Board disputed the applicant’s repeated claim that 463 cubic yards at the Premises required remediation and argued that the figure was actually 93 cubic yards based on the figures in the applicant’s report. Furthermore, the Board stated that the applicant’s uniqueness argument which related to the triangular shape of the lot was not supported by the applicant’s studies. The Board found that within the 600 foot radius Study Area near the Premises, there are seven other similarly shaped lots, and of those seven lots, the subject Premises are the third largest and has the widest angles, meaning it has the most regular floorplate. Additionally, the applicant provided as-of-right plans which the Board noted did not use the same zoning principles or layouts as in the proposed plans, and, therefore, were not as fully developed as the proposed plans. The Board stated that the information in the applicant’s materials justified fewer

than the requested waivers, such as only a height and setback waiver.

On Z.R. § 72-21 (b), the Board doubted the veracity of the figures the applicant claimed as part of its economic hardship, particularly the costs for remediation at the site, which it stated were inflated. Additionally, the Board found that the applicant added into its calculations costs that would typically be passed onto future tenants. As support for its Z.R. § 72-21(e) minimum variance argument, the applicant submitted plans demonstrating lesser variance options with a building at four stories and 3.59 FAR. The Board noted how this design was still well over the allowable FAR and height limitations. The Board argued that the of the lesser variance plans had the same issues as the as-of-right plans in that they did not incorporate the same zoning principles or layouts as in the proposed plans or take advantage of less restrictive zoning requirements such as the amount of parking necessary for a community facility use.

The Board posed these questions and requested that the applicant respond to them in its next submission. However, by correspondence, dated August 23, 2021, the applicant requested to withdraw the application without prejudice.

Therefore, it is Resolved, that this application is hereby *withdrawn* without prejudice.

Adopted by the Board of Standards and Appeals, October 18, 2021.

2016-4463-BZ

APPLICANT – Law Office of Jay Goldstein, for The AM Foundation c/o Arthur Meisels, owner; Mosdos Satmar BP, lessee.

SUBJECT – Application December 8, 2016 – Variance (§72-21) to permit the construction of a Use Group 3 school (Mosdos Satmar BP) contrary to Use (§42-00 and §77-11), Floor Area/Floor Area Ratio (§43-122, §24-11 and §77-22), Lot Coverage (§24-11 and §77-24), Height, Setbacks and Sky Exposure Plane (§43-43) and §24-521), Front Yard (§24-34 and §77-27), Side Yard (§24-35 and §77-27), Rear Yard (§24-36 and §77-27), Side Yard Setback (§24-551 and §77-28) and Required Yard Along District Boundary (§43-301) regulations. ZR 73-19 to permit a school in an M1-1 ZD. M1-1/R5B zoning district.

PREMISES AFFECTED – 6202 14th Avenue (1372-1384 62nd St., 1370 62nd St, 6210 14th Avenue) Block 5733, Lot(s) 35, 36, 42, Borough of Brooklyn.

COMMUNITY BOARD #10BK

ACTION OF THE BOARD – Laid over to January 24-25, 2022, at 10 A.M., for continued hearing.

MINUTES

2018-13-BZ

APPLICANT – Law Office of Lyra J. Altman, for Joseph Mamrout, owner.

SUBJECT – Application January 30, 2018 – 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.

PREMISES AFFECTED – 30-32 Village Road North, Block 7123, Lot(s) 29 and 30, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to January 10-11, 2022, at 10 A.M., for continued hearing.

2018-26-BZ

APPLICANT – Gerald J. Caliendo, RA, AIA, for Ivan Duque, owner.

SUBJECT – Application February 21, 2018 – 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.

PREMISES AFFECTED – 79-03 Roosevelt Avenue, Block 1290, Lot 46, Borough of Queens.

COMMUNITY BOARD #3Q

ACTION OF THE BOARD – Laid over to March 28-29, 2022, at 10 A.M., for adjourned hearing.

2020-45-BZ & 127-15-BZ

APPLICANT – Goldman Harris LLC, for Queens Theater Owner LLC, owner.

SUBJECT – Application May 22, 2020 – Variance (ZR §72-21) to permit the construction of a 16-story mixed-use building contrary to Residential FAR (ZR §23-151), Commercial FAR (ZR §33-121), and Total FAR (ZR §35-311(d)); Open Space and Open Space Ratio (ZR §23-151) and (ZR §35-32), permitted obstruction in the rear yard (ZR §24-339(b)(3) and ZR §33-23(b)(3)), Density (ZR §23-22), location of eating and drinking establishment above the ground floor (ZR §32-421), and contrary to maximum height for new buildings in the Airport Approach District (ZR §61-21); Amendment of a previously approved Special Permit (ZR §73-66) for the construction of a building in excess of the height limits in the Airport Approach District (ZR §61-21). R6 (C2-2) Zoning District.

PREMISES AFFECTED – 135-35 Northern Boulevard, Block 4958, Lot 38, Borough of Queens.

COMMUNITY BOARD #7Q

ACTION OF THE BOARD – Laid over to December 13-14, 2021, at 10 A.M., for adjourned hearing.

2020-55-BZ

APPLICANT – Eric Palatnik, P.C., for 1284 Plaza LLC, owner.

SUBJECT – Application July 2, 2020 – Variance (§72-21) to permit the development of an eight story and cellar residential building contrary to ZR §23-47 (rear yard). R7A zoning district.

PREMISES AFFECTED – 1284 East 19th Street, Block 6738, Lot (s) 31, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Laid over to January 24-25, 2022, at 10 A.M., for adjourned hearing.

PUBLIC HEARINGS MONDAY-TUESDAY AFTERNOON OCTOBER 18-19, 2021, 2:00 P.M.

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

2019-179-BZ

APPLICANT – Eric Palatnik, P.C., for Lee Yuen Fung Trading Co., Inc., owner.

SUBJECT – Application June 20, 2019 – Variance (§72-21) to permit the development of a twelve (12) story mixed-use building containing commercial use at the ground floor and twelve residential condominium units above contrary to ZR §42-00. M1-6 zoning district.

PREMISES AFFECTED – 118 West 28th Street, Block 00803, Lot 0051, Borough of Manhattan.

COMMUNITY BOARD #5M

ACTION OF THE BOARD – Laid over to January 10-11, 2022, at 10 A.M., for continued hearing.

2020-77-BZ

APPLICANT – AMP Architecture, PLLC Anthony Portillo & Douglas Scharadin for Gerald Maya, owner.

SUBJECT – Application September 29, 2020 – Variance (§72-21) to permit the enlargement of an existing building contrary to ZR 23-45 (front yard setback). R3-1 zoning district.

PREMISES AFFECTED – 68 Austin Avenue, Block 3116, Lot 89, Borough of Staten Island.

COMMUNITY BOARD #2SI

THE VOTE TO CLOSE HEARING –

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

ACTION OF THE BOARD – Laid over to January 10-11, 2022, at 10 A.M., for decision, hearing closed.

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2020-81-BZ

APPLICANT – Michael Scaduto AIA, PLLC, for Beerinder Rodey, owner.

SUBJECT – Application October 9, 2020 – Variance (§72-21) to permit parking contrary to ZR §25-20 for a two-family (2) home. R5 zoning district.

PREMISES AFFECTED – 220 East 2nd Street, Block 5324, Lot 28, Borough of Brooklyn.

COMMUNITY BOARD #12BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Shelta, and Commissioner Scibetta5
Negative:.....0

ACTION OF THE BOARD – Laid over to January 10-11, 2022, at 10 A.M., for decision, hearing closed.

Carlo Costanza, Executive Director

BULLETIN

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November 26, 2021

DIRECTORY

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2021-66-BZ

59 Bleecker Street, Block 00529, Lot(s) 0069, Borough of **Manhattan, Community Board: 2**. Special Permit (§73-36) to permit the operation of physical culture establishment to be located in a portion of the cellar and portion of the first floor of an existing building contrary to ZR §42-10. M1-1 zoning district. M1-5B district.

2021-67-BZ

2307 Ocean Parkway, Block 7183, Lot(s) 0031, Borough of **Brooklyn, Community Board: 15**. Special Permit (§73-622) to permit the enlargement of a single-family home contrary to underlying bulk requirements. R4 (Special Ocean Parkway) zoning district. R4 (OP) district.

2021-68-A

348A Deisius Street, Block 6566, Lot(s) 0001, Borough of **Staten Island, Community Board: 3**. Proposed development of a NYC School Construction Authority (SCA) school building located on a site not fronting on a mapped street contrary to General City Law §36. R1-2 zoning district. Special South Richmond Development District. R1-2/SRD district.

2021-69-BZ

240-10 Merrick Boulevard, Block 13204, Lot(s) 0097, Borough of **Queens, Community Board: 13**. Special Permit (§73-243) to permit an accessory drive-through accessory to an Eating and Drinking establishment (UG 6) of an eating and drinking establishment contrary to ZR §36-15. C1-3/R2 zoning district. C1-3/R2 district.

2021-70-BZ

1206 East 21st Street, Block 7602, Lot(s) 0078, Borough of **Brooklyn, Community Board: 14**. Special Permit (§73-622) to permit the enlargement of a one-family residence contrary to underlying bulk requirements. R2 zoning district. R2 district.

2021-71-BZ

105-31 76th Street, Block 9124, Lot(s) 106, Borough of **Queens, Community Board: 10**. Variance (§72-21) to permit the construction of a House of Worship (UG 4) (Al Furqan Mosque) contrary to underlying bulk requirements. R4A zoning district. R4A district.

2021-72-A

7-11 Annapolis Street, Block 15570, Lot(s) 0032, Borough of **Queens, Community Board: 14**. Proposed enlargement of an existing building within the bed of a mapped street contrary to General City Law (§35). R2X zoning district. 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

**TELECONFERENCE PUBLIC HEARINGS
JANUARY 10-11, 2022, MONDAY-TUESDAY
10:00 A.M. and 2:00 P.M.**

NOTICE IS HEREBY GIVEN of teleconference public hearings, Monday, January 10, 2022, at 10:00 A.M. and 2:00 P.M., and Tuesday January 11, 2022, at 10:00 A.M. and 2:00 P.M., to be streamed live through the Board's website (www.nyc.gov/bsa), with remote public participation, on the following matters:

SPECIAL ORDER CALENDAR

1254-80-BZ

APPLICANT – Jay Goldstein, Esq., for Sephardic Institute for Advanced Learning, owner.

SUBJECT – Application May 26, 2020 – Amendment of a previously approved Variance (§72-21) to permit the enlargement of a previously approved house of worship contrary to underlying bulk requirements. R6A, Special Ocean Parkway District.

PREMISES AFFECTED – 511 Avenue R, Block 394, Lot 15, Borough of Brooklyn.

COMMUNITY BOARD #15BK

364-82-BZ

APPLICANT – Qiang Su, for Little Neck Commons LLC, owner; SAF-T-SWIM, LLC, lessee.

SUBJECT – Application June 17, 2021 – Extension of Time to obtain a Certificate of Occupancy for a previously approved Special Permit which permitted the operation of a Physical Cultural establishment which expired on May 17, 2017; Amendment to reflect a change in owner/operator, signage and hours of operation; Waiver of the Board's Rules of Practice and Procedure. C1-2/R3-2 zoning district.

PREMISES AFFECTED – 245-24 Horace Harding Expressway, Block 8276, Lot 100, Borough of Queens.

COMMUNITY BOARD #4Q

837-85-A

APPLICANT – William Gati, for Cesar A. Linares, owner.

SUBJECT – Application December 14, 2020 – Extension of term to allow the continued operation of a medical office (UG4) in an existing frame structure contrary to Section C26-254.0 of the 1938 Building Code which expired on December 17, 2020. R2 Zoning District.

PREMISES AFFECTED – 166-18 73rd Avenue, Block 6974, Lot 19, Borough of Queens.

COMMUNITY BOARD #4Q

110-99-BZ

APPLICANT – Law Office of Jay Goldstein, for Dkiuc & Company, LLC, owner.

SUBJECT – Application May 6, 2021 – Extension of Term of a previously approved Variance (§72-21) which permitted the operation of an automotive repair shop (Use Group 16B) which expired on June 27, 2020; Extension of Time to Obtain a Certificate of Occupancy which expired on September 18, 2016; Waiver of the Board's Rules of Practice and Procedures. R6B zoning district.

PREMISES AFFECTED – 56-58 Kosciuszko Street, Block 1783, Lot 34, Brooklyn.

COMMUNITY BOARD #3BK

224-14-BZ & 225-14-A

APPLICANT – Eric Palatnik, P.C., for 1534 Victory Boulevard, owner.

SUBJECT – Application August 31, 2021 – Extension of Time to Complete Construction and Obtain a Certificate of Occupancy, which will expire on January 30, 2022, for a previously approved Variance (72-21) to permit the addition of five (5) accessory off-street parking spaces to an ambulatory diagnostic or treatment health care facility, and an appeal pursuant to General City Law 35. R1-2 zoning district.

PREMISES AFFECTED – 1534 Victory Boulevard, Block 695, Lot 81, Borough of Staten Island.

COMMUNITY BOARD #1SI

258-15-BZ

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

SUBJECT – Application July 21, 2021 – Extension of Time of a previously approved Special Permit (§73-44) to reduce the number of required accessory off street parking spaces from twenty nine (29) to fourteen (14) at the existing building which expired on July 25, 2021. C4-2 zoning district.

PREMISES AFFECTED – 2619 East 16th Street, Block 7460, Lot 0096, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ZONING CALENDAR

2021-16-BZ

APPLICANT – Rosenberg & Estis, P.C by Frank E Chaney, Esq., for Property 1 Holdings LLC, owner.

SUBJECT – Application February 24, 2021 – Variance (§72-21) to permit the development of a building to contrary to ZR §23-692(d)(2), a/k/a the “sliver law,” to allow the proposed building to exceed the maximum allowable building height by 6.07 feet, and (b) ZR §23-62(g)(3)(i) to allow the elevator and stair bulkheads to exceed the maximum allowable area for permitted obstructions by

CALENDAR

148.64 square feet. R8A/C2-4 zoning district.
PREMISES AFFECTED – 302 W 128th Street, Block 1954,
Lot 136, Borough of Manhattan.
COMMUNITY BOARD #10M

2021-32-BZ

APPLICANT – Law Office of Jay Goldstein, PLLC, for
Yehuda Eckstein, owner.
SUBJECT – Application May 24, 2021 – Special Permit
 (§73-622) to permit the enlargement of an existing home
contrary to ZR §23-141 (FAR and OSR); ZR §23-47 (rear
yard) and ZR §23-461(a) (side yard). R2 zoning district.
PREMISES AFFECTED – 1471 East 26th Street, Block
7680, Lot 18, Brooklyn.
COMMUNITY BOARD #14BK

Margery Perlmutter, Chair/Commissioner

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**PUBLIC HEARINGS
MONDAY-TUESDAY MORNING
NOVEMBER 15-16, 2021, 10:00 A.M.**

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

SPECIAL ORDER CALENDAR

CORRECTION: This resolution adopted on November 15, 2021, under Calendar No. 81-74-BZ, is hereby corrected to read as follows:

81-74-BZIV

APPLICANT – Gerald J. Caliendo, RA, AIA, for 57 Avenue Market Inc., owner.

SUBJECT – Application August 4, 2020 – Extension of Time to Obtain a Certificate of Occupancy for a previously approved variance (§72-21) which permitted the operation of a supermarket (UG 6) which expired on July 23, 2020. 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 – Application granted.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta5
Negative:.....0

THE RESOLUTION –

This is an application for an extension of time to obtain a certificate of occupancy pursuant to a variance, under Z.R. § 11-411, that permitted the operation of a supermarket (UG 6) and expired on July 23, 2020.

A public hearing was held on this application on September 27, 2021, after due notice by publication in *The City Record*, and then to decision on November 15, 2021. Vice-Chair Chanda performed an inspection of the Premises and surrounding neighborhood.

The Premises are bounded by 57th Avenue to the south, 97th Place to the west, 98th Street to the east, located partially within an R6B zoning district and located partially within an R6A (C2-2) zoning district, in Queens. With approximately 192 feet of frontage along 57th Avenue, 184 feet of frontage along 97th Place, 158 feet of frontage along 98th Street, and 34,177 square feet of lot area, the Premises are occupied by an existing one-story plus mezzanine supermarket (UG 6) containing 23,894 square feet of floor area (22,868 square feet of floor area on the first floor and 1,026 square feet of floor area on the mezzanine level), with loading berth and 21 accessory off-street parking spaces.

The Board has exercised jurisdiction over the Premises since February 27, 1962, when, under BSA Cal. No. 549-61-BZ, the Board granted a variance to permit the erection

and maintenance of a one-story building for use as stores, only as permitted in a restricted retail district, with loading and unloading, accessory parking of patrons' cars on the open area, with business signs and curb cuts, for a term of 25 years, to expire February 27, 1987, on condition that the work be done in accordance with drawings filed with the application; on the north, east and west boundaries of the parking lot a split-sapling fence be constructed on steel supports with the finished side of the split-sapling fence facing out; bumpers be provided around the perimeter where cars are to be parked and that between the bumpers and split-sapling fence there be planted a three-foot wide hedge; the hours for loading and unloading be from 8:00 a.m. to 6:00 p.m. only; all laws, rules and regulations applicable be complied with; and, permits be obtained, work done and a certificate of occupancy be obtained within one year, by February 27, 1963.

On June 26, 1962, under BSA Cal. No. 549-61-BZ, the Board amended the resolution to permit the building to be redesigned, rearranged, constructed and used substantially as shown on drawings of proposed conditions filed with the application, with arrangement of the balance of the Premises and curb cuts shown thereon, on condition that the building be faced with face brick on all four sides; and, other than as amended the resolution be complied with in all respects.

On February 13, 1963, under BSA Cal. No. 549-61-BZ, the Board further amended the resolution to extend the time to obtain permits and complete the work for one year, by February 13, 1964, on condition that a certificate of occupancy be obtained.

On June 25, 1974, under the subject calendar number, the Board, pursuant to Z.R. §§ 11-411 and 11-412, permitted the erection of a one-story enlargement to the existing supermarket and extended the term, to expire on February 27, 1987, on condition that all work substantially conform to plans filed with the application; all laws, rules and regulations applicable be complied with; and, substantial construction be completed within one year, by June 25, 1975.

On April 28, 1987, under the subject calendar number, the Board amended the resolution to extend the term for ten years, to expire on February 27, 1997, on condition that other than as amended the resolution be complied with in all respects; and, a new certificate of occupancy be obtained within one year, by April 28, 1988.

On July 13, 1999, under the subject calendar number, the Board further amended the resolution to extend the term for ten years, to expire on February 27, 2007, and legalized the enlargement of the storage area, on condition that the Premises be kept clean of debris and graffiti; all landscaping be maintained in accordance with BSA-approved plans; all lighting be pointed away from residential uses; the Premises be maintained in substantial compliance with the proposed plans 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 year, by July 13, 2000.

On April 24, 2007, under the subject calendar number,

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the Board further amended the resolution to extend the term for ten years, to expire on February 27, 2017, on condition that the use substantially conform to the approved plans; the conditions be listed on the certificate of occupancy; the Premises be maintained free of debris; 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, 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.

On July 23, 2019, under the subject calendar number, the Board further amended the resolution to extend the term of the variance for ten years and legalize a recycling structure at the Premises on condition that the term of the variance expire February 27, 2027; no trash or recyclables be stored outside of the approved structure; the recycling machine structure materials, including the exterior finish, be maintained and repaired, painted or replaced as necessary to maintain it in first-class condition; the Premises be kept clean of debris and graffiti; all lighting be pointed away from residential uses; the conditions appear on the certificate of occupancy; a revised certificate of occupancy, also indicating the approval and calendar number (“BSA Cal. No. 81-74-BZ”), be obtained within one year, by July 23, 2020; all conditions from prior resolution 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, 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.

The time to obtain a certificate of occupancy having expired, the applicant seeks the subject relief.

The applicant represents that all relevant conditions of prior Board approvals remain in compliance at the Premises apart from a revised certificate of occupancy. The applicant anticipates sign-off of open Department of Buildings items will be obtained within the next two to three months and a certificate of occupancy can then be obtained. Specifically, the applicant states that the recycling structure and program has been established in conformance with the Board approved plans, open from 8:00 a.m. to 10:30 p.m., seven days per week, with two pick-ups per week of all materials, on Monday and Thursday between the hours of 7:00 a.m. and 12:00 p.m. The Premises are screened from all adjoining lots in the residence district with a concrete block wall and uniformly painted fence of fire-resistant material around the parking area; the fence is no more than 8'-0" above finished grade and no more than 50 percent of the face is open.

The applicant provided proof of installation of improvements at the Premises in satisfaction of the Board, demonstrating the recycling structure improved with stucco

and painting in a color scheme that matches the existing supermarket building and the Premises clean and completely free of graffiti.

Based upon its review of the record, the Board has determined that the requested extension of time to obtain a certificate of occupancy is appropriate with certain conditions as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *amend* the resolution, dated February 27, 1962, under BSA Cal. No. 549-61-BZ, as amended through July 23, 2019, under the subject calendar number, so that as amended this portion of the resolution shall read: “to grant a one-year extension of time to obtain a certificate of occupancy, to November 15, 2022; *on condition*:

THAT the term of the variance shall expire on February 27, 2027

THAT no trash or recyclables shall be stored outside of the approved structure;

THAT the recycling machine structure materials, including the exterior finish, shall be maintained and repaired, painted or replaced as necessary to maintain it in first-class condition;

THAT the Premises shall be kept clean of debris and graffiti;

THAT all landscaping shall be maintained in accordance with BSA-approved plans;

THAT all lighting shall be pointed away from residential uses;

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, also indicating this approval and calendar number (“BSA Cal. No. 81-74-BZ”), shall be obtained within one year, by November 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;

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 15, 2021.

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72-04-BZ

APPLICANT – Eric Palatnik, P.C, for BWAY-129th Street, Gasoline Corp., owner.

SUBJECT – Application October 18, 2019 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of an Automotive Service Station (UG 16B)(Getty) which expires on June 3, 2020. C1-2/R6 & R6 zoning district.

PREMISES AFFECTED – 141-54 Northern Boulevard, Block 5012, Lot 45, Borough of Queens.

COMMUNITY BOARD #7Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta5
Negative:.....0

THE RESOLUTION –

This is an application for an extension of term of a variance, under Z.R. § 11-411, permitted the use and maintenance of the Premises as an automotive service station (Use Group (“UG”) 16B) with accessory uses and expired on June 3, 2020.

A public hearing was held on this application on May 4, 2020, after due notice by publication in *The City Record*, with continued hearings on January 11, 2021, March 8, 2021, June 14, 2021, and September 13, 2021, and then to decision on November 15, 2021. Vice-Chair Chanda and Commissioner Ottley-Brown performed inspections of the Premises and surrounding area. Community Board 7, Queens, recommends approval of this application.

The Premises are located on the southwest corner of Northern Boulevard and Parsons Boulevard, within an R6 (C1-2) zoning district, in Queens. With approximately 102 feet of frontage along Northern Boulevard, 150 feet of frontage along Parsons Boulevard, and 15,000 square feet of lot area, the Premises are occupied by an existing one-story automotive service station with accessory uses (three repair bays and a sales area) building (1,540 square feet of floor area) with ten parking spaces.

The Board has exercised jurisdiction over the Premises since February 9, 1960, when, under BSA Cal. No. 436-59-BZ, the Board granted a variance, for a term of 20 years, to permit, in a local retail and residence use district, the erection and maintenance of a gasoline service station, with lubricatorium, car washing, minor auto repairs, office and sales, storage room, parking and storage of motor vehicles, with a business entrance within 75 feet of a residence use district. Subsequently, the grant was amended and the term extended by the Board at various times.

On March 29, 2005, under the subject calendar number, the Board granted the reestablishment of the variance for ten years from the expiration of the prior grant, to expire on June 3, 2010, and granted an amendment to permit a minor alteration to the signage at the site and to legalize the existing convenience store as an accessory use.

On September 25, 2012, under the subject calendar

number, the Board amended the variance to extend the term for ten years from June 3, 2010, to expire on June 3, 2020, on condition that all use and operations substantially conform drawings filed with the application; the term of the grant expire on June 3, 2020; no transient food trucks or other retail trucks be permitted to conduct business or sell food or retail products on the site; the conditions be listed on the certificate of occupancy; all conditions from prior resolutions not specifically waived by the Board remain in effect; 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.

The term of the variance having expired, the applicant seeks the subject relief. The applicant represents that the Premises operates as a 24-hour gasoline service station with accessory uses including three repair bays, an office, and a small sales area. The service station is open seven days a week. There is a five-foot-high trash enclosure in the rear of the Premises. Due to the need for a remediation shed on the Premises, under the direction of the Department of Environmental Conservation, the parking has been reduced from 11 to 10 spaces, including 1 ADA space, and the trash enclosure was relocated. The applicant represents that all conditions from prior resolutions are in compliance, no other changes to the Premises have occurred or are sought, and, therefore, seeks to authorize the continued use of the Premises as a gasoline service station with repair bays and sales area for an additional term pursuant to Z.R. § 11-411.

In response to Board concerns over the course of hearings, the applicant demonstrated the removal of a light pole fixture from the westerly property line.

The Fire Department states, by correspondence dated April 29, 2020, that a review of their records indicates that the subject automotive service station is current with its Fire Department permits for the storage of combustible liquids, leak detection equipment, underground storage tanks and fire suppression (dry-chemical) system. Based on the foregoing, the Fire Department has no objection to the application, and the Bureau of Fire Prevention will continue to inspect the Premises and enforce all applicable rules and regulations.

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 *amend* the resolution, dated February 9, 1960, under BSA Cal. No. 436-59-BZ, as amended through September 25, 2012, under the subject calendar number, so that as amended this portion of the resolution shall read: “to grant a ten-year extension of the term, to June 3, 2030; *on condition* that all work, operations, and site conditions shall conform to drawings filed with this application marked ‘October 26, 2021’ – Eleven (11) sheets; and *on further condition*:

THAT the term of the variance shall expire on June 3, 2030;

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THAT when the remediation station work is complete, the enclosure shall be removed and the trash enclosure shall be constructed of finished or stuccoed and painted masonry with steel doors adjacent to the service building;

THAT landscaping along the residential perimeter shall be maintained with evergreen bushes that form a dense buffer to a minimum of six feet high;

THAT light spread from light fixtures shall not extend onto residential properties;

THAT the Premises shall be operated so as not to cause traffic or pedestrian interference or to disturb the residential neighbors in the adjacent building;

THAT no transient food trucks or other retail trucks shall be permitted to conduct business or sell food or retail products on the site;

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, also indicating this approval and calendar number (“BSA Cal. No. 72-04-BZ”), shall be obtained within one year, by November 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;

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 15, 2021.

114-07-BZ

APPLICANT – Eric Palatnik, P.C., for Sullivan Mountain Real Estate, LLC, owner.

SUBJECT – Application March 18, 2019 – Amendment of a previously approved Special Permit (§73-19) which permitted the operation of a day-care center (Kiddie Academy) (UG3). The amendment seeks an enlargement to the existing day care facility, a modification in the approved floor area, a change in the number of parking spaces, as well as request to permit a proposed outdoor play area on the roof. M1-1/R2A zoning district.

PREMISES AFFECTED – 7-05 152nd Street, Block 4531, Lot 35, Borough of Queens.

COMMUNITY BOARD #7Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta5
Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated February 13, 2019, acting on Alteration Type 1 Application No. 421650332 reads in pertinent part: “The proposed enlargement of the day care facility is contrary to ZR 42-31 and Board of Standards and Appeals (BSA) approval under BSA Cal. No. 114-07-BZ; and must therefore be referred back to the BSA.”

This is an application for an amendment of a previously approved special permit granted by the Board pursuant to Z.R. § 73-19 which permitted the operation of a daycare center (Use Group “UG” 3). The application seeks an amendment to enlarge the existing daycare facility, modify the approved floor area, change the number of parking spaces, and to permit a proposed outdoor play area on the roof and side yard.

A public hearing was held on this application on October 6, 2020 after due notice by publication in *The City Record*, with continued hearings on November 30, 2020, February 22, 2021, May 24, 2021, and September 23, 2021, and then to decision on November 15, 2021. Vice-Chair Chanda and Commissioner Ottley-Brown performed inspections of the Premises and surrounding neighborhood. Community Board 7, Queens, recommends approval of this application. The Board received one letter of support.

The Premises are located on the east side of 152nd Street, at the intersection of 152nd Street and Powell’s Cove Boulevard, partially within an M1-1 zoning district and partially within an R2A zoning district, in Queens. With approximately 70 feet of frontage along 152nd Street, 117 feet of depth, and 8,222 square feet of lot area, the Premises are occupied by an existing three-story commercial building.

The Board has exercised jurisdiction over the Premises since July 29, 2008, when, under the subject calendar number, the Board granted a special permit, pursuant to Z.R. §§ 73-19 and 73-03, to allow the proposed operation of a daycare center (UG 3), on a site partially within an M1-1 zoning district and partially within an R2A zoning district, condition that any and all work substantially conform to drawings as they apply to the objections, filed with the application; any change in the use, occupancy, or operator of the daycare facility space requires review and approval by the Board; the space occupied by the daycare facility is limited to the floor area of 11,253 square feet and 8 onsite parking spaces; the use and occupancy of the space associated with the special permit and the proposed daycare center use be restricted to such use; a lay-by be provided, as reflected on the BSA-approved plans; prior to the issuance of any permit, the applicant satisfy DOB’s requirements for establishing the proposed use as a Use Group 3 school, pursuant to Z.R. §§ 12-10 and 73-19; accordingly, the proposed bulk of the building be reviewed and approved by DOB; the Premises comply with all applicable fire safety measures, as required and as illustrated on the BSA-approved plans; as proposed in the Remedial Action Plan (“RAP”), upon completion of the construction activities, a Closure Report certified by a Professional Engineer or

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Architect be submitted to Department of Environmental Protection (“DEP”) for review and approval; this approval is 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) and/or configuration(s) not related to the relief granted.

From its prior grant, the applicant states that it seeks to amend (1) the floor area use to operate the entire building as a UG 3 daycare; (2) add three rooftop play areas (on the second floor, third floor, and side yard); (3) reconcile the floor area breakdown/as built conditions as approved by DOB; and (4) decrease the number of parking spaces from 18 to 15. The applicant notes that this building was constructed in substantial compliance with the previously BSA-approved plans and that this application does not seek to make any changes to the bulk of the building. The application seeks to reconcile the building’s floor area approved by DOB and on the building certificate of occupancy. The applicant represents that the original BSA approval for the third floor was 3,905 square feet but only 3,763 square feet was built due to setbacks.

The applicant seeks to increase its existing operation by 40 students and 4 staff members. Regarding the floor area, the applicant notes that the proposed building would maintain the existing 15,031 square feet of floor area while permitting the enlargement of the existing daycare center to the third floor building while converting the existing UG 6 offices and outdoor area to the UG 3 daycare space and proposed outdoor play area on the roof. Specifically, the applicant proposes to convert the outdoor area to a 1,316 square foot rooftop play area to a new playground on the western portion of the second floor roof. Finally, the applicant seeks to permit 15 parking spaces contrary to the previously BSA-approved plans, which indicated 18 parking spaces in the cellar. The applicant states that parking will be compliant with the Zoning Resolution and provide more than eight parking spaces for the daycare, as required by a condition of the previous resolution.

Over the course of hearings, the Board expressed concern over the potential for increased noise from the new outdoor space and additional students and increased traffic during drop off and pickup times. In response, the applicant provided a noise study to reflect the combined effects of the three play areas and detailing mitigation measures to combat increased noise. Additionally, the applicant submitted an operational plan for drop off and pick up times designed to have minimal impact on traffic surrounding the Premises.

By letter dated October 6, 2020, the Fire Department Bureau of Fire Prevention states that it has reviewed the application. As per 504.4.1FC (Rooftop Access), no access has been provided to the roof of the proposed playground area, therefore the Fire Department objects to this application. The applicant is advised to file with Technology

Management Unit in the Bureau of Fire Prevention in order to review and approve for rooftop access.

By correspondence dated September 22, 2021, the Fire Department states that it wishes to withdraw its “Letter of Objection”, for the application. After inspection by the Bureau of Fire Prevention and Operations it was determined that rooftop access will not be required. The decision is based on the existing field conditions due to power lines and electrical transformer, located directly in front of the Premises. The Fire Department would need to “Ladder” the building due to safety concerns.

By letter dated February 24, 2021, the Department of Transportation (“DOT”) states that following the 2020 CEQR Technical Manual Level 1 (Project Trip Generation) screening assessment, the Technical Memorandum (“TM”) summarizes the total site generated vehicular and pedestrian trips would not exceed the CEQR threshold and conducting Level 2 (Projected Generated Trip Assignment) screening assessment is not warranted. DOT concurs with the lead agency’s determination that detailed traffic, pedestrian, and parking analyses are not needed.

By letter dated September 17, 2021, the Department of Environmental Protection (“DEP”) states that it has reviewed the revised Noise Analysis document dated September 15, 2021, and an electronic support file prepared by Equity Environmental Engineering on behalf of the applicant for the project. Per BSA request, DEP has reviewed the document and has the following comment:

Noise: Based on the results of the Noise analysis performed as per the City Environmental Quality Review Technical Manual, it was determined that the proposed project would not result in significant adverse impact for noise. The assessment includes noise from mobile and stationary sources, including three play areas.

Based upon its review of the record, the Board has determined that the proposed amendment is appropriate with certain conditions as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *wave* its Rules of Practice and Procedures and *amends* the resolution, dated July 29, 2008 so that as amended this portion of the resolution shall read: “to *permit* an amendment to enlarge the existing daycare facility, modify the approved floor area, change the number of parking spaces, and to permit a proposed outdoor play area on the roof and side yard, *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked ‘Received October 26, 2021’—Seventeen (17) sheets; and *on further condition*,

THAT any change in the use, occupancy, or operator of the daycare facility space requires review and approval by the Board;

THAT the space occupied by the daycare facility is limited to the floor area of 15,031 square feet and 8 onsite parking spaces;

THAT the use and occupancy of the space associated with the special permit and the proposed daycare center use be restricted to such use;

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THAT the Premises comply with all applicable fire safety measures, as required and as illustrated on the BSA-approved plans;

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. 114-07-BZ"), shall be obtained within four years, by November 15, 2025;

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

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

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

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

Adopted by the Board of Standards and Appeals, November 15, 2021.

6-09-BZ

APPLICANT – Rampulla Associates Architects for Joseph Romeo, owner.

SUBJECT – Application June 18, 2020 – Extension of Term of a previously approved Variance (§72-21) which permitted the use of Automotive Repair (UG 16B) which will expire on November 9, 2020. C4-1 Special South Richmond Development and Special Growth Management Districts.

PREMISES AFFECTED – 24 Nelson Avenue, Block 31, Lot 5429, Borough of Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Application granted.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta5
Negative:.....0

THE RESOLUTION –

This is an application for an extension of term of a variance, previously granted under Z.R. § 72-21, which permitted the legalization of an existing automobile repair establishment (Use Group ("UG") 16), and expired on November 9, 2020.

A public hearing was held on this application on March 8, 2021, after due notice by publication in *The City Record*, with a continued hearing on September 27, 2021, and then to decision on November 15, 2021. Community Board 3, Staten Island, recommends approval of this application.

The Premises are located on the southwest corner of Nelson Avenue and Giffords Glen, within a C4-1 zoning

district and in the Special South Richmond Development District, on Staten Island. With approximately 105 feet of frontage along Nelson Avenue, 115 feet of frontage along Giffords Glen, and 11,064 square feet of lot area, the Premises are occupied by an existing one-story automotive repair establishment (UG 16) (2,643 square feet of floor area).

The Board has exercised jurisdiction over the Premises since June 7, 1955, when, under BSA Cal. No. 997-54-BZ, the Board granted a variance, under Section 7f, for a term of 15 years, to permit the Premises to be occupied as a gasoline service station on condition.

On June 12, 1956, under BSA Cal. No. 997-54-BZ, the Board granted a one-year extension of time to obtain permits and complete the work.

On July 24, 1956, under BSA Cal. No. 997-54-BZ, the Board further amended the variance to permit 2 additional 550-gallon approved tanks, to a total of 12 such tanks, 1 additional approved low type gasoline dispensing pump, as shown on plans filed with the application, and permit the location of the pumps along Giffords Glen to be of the distance as indicated on such plans.

On February 2, 1971, and September 9, 1980, under BSA Cal. No. 997-54-BZ, the Board granted ten-year extensions to the term of the variance, the latter of which to expire on February 2, 1991, on further condition that the station be operated at all times in such a fashion to minimize traffic congestion, and a new certificate of occupancy be obtained.

On October 28, 1986, under BSA Cal. No. 512-83-BZ, upon a May 1, 1986, Department of Buildings inspection reporting a change in use from a gasoline service station to an auto repair establishment, which is not in compliance with BSA Cal. No. 997-54-BZ, the Board rescinded the variance, and, on June 23, 1987, under BSA Cal. No. 136-87-A, the certificate of occupancy for the Premises was revoked.

On November 9, 2010, under the subject calendar number, the Board granted a variance, under Z.R. § 72-21, to permit the legalization of an existing automobile repair establishment (UG 16), which does not conform to district use regulations, contrary to Z.R. § 32-10, on condition that any and all work substantially conform to plans filed with the application; the following be the bulk parameters of the proposed building: a total floor area of 2,643 square feet (0.23 FAR); a total height of 15'-6"; and, six parking spaces, all as illustrated on BSA-approved plans; the term of the grant expire on November 9, 2020; the hours of operation be: Monday through Friday, 7:00 a.m. to 6:00 p.m.; Saturday, 7:00 a.m. to 4:00 p.m.; closed on Sunday; the conditions be listed 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; 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

MINUTES

other relevant laws under its jurisdiction irrespective of plan(s)/configuration(s) not related to the relief granted.

The Board, by letter dated April 15, 2011, permitted modifications to the approved plans as in substantial compliance with the grant. Specifically, the elimination of the existing curb cut located adjacent to the automotive repair building on Giffords Glen, and its relocation 59 feet from the intersection of Giffords Glen and Nelson Avenue; the adjustment of the location of the on-site parking spaces, and the modification of the layout for the landscaped area along Giffords Glen, to accommodate the relocated curb cut.

The term of the variance having expired, the applicant seeks the subject relief. Specifically, the applicant seeks a 20-year extension of the term. The applicant represents that all relevant conditions of prior Board approvals remain in compliance at the Premises. Specifically, the applicant represents that the established bulk parameters are maintained, 7'-wide planting box landscaping has been provided along the Premises, and new curb cuts have been installed as per the letter of substantial compliance. The hours of operation at the Premises continue to comply with the Board's grant and no car sales or public parking occurs at the Premises.

The Fire Department states, by letter dated March 6, 2021, that a review of their records indicates that the motor vehicle repair shop is current with its Fire Department permits for use as a motor vehicle repair shop and storage of combustible liquids. Based on the foregoing, the Fire Department has no objection to the application, and the Bureau of Fire Prevention will continue to inspect the Premises and enforce all applicable rules and regulations.

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 *amend* the resolution, dated November 9, 2010, so that as amended this portion of the resolution shall read: "to grant a 20-year extension of the term, to November 9, 2040; *on condition* that all work, operations, and site conditions shall conform to drawings filed with this application marked 'May 28, 2021' – Three (3) sheets; and *on further condition*:

THAT the term of the variance shall expire on November 9, 2040;

THAT the following shall be the bulk parameters of the building: a total floor area of 2,643 square feet (0.23 FAR); a total height of 15'-6"; and, six parking spaces, all as illustrated on BSA-approved plans;

THAT there shall be no tires stored outside when the Premises is closed;

THAT all landscaping shall be maintained in first-class condition, replaced as necessary

THAT the hours of operation shall be: Monday through Friday, 7:00 a.m. to 6:00 p.m.; Saturday, 7:00 a.m. to 4:00 p.m.; closed on Sunday;

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, also indicating this approval and calendar number ("BSA Cal. No. 6-09-BZ"), shall be obtained within one year, by November 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;

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 15, 2021.

2016-4337-BZIII

APPLICANT – Eric Palatnik, P.C., for Dr. Joshua Schiller and Ms. Vivian Lee, owners

SUBJECT – Application May 7, 2021 – Extension of Time to Complete Construction of a previously approved Special Permit (§73-69) to permit the enlargement of an existing single-family home which expires on September 19, 2021. R5 zoning district.

PREMISES AFFECTED – 127 Vanderbilt Street, Block 5264, Lot 51, Borough of Brooklyn.

COMMUNITY BOARD #7BK

ACTION OF THE BOARD – Application granted.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta5
Negative:.....0

THE RESOLUTION –

This is an application for an extension of time to complete construction and obtain a certificate of occupancy pursuant to a variance, under Z.R. § 72-21, that permitted the enlargement of an existing single-family residence, contrary to rear yards (Z.R. § 23-543), and expired on September 19, 2021.

A public hearing was held on this application on October 18, 2021, after due notice by publication in *The City Record*, and then to decision on November 15, 2021.

The Premises are located on the north side of Vanderbilt Street, between McDonald Avenue and 20th Street, within an R5 zoning district, in Brooklyn. With approximately 18 feet of frontage along Vanderbilt Street, 150 feet of depth, and 4,300 square feet of lot area the Premises are occupied by a two-story, with cellar, residence.

The Board has exercised jurisdiction over the Premises since September 19, 2017, when, under the subject calendar number, the Board granted a variance, under Z.R. § 72-21, to permit modifications to the rear yards required for a zoning lot existing on April 30, 2008, contrary to Z.R. § 23-543, on condition that all work and site conditions

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substantially conform the drawings filed with the application; a certificate of occupancy be obtained within four years, by September 19, 2021; the approval be limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings; 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 plans or configurations not related to the relief granted.

The Board, by letter dated October 23, 2019, permitted a modification to the floor area calculations associated with the Board's variance grant, changing from 0.31 FAR to 0.39 FAR where 1.25 FAR is permitted as of right, with no changes to the Board's approved plans.

The time to obtain a certificate of occupancy having expired, the applicant seeks the subject relief.

The applicant represents that construction of the Premises in accordance with the variance has not yet begun due to financial limitations that have occurred. However, the applicant submits that the Department of Buildings has approved plans, dated October 19, 2020, and anticipates construction beginning forthright and requiring approximately eight months. Accordingly, the applicant seeks a four-year extension of time to obtain a certificate of occupancy to account for any further delays.

Based upon its review of the record, the Board has determined that the requested extension of time to obtain a certificate of occupancy is appropriate with certain conditions as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *amend* the resolution, dated September 19, 2017, so that as amended this portion of the resolution shall read: "to grant a four-year extension of time to complete construction and obtain a certificate of occupancy, to September 19, 2025; *on condition*:

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, also indicating this approval and calendar number ("BSA Cal. No. 2016-4337-BZ"), shall be obtained within four years, by September 19, 2025;

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."

Adopted by the Board of Standards and Appeals,

November 15, 2021.

2017-213-BZ

APPLICANT – Hirschen Singer & Epstein, LLP, for Dynamic Youth Community, Inc., owner.

SUBJECT – Application October 21, 2020 – Amendment of a previously approved variance (ZR 72-21) for a six-story with cellar, community-facility building (Use Group 3), contrary to use and bulk regulations. Amendment to reduce the size of the cellar level, modify interior program, and change certain finishing materials. C8-2 ZD/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.

THE VOTE –

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

Negative:.....0

THE RESOLUTION –

This is an application for an amendment to a variance, under Z.R. § 72-21, that permitted the development of a six-story, with cellar, community-facility building for use as a non-profit institution with sleeping accommodations (Use Group ("UG") 3), contrary to Z.R. §§ 23-10, 33-26, and 33-292.

A public hearing was held on this application on January 25, 2021, after due notice by publication in *The City Record*, with a continued hearing on April 26, 2021, and September 27, 2021, and then to decision on November 15, 2021. Community Board 12, Brooklyn, waived its recommendation of this application. The Board received ten letters in support of this application, including letters from a New York State Member of Assembly and a New York State Senator.

The Premises are located on the west side of Coney Island Avenue, between Avenue N and Avenue O, within a C8-2 zoning district and in the Special Ocean Parkway District, in Brooklyn. With approximately 20 feet of frontage along Coney Island Avenue, 100 feet of depth, and 2,000 square feet of lot area, the Premises are occupied by an existing two-story community facility building (2,200 square feet of floor area).

The Board has exercised jurisdiction over the Premises since September 13, 2018, when, under the subject calendar number, the Board granted a variance, under Z.R. § 72-21, to permit the development of a six-story, with cellar, community-facility building for use as a non-profit institution with sleeping accommodations (UG 3), contrary to Z.R. §§ 23-10, 33-26, and 33-292, on condition that all work, operations, and site conditions conform to drawings filed with the application; the bulk parameters of the building 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

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drawings; the condition appear on the certificate of occupancy; a certificate of occupancy be obtained within four years, by September 13, 2022; the approval be limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings; 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 plans or configurations not related to the relief granted.

The applicant now seeks an amendment to permit modifications to the Premises. These modifications are: changes to the cellar level, including the elimination of kitchen and dining facilities, to accommodate a stepped footing foundation; the addition of a small “warming pantry” in the recreation room on the fifth floor; a change to the material of the side and rear facades from brick to stucco and a change to the proposed window casement material on the front façade from anodized bronze aluminum to aluminum only; and, the addition of a Building Code-required guardrail to the one-story rear portion of the Premises (the “Proposed Modifications”). The applicant represents that the Proposed Modifications are necessary to accommodate a stepped footing foundation, determined by the applicant and its funding partner (the Office of Addiction Services and Supports (“OASAS”)) to be necessary given site conditions, and to reduce construction costs to a level acceptable to OASAS.

The applicant states that the feasibility study revealed that the cost to develop the Premises as approved under the 2018 variance would be \$9,473,485, which was \$1,133,785 more than had been allocated by OASAS for its construction (\$8,339,700), pursuant to the funding contract entered into between OASAS and the applicant. The Dormitory Authority of the State of New York (“DASNY”), OASAS’s State-agency partner and project manager for construction of the Approved Building, OASAS, and NYC, have collectively identified the Proposed Modifications as the best way to reduce construction cost because they remove the need to underpin neighboring property while maintaining every aspect of the applicant’s academic and substance-abuse treatment program.

As to the need for stepped footing foundation design, the applicant represents that the party wall shared between the existing two-story building at the Premises and the adjacent building located at 1812 Coney Island Avenue does not include a structural footing and is generally in very poor condition and the two properties, generally, sit on loose, sandy soils. As such, the party wall cannot accommodate the proposed Premises’ load, any excavation below the level of the party wall would require structural underpinning that would greatly increase safety hazards during the course of construction, and the cost of underpinning the adjacent property was not accounted for in the feasibility study. The proposed stepped footing foundation system, to resolve the need to underpin the adjacent building, will render portions

of the proposed Premises’ cellar incapable of being “occupiable space” pursuant to the Building Code. Therefore, together with other cost-saving considerations, the Proposed Modifications include the removal of kitchen and dining facilities from the cellar level.

The applicant states that the Proposed Modifications do not change, in any respect, the zoning waivers approved by the Board under the 2018 variance, no new zoning waivers are needed, and the degree of the existing waivers will remain unchanged. However, the dining facilities that were proposed under the 2018 variance will not be relocated to elsewhere in the Premises as proposed: instead, a warming pantry is proposed to be added to the recreation room on the fifth floor. The warming pantry will include a sink, refrigerator, and microwave. Instead of having breakfast, lunch and dinner at the cellar-level dining facilities, residents of the Premises will, as their schedules require, use the proposed warming pantry to prepare breakfast, some lunches, and other small meals. Larger “group” meals will be prepared and served at the applicant’s related 1830 Coney Island Avenue location, which has a full kitchen and dining facility on its fifth floor. Laundry is no longer located in the cellar but is included in the group bathrooms on each of the floors that contain bedrooms (floors three, four, and six). Stair 1 (now labeled Stair A) no longer goes down to the cellar, as spaces with less than 10 occupants and a common path of travel of less than 75 feet do not require two exits as per 2014 Building Code § 1015.1.

The applicant represents that the Proposed Modifications are necessary to meet its programmatic need. The applicant states that the only change to the applicant’s program facilitated by the Proposed Modifications is the elimination of the kitchen, which has no impact on the applicant’s continued programmatic need for residential beds, educational and vocational instruction space, individual and group counseling rooms, administrative areas, and living spaces.

The applicant represents that the Proposed Modifications will not alter the essential character of the neighborhood. Specifically, a potential small change in the foot traffic between the applicant’s two facilities and a change to the building materials on the secondary facades, from brick to stucco, and a change in the window-casement materials on the front façade do not have the potential to alter the essential character of the neighborhood. There will be no disruption to the neighborhood due to the foot trips by students between the Premises and 1830 Coney Island Avenue, as the two facilities are only 140 feet away from each other and on the same side of the street. Further, there are many brick buildings on Coney Island Avenue, but the nature of Coney Island Avenue is not that of an aesthetically coherent street with uniformly brick buildings—it is a street characterized by its heterogeneity in terms of building form, materials and uses. Therefore, the applicant represents that the Proposed Modifications will not alter the essential character of the neighborhood.

The applicant states that the Proposed Modifications

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do not alter the Board's waivers under the 2018 variance and continue to reflect the minimum variance necessary.

Over the course of hearings, the Board raised concern regarding the elimination of the cellar kitchen and questioned whether the applicant could continue to fulfill its program relying on services available at 1830 Coney Island Avenue. The Board requested confirmation from OASES that administrative spaces as proposed at the Premises' ground and second floor (program director office, two admin offices, conference room, physician/clinical supervisor office, and three counseling and instruction spaces) are interior program spaces necessary to maintain the facility's compliance and cannot be replaced with on-site kitchen and dining facilities.

OASES states in part, by letter dated June 9, 2021, that all of the administrative spaces on the ground and second floor are necessary to maintain compliance with Part 820 of the New York Codes, Rules, and Regulations pertaining to community residence programs and reintegration programs specifically and internal OASES policy. Given the need for the spaces, OASES confirms that none of the spaces can be removed and replaced with kitchen and dining facilities. Further, in reviewing and approving the interior program of the Premises, OASES have given due consideration to the proximity of the applicant's community residence facility located nearby at 1830 Coney Island Avenue. OASES determined that the kitchen and dining facilities at 1830 Coney Island Avenue, together with the applicant's plan to program these dining facilities for residents of the Premises, will provide an adequately balanced and nutritious food and beverage program for the residents of the Premises in compliance with Part 820 and internal OASES policy.

Based upon its review of the record, the Board has determined that the requested amendment to the variance is appropriate with certain conditions as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *amend* the resolution, dated September 13, 2018, so that as amended this portion of the resolution shall read: "to permit modifications to the Premises *on condition* that all work, operations, and site conditions conform to drawings filed with the application marked 'October 28, 2021'—Sixteen (16) sheets; and *on further condition*:

THAT the bulk parameters of the Premises 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 there shall be no exterior insulating finish system ("EIFS") used at the Premises;

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, also indicating this approval and calendar number ("BSA Cal. No. 2017-213-BZ"), shall be obtained within four years, by November 15, 2025;

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."

Adopted by the Board of Standards and Appeals, November 15, 2021.

360-49-BZ

APPLICANT – Eric Palatnik, P.C., for Leemilts Petroleum Inc., owner.

SUBJECT – Application June 5, 2020– Extension of Term of a previously approved variance permitting the operation of an Automotive Service Station (UG 16B) which expired on May 2, 2006; Waiver of the Board's Rules. R4-1 zoning district.

PREMISES AFFECTED –69-05 Eliot Avenue, Block 2838, Lot 38, Queens.

COMMUNITY BOARD #5Q

ACTION OF THE BOARD – Laid over to February 28, 2022, at 10 A.M., for continued hearing.

221-88-BZII

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for Long Island Jewish Medical Center, owner.

SUBJECT – Application February 25, 2021– Amendment to the Board's condition of term of a previously approved Special Permit (73-49) which permitted open parking on the roof of an accessory parking garage which expired on December 6, 2013. R7-1 zoning district.

PREMISES AFFECTED – 102-01 60th Road, Block 2131, Lot 16, Borough of Queens.

COMMUNITY BOARD #6Q

ACTION OF THE BOARD – Laid over to January 10-11, 2022, at 10 A.M., for continued hearing.

129-92-BZ

APPLICANT – Akerman LLP, for Whitestone Plaza Associates Inc., owner.

SUBJECT – Application December 11, 2020 – Extension of Term of a previously approved Variance (§72-21) which permitted the use of Automobile Laundry (UG 16B) which expired on October 19, 2013; Waiver of the Board's Rules of Practice and Procedure. C1-2/R3-2 zoning district.

PREMISES AFFECTED – 150-55 Cross Island Parkway, Block 4697, Lot(s) 31, Borough of Queens.

COMMUNITY BOARD #7Q

ACTION OF THE BOARD – Laid over to January 10-11, 2022, at 10 A.M., for continued hearing.

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5-98-BZ

APPLICANT – Heywood Blaufeux, for Priority Landscaping Inc., owner.

SUBJECT – Application December 12, 2020 – Extension of Term of a previously approved variance (§72-21) which permitted a garden supply sales and nursery establishment (UG 17) with accessory parking and storage which expired on February 23, 2019; Waiver of the Board’s Rules. R5 zoning district.

PREMISES AFFECTED – 1861 McDonald Avenue, Block 6633, Lot 55, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to January 24-25, 2022, at 10 A.M., for adjourned hearing.

339-02-BZ

APPLICANT – Eric Palatnik, P.C., for WF Industrial III LLC, owner.

SUBJECT – Application June 1, 2021 – Amendment to modify the Board’s condition of term pursuant to (§ 1-07.3(3) (ii) of the Board’s Rules of Practice and Procedures for a previously granted Variance (§72-21) which permitted warehouse and office uses contrary to underlying use regulations which expired on February 25, 2013;. Amendment to legalize the addition of mezzanine increasing the degree of non-conformance; Waiver of the Board’s Rules. R3-1 and R3-2 zoning districts.

PREMISES AFFECTED – 146-65 Springfield Boulevard, corner of Springfield Boulevard and 147th Avenue, Block 13363, Lot 6. Borough of Queens.

COMMUNITY BOARD # 13Q

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 December 13-14, 2021, at 10 A.M., for decision, hearing closed.

215-06-BZIV

APPLICANT – Eric Palatnik, P.C., for Blue Hills Fuels, LLC, owner; BP Products North America Inc. lessee.

SUBJECT – Application September 30, 2020 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of an Automotive Service Station (UG 16B) (Amoco) with accessory uses which expired on July 21, 2021. C1-2/R4 zoning district.

PREMISES AFFECTED – 202-06 Hillside Avenue, Block 10496, Lot 52, Borough of Queens.

COMMUNITY BOARD #12Q

ACTION OF THE BOARD – Laid over to February 28, 2022, at 10 A.M., for continued hearing.

49-11-BZ

APPLICANT – Akerman LLP, for A&G Real Estate, LLC, owner Barry’s Bootcamp NYC, LLC, lessee.

SUBJECT – Application October 26, 2020 – Extension of Term of a previously approved Special Permit (§73-36) permitting the operation of a physical cultural establishment (Barry’s Bootcamp Fitness Center) located on the cellar and first floor of an existing building which is set to expire on July 12, 2021. C6-3A zoning district.

PREMISES AFFECTED – 135 West 20th Street, Block 796, Lot 18, Borough of Manhattan.

COMMUNITY BOARD #4M

ACTION OF THE BOARD – Laid over to January 10-11, 2022, at 10 A.M., for continued hearing.

78-11-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, Ayer Re Development, LLC, owner,

SUBJECT – Application February 26, 2021 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) permitting the construction of a four-story mixed-use building which expired on March 10, 2019. C8-1 zoning district.

PREMISES AFFECTED – 78-70 Winchester Boulevard, Block 7880, Lot 550, Borough of Queens.

COMMUNITY BOARD #13Q

ACTION OF THE BOARD – Laid over to February 7-8, 2022, at 10 A.M., for continued hearing.

2016-4249-BZ

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for YWA Amsterdam LLC, owner

SUBJECT – Application August 24, 2021 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) permitting the construction of a four-story mixed-use building which expired on March 10, 2019. C8-1 zoning district.

PREMISES AFFECTED – 2420 Amsterdam Avenue, Block 2152, Lot 83, Borough of Manhattan.

COMMUNITY BOARD #12M

ACTION OF THE BOARD – Laid over to February 28, 2022, at 10 A.M., for postponed hearing.

2017-4-A

APPLICANT – Eric Palatnik, P.C., for Lavan Muthu, owner.

SUBJECT – Application July 13, 2021 – Extension of Time to Complete Construction of a previously approved General City Law § 35 waiver to construct a two-story mixed-use commercial and residential building within the bed of a mapped street which expires on July 25, 2021. C1-3/R4 Special Hillside Preservation District.

PREMISES AFFECTED – 339 Victory Boulevard, Block 115, Lot 63, Borough of Staten Island.

COMMUNITY BOARD #1SI

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ACTION OF THE BOARD – Laid over to January 24-25, 2022, at 10 A.M., for continued hearing.

2017-286-BZII

APPLICANT – Eric Palatnik, P.C., for Ditmars 31st Street Associates LLC, owner.

SUBJECT – Application December 18, 2020 – Amendment of a previously approved Special Permit (§73-36) which permitted the operation of a Physical Culture Establishment (*The Rock Health & Fitness*) to be located within the cellar level of a proposed three-story retail building. The Amendment seeks to permit the enlargement of the facility to include the first floor. 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 – Laid over to March 14-15, 2022, at 10 A.M., for deferred decision.

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

ACTION OF THE BOARD – Application granted on condition.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta5

Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated February 7, 2017, acting on Alteration Type 1 Application No. 321360130, reads in pertinent part:

“The street giving access to the proposed building is not duly placed on the official map of the City of New York therefore:

- A) No Certificate of Occupancy can be issued pursuant to Article 3, Section 36 of General City Law;
- B) Proposed construction does not have at least 8% of the total perimeter of building fronting directly upon a legally mapped street or frontage space contrary to section 501.3.1 of the 2014 NYC Building Code.”

This is an application under General City Law § 36 to

permit, in an R3-1 zoning district, the enlargement of a single-family, one-story, detached residence to a single-family, two-story with attic mixed-use residential and community facility (daycare center) that does not front on a mapped street.

A public hearing was held on this application on August 7, 2018 after due notice by publication in *The City Record*, with continued hearings on June 11, 2019, March 24, 2020, and October 5, 2021, and then to decision on November 15, 2021. Commissioner Scibetta performed inspections of the Premises and surrounding neighborhood.

The Premises are located on the north side of Ocean View Avenue, between Sea Gate Avenue and Highland Avenue, within an R3-1 zoning district, in Brooklyn. With approximately 40 feet of frontage on Ocean View Avenue, 110 feet of depth, and 4,400 square feet of lot area, the Premises are currently occupied by a single-family, one-story, detached residence.

The applicant proposes to enlarge the single-family, one-story, detached residence to a two-story with attic mixed-used residential and community facility used for daycare. The applicant represents that the proposed residence will comply with the underlying bulk provisions of the R3-1 zoning district including the proposed floor area, FAR, total height, and wall height. The applicant states that the front yard, side yard, and rear yard depths for the proposed building will remain the same as the existing residence.

Over the course of hearings, the Board raised questions about whether or not the plans will comply with flood zone regulations, particularly the first floor of the building.

In response, the applicant provided updated architectural survey and plans which illustrated how the building will be dry flood proofed; demonstrated the proposed sprinkler system; and included the following notes:

1. The Premises is currently located in an “AE” zone per effective firm. The applicant has been advised by the DOB and acknowledges that the Premises is now located in an “AE” Zone per FEMA preliminary floor maps released in 2013.
2. The property is located within the flood zone.
3. Application filed is a substantial improvement.
4. Proposed work has to comply with Appendix (G)

Proposed alteration complies with the FEMA and DOB requirements for base flood elevations;

- NYC Zoning Regulations, Art. VI, Chapter 2 – Special Regulations applying in the waterfront area
- NYC Zoning Regulation, Art. VI, Chapter 4 - Special Regulations applying in flood hazard areas
- NYC DOB Building Code, Appendix G -

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Flood Resistant Construction.

- Building will be fully sprinklered
- BSA does not waiver any Appendix G Provisions

By letter dated July 9, 2021, the Department of Environmental Protection (“DEP”) states that based on its review of DEP maps, there is an 8" diameter (dia.) City water main in Ocean View Avenue at the proposed location. The proposed sanitary and storm will be discharged as per the certified House Connection Proposal (“HCP”) # 15316. The proposed water connection will be to the existing 8" dia. water main in Ocean View Avenue. It is anticipated that the proposed water connection, and the proposed sanitary and storm discharge will be maintained by the owner and will not be maintained by the City of New York. Based on the above, the NYC DEP has no objection to the proposed GCL 36 application.

By letter dated February 11, 2019, the Fire Department states that the Fire Department, Bureau of Operations has reviewed the site plan for the application. As per Section FC 501.4.3.1.2 (change of use) and FC 501.4.3.1.4 (height) a sprinkler system shall be installed throughout the building. A subsequent filing had been made to the alteration type 1 application (Alt. 1 321260130) that show a special system is proposed to be installed at these Premises. The department has no objection to this application.

The Board notes that this application is for a GCL § 36 waiver, and the Board makes no representation on the legality of the use of the building or whether it complies with flood regulations for the first floor occupancy that is located below base floor elevations.

Accordingly, 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 February 7, 2017, acting on Alteration Type 1 Application No. 321260130, under the powers vested in the Board by Section 36 of the General City Law, to *permit* the construction of a building 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 October 14, 2021” - One (1) sheet; and *on further condition*:

THAT DOB must review the application for flood plane compliance;

THAT the Premises must be fully sprinklered, as per FDNY requirements;

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. 2017-59-A”), shall be obtained within four years, by November 15, 2025;

THAT the Department of Buildings must ensure that the Board-approved plans comply to the maximum extent feasible with all applicable zoning regulations as if the

unimproved street were not mapped;

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 15, 2021.

2019-255-A

APPLICANT – Shmuel D. Flaum, for Mendy Samuel Blau, owner.

SUBJECT – Application September 5, 2019 – Proposed enlargement of an existing single-family home with a portion located within the bed of a mapped street contrary to General City Law §36 and within the street widening line contrary to General City Law §35. R3X zoning district.

PREMISES AFFECTED – 621 Alonzo Road, Queens. Block 15510, Lot 0011

COMMUNITY BOARD #14Q

ACTION OF THE BOARD – Laid over to January 24-25, 2022, at 10 A.M., for deferred decision.

ZONING CALENDAR

2019-24-BZ

APPLICANT – Eric Palatnik, P.C., for Crystal Bay Imports, LTD, owner.

SUBJECT – Application January 31, 2019 – Special Permit (§73-49) to permit accessory parking on the roof of an under-construction DOB-approved Use Group 9A automotive sales use establishment contrary to ZR §36-11. C2-2/R4 zoning district.

PREMISES AFFECTED – 2721 Nostrand Avenue, Block 7666, Lot 20, Borough of Brooklyn.

COMMUNITY BOARD #18BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE –

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

THE RESOLUTION –

The decision of the Department of Buildings, dated January 2, 2019, acting on New Building Application No. 321435452, reads, in pertinent part: “Proposed rooftop parking in an R4/C2-2 zoning district is contrary to Z.R. Section 35-11 and therefore requires a special permit from

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the Board of Standards and Appeals pursuant to Z.R. 73-49.”

This is an application under Z.R. §§ 73-49 and 73-03 to permit accessory parking on the roof of a recently constructed, DOB-approved Use Group (“UG”) 9A automotive sales use establishment, in a C2-2 (R4) zoning district, contrary to Z.R. § 36-11.

A public hearing was held on this application on January 28, 2020, after due notice by publication in *The City Record*, with continued hearings on August 11, 2020, December 15, 2020, March 9, 2021, May 11, 2021, and September 14, 2021, and then to decision on November 15, 2021. Vice-Chair Chanda, Commissioner Ottley-Brown, and Commissioner Sheta performed inspections of the site and surrounding neighborhood.

Community Board 18, Brooklyn, recommends denial of this application, citing concerns over the potential loss of light and air to the adjacent neighbors from the height increase; pollution from the new rooftop operation; danger to pedestrians from the presence of delivery trucks; the inability of New York City buses and other vehicles to safely and lawfully use the roadways surrounding the Premises; and the large size of the operations at the Premises. The Board received letters of support from elected officials and civic associations. The Board also received 14 letters of objection, including a letter from an organized association of residents of East 31st Street between Avenue M and Avenue N. The letters of objection cite concerns over unsafe driving conditions near the Premises; increased congestion and traffic; damage to adjacent properties caused by operations at the Premises; a history of poor communication between the applicant and its neighbors; the vast scope of the proposed project and its potential ramifications; concerns that the applicant would not adhere to the scope of any approved project; and loud noises emanating from the Premises.

I.

The Premises are located on the east side of Nostrand Avenue, between Avenue M and Avenue N, in a C2-2 (R4) zoning district, in Brooklyn. With approximately 240 feet of frontage along Nostrand Avenue, 105 feet of depth, and 25,200 square feet of lot area, the Premises are occupied by an existing one-story with cellar, UG 9A, automotive sales facility.

The existing one-story commercial building was enlarged from 9,450 square feet of floor area (0.38 FAR) to 25,200 square feet of floor area (1.0 FAR). The applicant proposes to use the roof of the enlarged building for open accessory off-street parking spaces. As such, the applicant seeks a special permit under Z.R. § 73-49.

A.

Per Z.R. § 36-21, one parking space is required for every 600 square feet of floor area for UG 9A automotive show rooms located in C2-2 zoning districts. Here, under Z.R. § 36-21, the Premises has a parking requirement of 42 spaces. Originally, the applicant proposed to construct an accessory rooftop parking area with 63 attended parking spaces for customer use; 61 display cars in the cellar; 85

display cars on the first floor for a total of 209 vehicles. The applicant stated that the proposed 63 spaces of rooftop parking would be accessible via a two-way ramp located at the southern end of the building. The applicant contended that it was providing parking in excess of the 42 required spaces in order to reduce the number of vehicles parking on surrounding streets.

In response to concerns raised by the Board, other New York City agencies who reviewed the proposed project, and community members about the proposed scope and potential safety, noise, pollution, fumes, emissions, and light from vehicles, the applicant amended its application. Instead, the applicant proposes to provide at the subject Premises 45 customer-only parking spaces in the cellar; 48 customer and employee parking spaces on the roof; 34 display cars in the cellar; and 82 display cars on the first floor for a total of 209 vehicles on the Premises.

B.

Z.R. § 73-49 states, in part, “As a condition of permitting such roof parking, the Board shall find that the roof parking is so located as not to impair the essential character or the future use or development of adjacent areas.” Over the course of hearings, the Board received letters of objection from adjacent residential neighbors which described how, during the construction of the building at the subject Premises, the applicant’s construction practices caused severe damage to their residences, and even after neighbors voiced their concerns to the applicant, it failed to change its construction practices to address their concerns or compensate them for the damage caused to their property. Additionally, neighbors complained of how the applicant’s current operation caused circulation and safety issues in the streets adjacent to their properties as it involved multiple, daily, car-carrier deliveries and customer traffic resulting in double and triple parking on the streets next to their residences, as well as resulting in double and triple parking and traffic build-up along Nostrand Avenue in front of the Premises. The Board noted that this past behavior combined with the applicant’s unwillingness to follow the Board’s directions throughout the course of hearings demonstrated a continued reluctance to adhere to the Board’s instructions to reduce the scope of the project to address the needs of the community members and neighbors. Taking into consideration the applicant’s ongoing actions as well as the fact that residential use abuts the subject Premises, the Board discussed, at great lengths, how to ensure that the applicant would lessen the concerns voiced surrounding safety, noise, fumes, emissions, pollution, and light from the proposed increased vehicular presence.

The applicant originally proposed to provide stackers on the roof. The Board noted that the presence of stackers on the roof presents a safety concern inherent in its operation and because the increased weight on the roof may damage or cause harm to the building structure as well as further increase the amount of light, noise, fumes, and emissions directed toward adjacent neighbors. In response to concerns about the proposed scope and potential safety,

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noise, pollution, fumes, emissions, and light from the vehicles raised by the Board, other New York City agencies who reviewed the proposed project, and community members, the applicant amended its application, in part, to eliminate the use of stackers as part of the rooftop parking operation. Moreover, the Board requested that the applicant clearly delineate the maneuverability of cars on the roof on the plans to demonstrate where cars may be and cannot be parked. The Board also stated that because the applicant proposed to only have a valet for rooftop parking, there would be no need for a specialized parking design such as handicapped parking.

Similarly, the Board discussed how the applicant's proposed parking design involved vehicles accessing an unenclosed roof, which increased concerns about the projection of the headlights coming up the ramp and lighting used as part of managing the rooftop parking that could cause disturbances to adjacent and nearby residential properties. The Board requested that the applicant clearly delineate where vehicles could and could not be placed on the rooftop with proper signage and striping and to ensure that all lighting be directed down and away from adjacent uses to lessen their ability to cause disturbances. Furthermore, the Board directed the applicant to set back the parking area 30 feet from the rear property line and construct a physical buffer consisting of a ten-foot-tall acoustical fence located 30 feet from the rear property line and screened from the residential neighbors with dense landscaping made up of tall planting such as arborvitae and bamboo to diminish the amount of light spilling onto the adjacent residential properties, as well as distance the parking operations from the rear property line, as per the required 30 foot rear yard setback under Z.R. § 33-23(b)(3).

In addition to requiring the acoustical fence to address potential noise concerns, the Board instructed the applicant to limit access to the roof with the use of the valet attendant to ensure that the roof is not used outside of business hours; avoid the use of keyless entry to reduce excess noise from the vehicles; reduce idling; prohibit the use of horns; limit noise levels and restrict hours of operation for the elevator. Then, to address the potential for increased fumes and emissions from the vehicles, the Board noted that the presence of the dense physical landscaping buffer would lessen the spread of odors. Also, the Board noted that restrictions on idling, hours of operation, and clarity in maneuverability would lessen the impact of car emissions to the adjacent neighbors.

Furthermore, the Premises are owned and operated in tandem with adjacent lots which also serve as automotive sales facilities and aim to service all the needs of presumptive vehicle purchasers, and the applicant seeks this special permit, in part, in hopes of lessening the traffic and congestion caused by the operation of a commercial enterprise of this scope and size. In addition to the neighbor's complaints about traffic congestion, the applicant provided a traffic study which demonstrated that during peak hours the demand for parking next to the Premises was often greater than what was provided. For example, along

Avenue L to Avenue M, the demand at the morning peak was as great as 51; for the midday peak was as great as 57; and for the evening peak was as great as 38 for 49 available parking spaces. Along Avenue M to Avenue N, the demand at the morning peak was as great as 76; for the midday peak was as great as 73; and for the evening peak as great as 62 for 54 available parking spaces. The traffic study also reflected that the applicant had as many as 154 sales appointments during its operating hours, from 9:00 a.m. to 7:00 p.m.

In response, the Board directed the applicant to limit car deliveries outside of the Premises during peak traffic times to limit disruption to roadway operations and to manage loading and unloading times so as not to impede the proper flow of traffic. To address concerns about pedestrian and driver safety, the Board directed the applicant to install and maintain a pedestrian activated warning light and sign on its private property for a one-year trial basis with monitoring and oversight by the Board.

Moreover, to commit to these safeguards and obligations, the applicant recorded a restrictive declaration on December 7, 2021, under CRFN # 2021000480783 committing to the following:

That a maximum of 48 rooftop parking spaces shall be permitted;

That there shall be no stackers on the roof;

That rooftop parking shall be used exclusively for customer and employee parking and shall never be used for the parking or storage of vehicles for sale;

That the designated customer parking shall be maintained as shown on the Board-approved plans and, therefore, not used to increase sales area beyond what is described and shown;

That the layout of the parking spaces shall be as reviewed and approved by DOB;

That 45 customer-only parking spaces shall be provided at all times in the cellar;

That no fewer than 93 spaces for customer and employee parking shall be provided at all times; That a maximum total for the building of 116 spaces for sales parking may be provided at the cellar and first floors, and none shall be provided on the roof;

That unobstructed FDNY access doors shall be provided at the Nostrand Avenue parapet wall, and unobstructed FDNY access routes must be provided on the roof, all as shown on the BSA approved plans;

That all lighting on the roof shall be directed down and away from adjacent uses in such a way as to avoid shedding any light on any adjacent uses;

That landscaping and sound wall shall be installed as shown on the BSA approved landscaping plans and longitudinal section with details providing a 30' wide landscaping boundary and 10' sound wall;

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That the sound wall proposed to be facing the adjacent residential buildings shall be properly designed and maintained in first class condition, repaired, and painted, as needed;

That structural design of the sound wall shall be reviewed and approved by the Department of Buildings to prevent any negative impacts on adjacent properties;

That all planting shall be maintained in first class condition and replaced, as needed;

That all planting shall be installed and maintained in accordance with the Board-approved plans;

That the roof shall be maintained to ensure that it can structurally support the planting;

That the hours of operation of the rooftop parking shall be 7:00 a.m. to 9:00 p.m., seven days per week;

That an attendant shall monitor the roof for illegal parking and safety measures, and shall make sure that the rooftop parking facility is cleared nightly by 9:00 p.m.;

That elevators shall be closed and turned off nightly at 9:00 p.m. to ensure that the rooftop parking area is inaccessible to people within the subject Premises;

That deliveries shall occur outside of the peak traffic times to limit disruption to roadway operations;

That signage and striping shall comply with BSA plans as approved by BSA and DOT;

That there shall be three curb cuts per DOT standards, which shall provide internal circulation within the newly constructed automobile showroom via one-way drive aisles served by an ingress-only curb cut and an egress-only curb cut, as well as one two-way curb cut serving the rooftop valet parking;

That only three curb cuts as shown on the plans shall be provided and all other curb cuts shall be replaced with full height steel edged curbs complying with DOT materials, methods and standards;

That the owner will work with DOT to secure the loading zone for the car carriers;

That the applicant shall manage loading and unloading times so as not to present an impediment to the proper flow of traffic;

That a pedestrian activated warning light and sign on private property shall be installed and properly maintained. If it is proved to be ineffective after a one-year trial period, prior to taking any action to disconnect, deactivate, or remove the warning light, the applicant agrees to request an amendment to the Board's approval, to demonstrate ineffectiveness of the pedestrian activated warning light, and sign and propose an alternate solution;

That there shall be no idling of cars, horns or use

of key fobs or other noise-producing signal devices shall be used on the roof parking area;

That each car elevator movement shall not exceed a noise level equivalent of 85 dB(A) at a reference distance of 3 feet for 5 seconds;

That 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.

II.

The Board finds that, under the conditions and safeguards imposed, any hazard or disadvantage to the community at large due to the proposed roof parking 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 the proposed open roof parking will not interfere with any pending public improvement project.

By letter dated January 25, 2020, the Fire Department states that the Fire Department, Bureau of Fire Prevention has reviewed the application and objects as compliance with Section 504.4 and 504.4.1 of the Fire Code ("FC"), for rooftop access for firefighting operations has not been met. If the applicant is unable to comply with the requirements of FC § 504.4, they must seek and obtain a variance with the Bureau of Fire Preventions, Rooftop Unit, prior to the Board of Standards and Appeals granting a special permit.

By correspondence dated August 11, 2020, the Fire Department states that it continues to object to the application for the following reasons:

1. Access to the roof has not been provided by means of openings in the parapet wall, for members to safely access the roof with equipment. Openings must be provided in order for the Fire Department to stage to fight any fires, for motor vehicles stored in parking stackers.
2. In addition, no fire protection suppression system has been proposed for the parking stackers at the roof. This will allow for fire to spread to adjacent motor vehicles gasoline powered and electric powered that cannot be contained and will also affect the integrity of the roof structure.

The Fire Department will be notifying the Department of Buildings Office of Technical Certification and Research and request that a FDNY Letter of Approval for Rooftop Access and the installation of parking stackers will be required for application number Alt. 1 321247101.

By correspondence dated December 15, 2020, the Fire Department states that the provided plans show one access point, indicated by an arrow for Fire Department Roof Access, such access is not in compliance with FC § 504.4, in that access has to be provided for every 12 feet along the entire length of the building. Elevation plans do not show any opening along the building wall. In addition, how would the stackers, located on the roof be protected? The use of

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stackers on the roof is defined as High-Piled storage and protection for these stackers is necessary. The off-gases of vehicle fires would create hazardous conditions for responding members and the general public. To date, no filings have been made to the Bureau of Fire Prevention's Tech Management for plan review. Therefore, the Fire Department's letters of objection have not been complied with.

By correspondence dated March 9, 2021, the Fire Department states that the department has reviewed the revised plans and has no objection to the roof access, but requests that signs be installed at each gate to read "FDNY Access". Such sign to have a white background with red lettering and lettering to be one inch in height.

The project is classified as an Unlisted action pursuant to Section 617.2 of 6 NYCRR. The Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final EAS CEQR No. 19BSA082K, dated November 15, 2021. The EAS documents that the project as proposed would not have significant adverse impacts on land use, zoning, and public policy; socioeconomic conditions; community facilities and services; open space; shadows; historic resources; urban design and visual resources; neighborhood character; natural resources; waterfront revitalization program; infrastructure; hazardous materials; solid waste and sanitation services; energy; traffic and parking; transit and pedestrians; air quality; noise; or public health.

By letter dated July 27, 2021, the New York City Department of Environmental Protection ("DEP") states that it has reviewed the revised Noise Report dated July 12, 2021, Environmental Assessment statement dated July 21, 2021, and supportive files prepared on behalf of the applicant and concludes that the proposed project would not result in any potential significant adverse impacts with respect to noise from both mobile and stationary sources.

By letter dated August 12, 2021, the New York Department of Transportation ("DOT") states that it has reviewed the signage and striping plan, and requested the applicant relocate and reconstruct the four existing curb cuts to three curb cuts as per DOT standards, which will provide internal circulation within the newly constructed automobile showroom via one-way drive aisles served by an ingress-only curb cut and an egress-only curb cut, as well as one two-way curb cut serving the rooftop valet parking. The applicant is willing to install a pedestrian activated warning light and sign on private property and will maintain it accordingly. If it is proved to be ineffective after a sufficient trial, the applicant agrees to disengage or remove said equipment. In order to improve the existing condition, the operator is seeking to modify the on-street parking regulation signs to provide a permanent truck loading zone. The location of the proposed loading zone would be approximately 130 feet north of Avenue N along the east curb of Nostrand Avenue and would be bounded by the existing on-street parking regulation signs located 285 feet north of Avenue N on Nostrand Avenue. Following the

2020 CEQR Technical Manual Level 1 Screening Assessments, DOT indicates that detailed traffic and pedestrian analyses are not warranted. DOT agrees with BSA's suggestion on requesting the applicant record a Restrictive Declaration to ensure that all of the designated customer parking must be upheld as shown on the drawings, and therefore not used to increase the sales area beyond what is described and shown on the plans. Therefore, no incremental trips are projected due to the proposed action.

No other significant effects upon the environment that would require an Environmental Impact Statement are foreseeable. Accordingly, the Board has determined that the proposed action will not have a significant adverse impact on the environment

The Board finds that the evidence in the record supports the findings required to be made under Z.R. §§ 73-49 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 Z.R. §§ 73-49 and 73-03 *to permit*, in an R4 (C2-2) zoning district, parking on the roof of a recently constructed, DOB-approved Use Group ("UG") 9A automotive sales use establishment, contrary to Z.R. § 36-11; *on condition* that all work and site conditions shall conform to drawings filed with this application marked "Received November 5, 2021" - Twenty-five (25) sheets; and *on further condition*:

THAT the term of the grant shall expire in three years, by November 15, 2024;

THAT the applicant must appear before the Board for a compliance hearing within 18 months of this approval, by May 15, 2023;

THAT the compliance hearing shall be preceded by a site visit by the Board's commissioners and its compliance officer;

THAT the applicant must notify neighbors and officials in advance of the compliance hearing date;

THAT the BSA shall notify the DOT and the New York City Police Department's traffic unit prior to the compliance hearing to obtain data on site conditions at that time;

THAT prior to expiration of the three-year term, the Board's compliance officer shall automatically send notification to the applicants to file for an extension of term;

THAT a maximum of 48 rooftop parking spaces shall be permitted;

THAT there shall be no stackers on the roof;

THAT rooftop parking shall be used exclusively for customer and employee parking and shall never be used for the parking or storage of vehicles for sale;

THAT the designated customer parking shall be maintained as shown on the Board-approved plans and, therefore, not used to increase sales area beyond what is

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described and shown;

THAT the layout of the parking spaces shall be as reviewed and approved by DOB;

THAT 45 customer-only parking spaces shall be provided at all times in the cellar;

THAT no fewer than 93 spaces for customer and employee parking shall be provided at all times;

THAT a maximum total for the building of 116 spaces for sales parking may be provided at the cellar and first floors, and none shall be provided on the roof;

THAT unobstructed FDNY access doors shall be provided at the Nostrand Avenue parapet wall, and unobstructed FDNY access routes must be provided on the roof, all as shown on the BSA approved plans;

THAT all lighting on the roof shall be directed down and away from adjacent uses in such a way as to avoid shedding any light on any adjacent uses;

THAT landscaping and sound wall shall be installed as shown on the BSA approved landscaping plans and longitudinal section with details providing a 30' wide landscaped boundary and 10' high sound wall;

THAT the sound wall proposed to be installed between the parking area and the landscaped boundary shall be properly designed and maintained in first class condition, repaired, and painted, as needed;

THAT structural design of the sound wall shall be reviewed and approved by the Department of Buildings to prevent any negative impacts on adjacent properties;

THAT all planting shall be maintained in first class condition and replaced, as needed;

THAT all planting shall be installed and maintained in accordance with the Board-approved plans;

THAT the roof shall be maintained to ensure that it can structurally support the planting;

THAT the hours of operation of the rooftop parking shall be 7:00 a.m. to 9:00 p.m., seven days per week;

THAT an attendant shall monitor the roof for illegal parking and safety measures, and shall make sure that the rooftop parking facility is cleared nightly by 9:00 p.m.;

THAT elevators shall be closed and turned off nightly at 9:00 p.m. to ensure that the rooftop parking area is inaccessible to people within the subject Premises;

THAT deliveries shall occur outside of the peak traffic times to limit disruption to roadway operations;

THAT signage and striping shall comply with BSA plans as approved by BSA and DOT;

THAT there shall be three curb cuts per DOT standards, which shall provide internal circulation within the newly constructed automobile showroom via one-way drive aisles served by an ingress-only curb cut and an egress-only curb cut, as well as one two-way curb cut serving the rooftop valet parking;

THAT only three curb cuts as shown on the plans shall be provided and all other curb cuts shall be replaced with full height steel edged curbs complying with DOT materials, methods, and standards;

THAT the owner shall work with DOT to secure the loading zone for the car carriers;

THAT the applicant shall manage loading and unloading times so as not to present an impediment to the proper flow of traffic;

THAT a pedestrian activated warning light and sign on private property shall be installed and properly maintained. If it is proved to be ineffective after a one-year trial period, prior to taking any action to disconnect, deactivate, or remove the warning light, the applicant agrees to request an amendment to the Board's approval, to demonstrate ineffectiveness of the pedestrian activated warning light, and sign and propose an alternate solution;

THAT there shall be no idling of cars, horns or use of key fobs or other noise-producing signal devices used on the roof parking area;

THAT each car elevator movement shall not exceed a noise level equivalent of 85 dB(A) at a reference distance of 3 feet for 5 seconds;

THAT failure to comply with the above conditions other terms of the restrictive declaration recorded on December 7, 2021, under CRFN # 2021000480783 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;

THAT a certificate of occupancy, also indicating this approval and calendar number ("BSA Cal No 2019-24-BZ"), shall be obtained within four (4) years, by November 15, 2023;

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 15, 2021.

CORRECTION: This resolution adopted on November 15, 2021, under Calendar No. 2020-25-BZ, is hereby corrected to read as follows:

2020-25-BZ

APPLICANT – Sheldon Lobel, P.C., for Angela Guarino, owner.

SUBJECT – Application March 27, 2020 – Variance (§72-21) to legalize an existing single-family house contrary to ZR §§23-45 & 23-48 (side and front yard requirements. R1-2 zoning district.

PREMISES AFFECTED – 142-30 13th Avenue, Block 4435, Lot 27, Borough of Queens.

COMMUNITY BOARD #7Q

ACTION OF THE BOARD – Application denied.

THE VOTE –

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

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated February 28, 2020, acting on Alteration Type 1 Application No. 402275006, reads in pertinent part:

1. Proposed building does not comply with the minimum required front yard, contrary to ZR 23-45.
2. Proposed building does not comply with the minimum required side yard, contrary to ZR 23-48.

This is an application for a variance, pursuant to Z.R. § 72-21, to legalize, within an R1-2 zoning district, an existing single-family, two-story with cellar, detached residence that does not comply with the zoning requirements for side yard (Z.R. § 23-45) and front yard (Z.R. § 23-48).

A public hearing was held on this application on January 26, 2021 after due notice by publication in *The City Record*, with a continued hearing on September 23, 2021, then to decision on November 15, 2021. Vice-Chair Chanda and Commissioner Ottley-Brown performed inspections of the Premises and surrounding neighborhood. Community Board 7, Queens, recommends approval of this application. The Board received two form letters of support and one letter of support from a member of the New York State Senate.

I.

The Premises are located on the south side of 13th Avenue, between 142nd Street and 143rd Place, within an R1-2 zoning district, in Queens. The Premises are irregularly shaped, with approximately 39 feet of frontage along 13th Avenue, 98 feet of depth, and 4,163 square feet of lot area, and are occupied by an existing single-family, two-story with cellar, detached residence.

II.

The existing residence is a single-family, two-story with cellar, detached building with a total floor area of approximately 2,077 square feet (1,114.15 square feet on the first floor and 962.57 square feet on the second floor); an FAR of 0.50; one side yard to the west with a width of 1'-10" and one side yard to the east with a width of 10'-6"; a front yard measuring 18'-4"; and a rear yard with a depth of 34'-1 1/2" at the first floor and above. At the Premises, a front yard with a minimum depth of 20 feet is required, pursuant to Z.R. § 23-45 and two side yards totaling 12'-11", with a minimum side yard width of 5'-0" are required, pursuant to Z.R. § 23-48.

The applicant seeks to legalize the existing conditions at the Premises and represents that during the construction of the residence the retaining wall along the easterly property line began to collapse during excavation for the new residence and required that the wall be rebuilt. The applicant states that during the reconstruction of this wall, the residence was shifted and rotated on the lot, not in

accordance with the DOB-approved site plan. The applicant claims that the shifting and rotation of the residence during construction caused it to be located closer to the west side lot line, affecting the minimum required side yard width of five feet. The applicant further posits that this lot classifies as an existing small lot because it is located in an R1-2 zoning district and has a lot area less than 5,700 square feet, as per Z.R. § 23-32. The applicant also contends that the Premises are subject to the narrow lot provisions of Z.R. § 23-48, which permit a reduction in the total side yard width of 4" for every foot that the site is narrower than the minimum lot width of 60'-0", provided no side yard is less than 5'-0".

The applicant further notes that the resulting residence encroaches into both the westerly required side lot and into the required front yard. Additionally, the applicant represents that the lot most affected by the residence's location is the adjacent lot 25 which currently has the same owner as the subject Premises. As a solution, the applicant proposes to file a restrictive declaration for lot 25 that would acknowledge the as-built conditions on lot 27 in perpetuity, thereby alerting and binding all future owners to the existing conditions.

III.

The Zoning Resolution vests the Board with wide discretion to “vary or modify [its] provision[s] so that the spirit of the law shall be observed, public safety secured and substantial justice done,” Z.R. § 72-21.

A.

First, as per Z.R. § 72-21(a), the applicant submits that there are unique physical conditions inherent in the Premises that 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. More particularly, the applicant claims that the following conditions present at the site have created the practical difficulty or unnecessary hardship: 1) The lot is the only odd-shaped lot on the subject block and is an existing narrow lot, approximately 38.7' wide in the front and 46.7' wide in the rear; 2) The grade changes between the lot and its adjacent neighbors to the side, as well as the rear, which necessitated a large retaining wall extended along three sides of the house; 3) The west retaining wall was re-built during excavation after which the owner completed the construction of the residence. 4) Slope changes: within the 38.7' street width of the Premises (west to east) the datum elevation changes from 39.0' to +48.0', a difference in height of 9.0', approximately 23.26% slope, which cause additional expenses in development due to drainage and earth retainage of the neighboring lots. The applicant maintains that the Premises has a slope of 23.26%, which is significantly steeper than the surrounding lots and required a significantly sized retaining wall in order to be developed. The applicant submitted Sanborn maps from 1963 and 2006 to demonstrate that the subject property was the only lot on the subject block which was not developed in the 1950s or 1960s. The applicant did not, however, submit a survey to support these assertions.

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The applicant argues that applications filed pursuant to Z.R. § 72-21 for area or bulk variances must be treated differently and less stringently than use variances. First, the applicant asserts that the language of the Zoning Resolution states that the Board must consider a practical difficulties standard or an unnecessary hardship standard. The applicant submitted a legal memorandum in which it cites *Pantelidis v. New York City Bd. of Standards & Appeals*, 43 A.D.3d 314 N.Y.S.2d 41 (2007), *aff'd*, 10 N.Y.3d 846 N.E.2d 474 (2008), the capstone in a line of cases dating before the 1961 Zoning Resolution, as establishing criteria for area variances. Specifically, the applicant declares that “[c]ourts have held that uniqueness does not only require a showing that the lot is unique, but improvements on the lot could also create the uniqueness of the property.” The applicant further claims that the Court’s ruling in *Pantelidis* establishes that because area/bulk variances do not change the character of neighborhood and use variances do, bulk/area variances should be held to a lesser standard.

Additionally, the applicant quotes the decision in *Pantelidis*, 10 N.Y.3d 846, 889 N.E.2d 474 (2008),

Pantelidis established practical difficulties and economic hardship based on the need to connect the two floors for the family’s appropriate use of their home, the expense of construction, and the cost and impact of the removal of the newly constructed extension. The cases cited by the respondents are readily distinguishable. Not only is each case particular to its facts, but here Pantelidis built the most minimal extension, housing a necessary staircase rather than multiple additional rooms to simply enlarge his home. Thus, the denial of the variance under subdivision (b) was arbitrary.

In response, the Board cites cases from the applicant’s own memorandum in rebutting several of its arguments. First, the Board recalls *Vill. of Bronxville v. Francis*, 1 A.D.2d 236, 150 N.Y.S.2d 906, *aff’d*, 1 N.Y.2d 839, 135 N.E.2d 724 (1956), the first in the applicant’s line of cases, which stated that there should be a “practical difficulty” standard for area/bulk variances unless there exists a statutory provision to the contrary. In *Sasso v. Osgood*, 86 N.Y.2d 374, 384, 657 N.E.2d 254, 259 (1995), the Court describes the 1961 Zoning Resolution as such a statute. The Court in *Sasso* found that the distinction between unnecessary hardship and practical difficulty has been blurred and that courts expect all findings to be made under Z.R. § 72-21, so the Board must look at both simultaneously.

Next, the Board distinguishes *Pantelidis* from the case at hand. The Board clarifies that *Pantelidis* was decided based on that owner’s detrimental, good faith reliance on the DOB Commissioner’s approval of its application, which was specific to the question of the proposed greenhouse with a staircase in the rear yard. The applicant has not presented any evidence of such reliance and, therefore, the Board has not found reliance in the subject case. Additionally, the Board recalls that it has had applications

for use variances that do not change neighborhood character while many proposed area variances would and concludes that the Board must make its findings on a case-by-case basis about neighborhood character.

B.

Next, as per Z.R. § 72-21(b), the applicant submits, that, because the applicant is a single-family residence, no showing need be made with respect to realizing a reasonable return. Additionally, the applicant argues that it is impossible to do the required work to make the yards compliant with the provisions of the Zoning Resolution because it is cost-prohibitive, and the resulting structure would create further non-compliance with room sizes and other regulations in the internal existing parts of the residence. The applicant contends the required work would cause further extreme practical difficulty and hardship to the owner. In support of this contention, the applicant submitted a bid from a company which physically relocates buildings.

In response, the Board finds that the bid the applicant submitted is not based on a site visit and is a general estimate which included costs to remove plumbing and repour cement, which are not at issue with the subject case. The Board determines, based on the submitted plans and its site visits, that the noncompliances at the Premises are possible to correct. Additionally, the Board states that any bid to physically move the existing residence needs to be based on moving the offending walls and cutting back the residence by the necessary amount, which would just make the sizable rooms at the Premises smaller.

C.

As per Z.R. § 72-21(c), the applicant represents that the requested variance would not alter the essential character of the neighborhood, impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare. Specifically, the applicant states that the single-family residence is in line with the surrounding area and the proposed waivers would relieve the owner of minimal yard intrusions.

D.

Z.R. § 72-21(d) states, the practical difficulties or unnecessary hardship claimed as a ground for a variance have not been created by the owner or by a predecessor in title; however, where all other required findings are made, the purchase of a *zoning lot* subject to the restrictions sought to be varied shall not itself constitute a self-created hardship. (Emphasis original.)

The applicant acknowledges that the situation at the Premises for which it is requesting the waivers is self-created but argues that the finding of a self-created hardship in an area or bulk variance cannot bar the granting of a variance as long as the Board balances the benefit to the applicant against the detriment to the health, safety, and welfare of the neighborhood or community.

E.

As per Z.R. § 72-21(e), the applicant submits that the variance request is the minimum necessary to develop a

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residence at the Premises. Specifically, the applicant argues that this variance request would enable the applicant to retain the existing structure without demolition and construction costs required to comply with the underlying zoning regulations. The applicant further claims that the intrusion into the side yard and front yard is minimal and has no effect on the neighborhood or adjacent properties and, as such, are unsubstantial.

IV

At hearings, the Board expressed concerns about the applicant's failure to establish a Z.R. § 72-21(a) finding as the application provides no supporting documentation that the retaining wall conditions on the Premises presented the unique physical conditions and caused a practical difficulty that required the residence be improperly situated on the lot. The Board further posited that if this application were to be approved, the applicant's failure to establish this finding could set a precedent for granting a variance solely to correct the malpractice of the contractor, surveyor and/or architect for "builder's error," and described the potential outcome as "havoc". The Board also stated that the applicant argues that because the noncompliances at the subject Premises are not as big as they could be, the site is deserving of a variance. The Board contemplates that a positive outcome for this applicant could lead builders who make "mistakes", chose not to correct them, and instead come before the Board to remedy them, which is not the Board's role. The Board plainly stated that granting a variance in this case could invite fraud and/or variances of doubtful quality to enter and mar a community plan, and the Z.R. § 72-21 (d) self-created hardship finding is meant to prevent such outcomes. In applications before the Board, common ownership is typically cited to differentiate a single, small, or narrow lot suffering a hardship from one that is similarly sized but is owned in common with an adjacent lot, as with the subject Premises, and does not suffer a hardship.

Based upon its review of the record, the Board has determined that this approval is not eligible for relief under Z.R. § 72-21 and that the applicant has not substantiated a basis to warrant exercise of discretion.

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

Adopted by the Board of Standards and Appeals, November 15, 2021.

CORRECTION: This resolution adopted on November 15, 2021, under Calendar No. 2020-70-BZ, is hereby corrected to read as follows:

2020-70-BZ

CEQR # 21-BSA-012K

APPLICANT – Law Office of Lyra J. Altman, for The Albert Dweck Irri Trust FBO Morris Dweck, owner.

SUBJECT – Application September 11, 2020 – Special Permit (§73-622) to permit the enlargement of a single-family residences into one single-family residence. R4-1 zoning district.

PREMISES AFFECTED– 1903 Homecrest Avenue, Block 7291, Lot 0168, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE –

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

Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings ("DOB"), dated August 12, 2020, acting on Alteration Type 1 Application No. 321592353, reads in pertinent part:

1. ZR 23-142: The proposed building floor area ratio exceeds the permitted maximum per Zoning Resolution Section 23-142 within the R4-1 zoning district.
2. ZR 23-461: The proposed side yard does not comply with minimum side yard requirements per Zoning Resolution Section 23-461.

This is an application under Z.R. §§ 73-622 and 73-03 to permit, in an R4-1 zoning district, the enlargement and conversion of an existing two-family, two-story, detached residence to a single-family, three-story, detached residence that does not comply with zoning regulations for FAR (Z.R. § 23-142) and side yard (Z.R. § 23-461).

A public hearing was held on this application on April 13, 2021, after due notice by publication in *The City Record*, with a continued hearing on May 25, 2021, then to decision on November 15, 2021. Community Board 15, Brooklyn, recommends approval of this application.

The Premises are located on at the intersection of Homecrest Avenue and Avenue S, at the southeast corner, within an R4-1 zoning district, in Brooklyn. With approximately 33 feet of frontage along Homecrest Avenue, 96 feet of depth, and 3,164 square feet of lot area, the Premises are occupied by an existing two-story, two-family, detached residence.

The Board notes that its determination herein is subject to and guided by, inter alia, Z.R. §§ 73-01 through 73-04. As a threshold matter, the Board notes that the Premises are within the boundaries of a designated area in which the subject special permit is available.

The existing residence is a two-story, two-family,

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detached building with a total floor area of approximately 2,342 square feet; an FAR of 0.74; one side yard to the south with a width of 4'11 1/4" and one side yard to the east with a width of 23' 1/2"; and a front yard on Avenue S with a depth of 5'10 13/16" and an existing front yard on Homecrest Avenue is 20'0".

At the Premises, a maximum FAR of 0.75 is permitted (2,373 square feet of floor area), pursuant to Z.R. § 23-142, and one side yard measuring a minimum of 5'0" and one side yard measuring a minimum of 20'0" are required, pursuant to Z.R. § 23-461.

The applicant proposes to enlarge the existing residence to 3,659 square feet (1.16 FAR), comprised of an additional 230 square feet on the first floor, an additional 182 square feet to the second floor, and the addition of a 904 square foot third floor. The applicant represents that the proposed residence would have a front yard along Homecrest Avenue with a depth of 12'3 5/8", a front yard along Avenue S with a depth of 10'0", a side yard along the southern side of the residence with a width of 4'9 1/4", a side yard along the eastern side of the residence with a width of 20'0", and a garage in the eastern side yard with one parking space.

The applicant states that the proposed single-family residence as enlarged is consistent with the built character of the neighborhood. In support of this contention, the applicant surveyed single- and two-family residences within 400 feet of the Premises and with the same relevant bulk regulations (the "Study Area"), finding that of the 38 qualifying residences, 27 residences (71 percent) have an FAR ranging from 0.75 to 1.76, and 6 residences (16 percent) have an FAR of 1.16 or greater.

At hearings, the Board expressed concerns about the design of the proposal, specifically as to wall and joists retention, and its potential effects on neighborhood character. In response, the applicant submitted updated plans clarifying that the proposed residence would maintain the floor joists on all floors and at least 50% of wall retention on the first and second floors as well as including a note which states, "removal of exterior walls and floor joists in excess of that shown on the drawings will void the special permit" and that the exterior finish would have "hardi plank or equal cement board siding".

Z.R. § 73-622 (1) states that "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". The applicant represents that because the proposed residence adds a new exterior finish to the existing wall as permitted by Z.R. § 23-44(a)(8), reducing the south side yard from a width of 4'11 1/4" to 4'9 1/4" is permissible.

The Board notes that it does not take a position on the legality of the side yard and, hence, whether the extension into the front yard and the other side yard is permitted. The Board further clarifies that it is for the DOB to decide whether there is an existing, legal, non-complying condition

or a complying condition. The Board states that the Z.R. § 73-622 waiver of side yard regulations for the extension will be based upon DOB's determination. Accordingly, if the condition is not an existing, legal, non-complying condition, it is not within the Board's authority to grant a waiver, and if the condition is complying, the Board need not grant a waiver.

Based upon its review of the record and inspections of the Premises 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.

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. The proposed modification of bulk regulations will not interfere with any pending public improvement project.

The project is classified as a Type II action pursuant to 6 NYCRR Part 617.5, as noted in CEQR Checklist No. 21BSA012K, dated November 15, 2021.

The Board finds that the evidence in the record supports the findings required to be made under Z.R. §§ 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 make each and every one of the required findings under Z.R. §§ 73-622 and 73-03 to *permit* the enlargement and conversion of an existing two-story, two-family, detached residence that does not comply with zoning regulations for FAR and side yard, contrary to Z.R. §§ 23-142 and 23-461; *on condition* that all work and site conditions shall conform to drawings filed with this application marked "October 29, 2021"- Eighteen (18) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: a maximum of FAR of 1.16, one side yard with a width of 4'9 1/4" and one side yard with a width of 20'0", as illustrated on the Board-approved plans;

THAT there shall be no exterior insulation finishing system ("EIFS") used at the Premises;

THAT removal of exterior walls and joists in excess of that shown on the Board-approved plans will void the special permit;

THAT the Board is not approving any work to be done beyond the property lines;

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. 2020-70-BZ"), shall be obtained within four years, by November 15, 2025;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

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

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

Adopted by the Board of Standards and Appeals, November 15, 2021.

2019-66-BZ

APPLICANT – Law Office of Jay Goldstein, for 7-15 Terrace View Avenue LLC, owner.

SUBJECT – Application March 27, 2019 – Variance (§72-21) to permit the development of a seven (7) story building containing 59 rental apartments contrary to ZR §42-00. M1-1 zoning district.

PREMISES AFFECTED – 15 Terrace View Avenue, Block 2215, Lot 173, Borough of Manhattan.

COMMUNITY BOARD #8BX

ACTION OF THE BOARD – Laid over to January 24-25, 2022, at 10 A.M., for continued hearing.

2019-173-BZ

APPLICANT – Eric Palatnik, P.C., for PMG LI, LLC, owner.

SUBJECT – Application June 12, 2019 – 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. C2-4/R6A Special Downtown Jamaica District.

PREMISES AFFECTED – 187-01 Hillside Avenue, Block 9960, Lot 19, Borough of Queens.

COMMUNITY BOARD #8Q

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 December 13-14, 2021, at 10 A.M., for decision, hearing closed.

2020-75-BZ

APPLICANT – Eric Palatnik, P.C., for 474 Associates, Inc., owner.

SUBJECT – Application September 22, 2020 – Special Permit (§73-36) to permit the legalization of a physical cultural establishment (Spa 7) located in the third floor an existing building contrary to ZR §42-10. M1-6 zoning district.

PREMISES AFFECTED – 474 7th Avenue, Block 00785, Lot 0043, Borough of Manhattan.

COMMUNITY BOARD #5M

ACTION OF THE BOARD – Laid over to February

28, 2022, at 10 A.M., for deferred decision.

PUBLIC HEARINGS MONDAY-TUESDAY AFTERNOON NOVEMBER 15-16, 2021, 2:00 P.M.

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

2019-304-BZ & 2019-305-A

APPLICANT – Sheldon Lobel, P.C., for 82 Willis, LLC, owner

SUBJECT – Application December 19, 2019 – Variance (§72-21) to permit the development of a fifteen-story residential building (UG 2) contrary to ZR §42-00 (use); ZR §23-662(a) and 123-662 (b)) (height). Waiver of General City Law §36 to permit the construction not fronting on a mapped city street. M3-1 and M1-5/R8A (MX-1) zoning district.

PREMISES AFFECTED – 180 East 132nd Street, Block 2260, Lot 180, Borough of Bronx.

COMMUNITY BOARD #1BX

ACTION OF THE BOARD – Laid over to February 7-8, 2022, at 10 A.M., for continued hearing.

2021-8-BZ

APPLICANT – Victor Han AIA, PC, for Gavriel Mullakandarov, owner.

SUBJECT – Application January 14, 2021 – Special Permit (§73-621) to permit an enlargement of an existing one-family residence. R2A zoning district

PREMISES AFFECTED – 79-26 214th Street, Block 7770, Lot 18, Borough of Queens.

COMMUNITY BOARD #11Q

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 December 13-14, 2021, at 10 A.M., for decision, hearing closed.

2021-16-BZ

APPLICANT – Rosenberg & Estis, P.C by Frank E Chaney, Esq., for Property 1 Holdings LLC, owner.

SUBJECT – Application February 24, 2021 – Variance (§72-21) to/ permit the development of a building contrary to ZR §23-692(d)(2), a/k/a the “sliver law,” to allow the proposed building to exceed the maximum allowable building height by 6.07 feet, and (b) ZR §23-62(g)(3)(i) to allow the elevator and stair bulkheads to exceed the maximum allowable area for permitted

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obstructions by 148.64 square feet. R8A/C2-4 zoning district.

PREMISES AFFECTED – 302 W 128th Street, Block 1954, Lot 136, Borough of Manhattan.

COMMUNITY BOARD #10M

ACTION OF THE BOARD – Laid over to January 10-11, 2022, at 10 A.M., for postponed hearing.

2021-36-BZ & 2020-90-A

APPLICANT – Terminus Group, LLC, for CeeJay Real Estate Development Corp., owner.

SUBJECT – Application June 2, 2021 – Variance (§72-21) to permit the development of a two-family detached home (UG 2) contrary to ZR §23-461(a) (side yard), R3X Zoning District. Proposed construction of a two-family building located within the bed of a mapped street, contrary to General City Law Section 35 and waiver of 72-01-(g). Lower Density Growth Management Area.

PREMISES AFFECTED – 244 Gansevoort Boulevard, Block 761, Lot 45, Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Laid over to February 7-8, 2022, at 10 A.M., for continued hearing.

Carlo Costanza, Executive Director

BULLETIN

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December 10, 2021

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2021-73-BZY

113 West 24th Street, Block 800, Lot(s) 0050, Borough of **Manhattan, Community Board: 4**. Extension of time (§11-332) to complete construction of a minor development commenced under the prior zoning. M1-6 zoning district. M1-6 district.

2021-74-BZY

37-10 10th Street, Block 00359, Lot(s) 0021, Borough of **Queens, Community Board: 1**. Extension of time (§11-332) to complete construction of a minor development commenced under the prior zoning. M1-3 zoning district. M1-3 district.

2021-75-BZY

38-15 9th Street, Block 00475, Lot(s) 0026, Borough of **Queens, Community Board: 1**. Extension of time (§11-332) to complete construction of a major development commenced under the prior zoning. M1-3 zoning district. M1-3 district.

2021-76-BZY

35 West 28th Street, Block 00830, Lot(s) 17 & 24, Borough of **Manhattan, Community Board: 5**. Extension of time (§11-332) to complete construction of a minor development commenced under the prior zoning. M1-6 zoning district. M1-6 district.

2021-77-BZY

38-39 9th Street, Block 00475, Lot(s) 0019, Borough of **Queens, Community Board: 1**. Extension of time (§11-332) to complete construction of a major development commenced under the prior zoning. M1-3 zoning district. M1-3 district.

2021-78-A

131 22nd Street, Block 00642, Lot(s) 0013, Borough of **Brooklyn, Community Board: 7**. Application to acquire vested rights under common law requesting the renewal of all building permits relating to the proposed development. M1-2D zoning district. M1-2D district.

2021-79-A

38-60 11th Street, Block 00474, Lot(s) 0056, Borough of **Queens, Community Board: 1**. Application to acquire vested rights under common law requesting the renewal of all building permits relating to the proposed development. M1-3 zoning district. M1-3 district.

2021-80-BZY

131 22nd Street, Block 00642, Lot(s) 0013, Borough of **Brooklyn, Community Board: 7**. Extension of time (§11-332) to complete construction of a minor development commenced under the prior zoning. M1-2D zoning district. M1-2D district.

2021-81-BZY

38-60 11th Street, Block 00474, Lot(s) 0056, Borough of **Queens, Community Board: 1**. Extension of time (§11-332) to complete construction of a minor development commenced under the prior zoning. M1-3 zoning district. M1-3 district.

2021-82-BZ

218 Hamilton Avenue, Block 00513, Lot(s) 29, 36, Borough of **Brooklyn, Community Board: 6**. 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. 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

**TELECONFERENCE PUBLIC HEARINGS
JANUARY 24-25, 2022, MONDAY-TUESDAY
10:00 A.M. and 2:00 P.M.**

NOTICE IS HEREBY GIVEN of teleconference public hearings, Monday, January 24, 2022, at 10:00 A.M. and 2:00 P.M., and Tuesday January 25, 2022, at 10:00 A.M. and 2:00 P.M., to be streamed live through the Board's website (www.nyc.gov/bsa), with remote public participation, on the following matters:

SPECIAL ORDER CALENDAR

171-97-BZ

APPLICANT – Gerald J. Caliendo, RA, AIA, for Rocco Sacco, owner.

SUBJECT – Application August 31, 2021 – Extension of Term of a previously approved variance which permitted the operation of a trade school (UG 9), eating and drinking establishment (UG 6), retail (UG 6) and accessory uses which expired on October 20, 2018; Waiver of the Board's Rules of Practice and Procedures. R4 zoning district.

PREMISES AFFECTED – 65-01 Kissena Boulevard, Block 6742, Lot 10, Borough of Queens.

COMMUNITY BOARD #8Q

197-08-BZ

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

SUBJECT – Application June 9, 2021 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) to permit a four-story and penthouse residential building which expired on June 18, 2021. R4 district.

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

COMMUNITY BOARD #9BK

ZONING CALENDAR

2021-52-BZ

APPLICANT – Terminus Group, LLC, for Frank Martarella III, owner.

SUBJECT – Application August 10, 2021 – Variance (§72-21) to permit the construction of a single-family detached home contrary to side yard regulations. R3-1 zoning district.

PREMISES AFFECTED – 134-24 159th Street, Block 12297, Lot 19, Borough of Queens.

COMMUNITY BOARD #12Q

Margery Perlmutter, Chair/Commissioner

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**PUBLIC HEARINGS
MONDAY-TUESDAY MORNING
NOVEMBER 29-30, 2021, 10:00 A.M.**

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

SPECIAL ORDER CALENDAR

282-79-BZ

APPLICANT – David L Businelli, for 1745 Forest Avenue Corp., Anthony DiLeo, President, owner; 1745 Operating LLC, lessee.

SUBJECT – Application June 11, 2019 – Amendment to a condition of term for a previously approved Variance (§72-21) which permitted an accessory off-site parking facility accessory to an eating and drinking establishment located on the opposite side of the street which expired on July 24, 2009; Waiver of the Board’s rules. R3A zoning district.

PREMISES AFFECTED – 840 Richmond Avenue, Block 1147, Lot(s) 1, Borough of Staten Island.

COMMUNITY BOARD #1SI

ACTION OF THE BOARD – Application granted.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta5

Negative:.....0

THE RESOLUTION –

This is an application for a waiver of the Board’s Rules of Practice and Procedures and an extension of term of a variance, previously granted under Z.R. § 72-21, which permitted the construction and maintenance of an off-site accessory parking facility for an adjacent restaurant at 1745 Forest Avenue and expired on July 24, 2009.

A public hearing was held on this application on May 10, 2021, after due notice by publication in *The City Record*, with a continued hearing on October 4, 2021, and then to decision on November 29, 2021. Community Board 1, Staten Island, recommends approval of this application.

The Premises are located on the northwest corner of Richmond Avenue and Leadley Place (Willow Road West), within an R3A zoning district, on Staten Island. With approximately 157 feet of frontage along Richmond Avenue, 135 feet of frontage along Willow Road West, and 17,242 square feet of lot area, the Premises are occupied by an existing parking lot with 40 parking spaces.

The Board has exercised jurisdiction over the Premises since July 24, 1979, when, under the subject calendar number, the Board granted a variance, under Z.R. § 72-21, to permit, in a then-R41 zoning district, the construction and

maintenance of an off-site accessory parking facility for an existing restaurant on condition that all work substantially conform to plans filed with the application; a uniformed attendant supervise the parking facility between 10:00 p.m. and 4:00 a.m., Friday and Saturday; six-foot-high evergreen shrubs be planted on all lot lines except for the ingress and egress openings; the ingress and egress be restricted to the Richmond Avenue frontage only; full width sidewalks be constructed on both Richmond Avenue and Willow Road West; lighting be directed away from adjoining properties; the parking facility be restricted to accessory parking for the restaurant at 1745 Forest Avenue only; the variance be limited to a term of ten years; all laws, rules, and regulations applicable be complied with; and, substantial construction be completed within one year.

On April 11, 1989, under the subject calendar number, the Board amended the variance to extend the term for ten years, to expire on July 24, 1999, on condition that the landscaping be in accordance with the plans filed with the application and be maintained and replaced when necessary; the Premises be maintained clean and free of debris 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 year.

On September 12, 2000, under the subject calendar number, the Board waived its Rules of Practice and Procedures and further amended the variance to extend the term for ten years, to expire on July 24, 2009, on condition that all vehicles be kept within the subject parking lot and not on the street or sidewalk; the conditions appear on the certificate of occupancy; the Premises be maintained in substantial compliance with the proposed plans filed with the application; other than as amended the resolution be complied with in all respects; and, a new certificate of occupancy be obtained within two years.

The term of the variance having expired, the applicant seeks an extension. Because this application was filed more than two years since the expiration of the term, the applicant requests a waiver, pursuant to § 1-14.2 of the Board’s Rules of Practice and Procedures (the Board’s Rules), of § 1-07.3(b)(3)(ii), of the Board’s Rules to permit the filing of this application.

The applicant represents that the parking facility has continuously operated at the Premises since the expiration of the term and continues to comply with all relevant conditions of the Board’s approvals. Specifically, the applicant states that the parking lot has been well maintained, the landscaping has been well maintained, the lighting is in good condition and the sidewalks are in reasonable condition. All vehicles are kept within the subject parking lot and not on the street or sidewalk. Further, there is no refuse storage at the Premises, the hours of operation coincide with the restaurant’s hours of operation, the fence does not have any graffiti, as graffiti is mitigated by the open chain link fencing, and shrubs and

1 On November 14, 1985, the area was rezoned from an R4 zoning district to an R3-2 zoning district under CPC Calendar #C850532ZMR and, on December 19, 2001, was

again rezoned from an R3-2 zoning district to R3A zoning district under CPC Calendar #C0106017MR.

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trees are planted along the fence line.

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 *waive* its Rules of Practice and Procedures and *amends* the resolution, dated July 24, 1979, as amended through September 12, 2000, so that as amended this portion of the resolution shall read: “to grant a ten-year extension of the term, to July 24, 2029; *on condition* that all work, operations, and site conditions shall conform to drawings filed with this application marked ‘November 29, 2021’ – Three (3) sheets; and *on further condition*:

THAT the term of the variance shall expire on July 24, 2029;

THAT that all vehicles be kept within the subject parking lot and not on the street or sidewalk;

THAT lighting shall be provided with reflectors designed so that illumination is directed down and away from adjacent residences;

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, also indicating this approval and calendar number (“BSA Cal. No. 282-79-BZ”), shall be obtained within one year, by November 29, 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;

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 29, 2021.

42-97-BZ

APPLICANT – Law Offices of Marvin Mitzner LLC, for NDC Elmhurst, LLC, owner.

SUBJECT – Application October 18, 2019 – Extension of Term of a previously approved Variance (§72-21) which permitted the construction and use of a one-story and cellar retail drug store (UG 6) which expired on March 3, 2018; Amendment to permit the elimination of a term since the use is now permitted with the exception of a portion located in a R6B zoning district; Waiver of the Board’s Rules. C1-3 and R6B zoning districts.

PREMISES AFFECTED – 93-20 Astoria Boulevard, Block 1367, Lot 48, Borough of Queens.

COMMUNITY BOARD #3Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

This is an application for a waiver of the Board’s Rules of Practice and Procedures (“the Board’s Rules”), an extension of term of a variance, previously granted by the Board pursuant to Z.R. § 72-21, which permitted the construction and use of a one-story with cellar retail drug store (Use Group (“UG”) 6) and expired on March 3, 2018, and an amendment to permit the elimination of a term for the portion of the Premises now located within the C1-3 zoning district.

A public hearing was held on this application on February 25, 2020, after due notice by publication in *The City Record*, with continued hearings on June 1, 2020, October 19, 2020, January 11, 2021, March 22, 2021, and October 4, 2021, and then to decision on November 29, 2021. Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta performed inspections of the Premises and surrounding neighborhood. Community Board 3, Queens, recommends approval of this application on condition that 1) the storm water drainage system at the parking area to be corrected due to flooding; 2) maintain and comply with green tree sustainability and infrastructure; 3) comply with rules and regulations of the Department of Sanitation regarding snow removal at all sidewalks at 93rd Street, 94th Street, and Astoria Boulevard; and 4) maintain parking for 14 cars.

The Premises are located on the southwest corner of Astoria Boulevard and 94th Street, within an R6B (C1-3) zoning district, in Queens. With approximately 214 feet of frontage along Astoria Boulevard, 128 feet of depth, and 20,963 square feet of lot area, the Premises are occupied by an existing one-story, commercial building occupied as a retail drug store (UG 6), with 14 accessory parking spaces.

The Board has exercised jurisdiction over the Premises since March 3, 1998, when, under the subject calendar number, the Board granted a variance, pursuant to Z.R. § 72-21, to permit, in an R4 district, the proposed erection of a one-story plus cellar retail drug store with accessory parking (UG 6) on condition that all work substantially conform to drawings as they apply to the objections filed with the application; the term of the variance be limited to 20 years to expire on March 3, 2018; on-site accessory parking spaces and loading areas be maintained in accordance with BSA-approved plans and be secured when the store is not in operation; roof-mounted HVAC and refrigeration equipment be located and enclosed with a sound-baffling wooden fence in accordance with BSA-approved plans to minimize noise impacts on the adjacent residential uses; lighting be positioned down and away from nearby residential uses; screening and fencing be maintained in accordance with BSA-approved plans; landscaping be maintained in

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accordance with BSA-approved plans; trash pick-up occur between the hours of 8:00 a.m. and 9:00 p.m. only; the above conditions appear on the certificate of occupancy; the following conditions set forth in the conditional negative declaration by reference herein, be complied with:

1. The applicant apply to NYC Department of Transportation's ("DOT") office of Project Analysis and the Divisions of Street Lighting for final approval and implementation of the following mitigation measures once the project is built and substantially occupied, if this mitigation is still deemed necessary by DOT: At the intersection of Astoria Boulevard and 94th Street, during PM peak hour, two seconds of green time be taken from the 94th Street northbound/southbound phase allocated to the Astoria Boulevard eastbound/westbound phase.
2. The applicant submit a sampling protocol for soil gas and soil/groundwater testing on Block 1367, Lot 48 to DEP's Bureau of Air, Noise Hazardous Materials ("BANHM") for review and approval. The applicant is also required to complete any remedial actions determined by Department of Environmental Protection ("DEP") to appropriate based on the sampling. In addition, no sampling, site grading, excavation, demolition or building construction and/or remediation can begin until DEP/BANHM provides written approval of the sampling.;

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 in accordance with Z.R. § 72-23.

The term of the variance having expired, the applicant now seeks an extension. Because this application was filed less than two 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 Procedures (the Board's Rules), of § 1-07.3(b)(2), of the Board's Rules to permit the filing of this application. In accordance with the Board's Rules, the applicant provided images of the Premises to demonstrate continuous use. The applicant further represents that substantial prejudice would result without the grant of the waiver to allow filing of the extension of term because since the original variance was granted, the zoning at the subject Premises has changed to permit commercial use, and the site is now compliant with such use.

The applicant also seeks an amendment to the terms of the variance because the use at the Premises is compliant with the C1-3 commercial district, the original variance pertaining to the use is no longer applicable. However, the applicant notes that the parking requirements in a C1-3 zoning district is one space per 400 square feet, *see* Z.R. §

36-20. The applicant states that since the floor area at the subject lot is 13,379 square feet, the resultant requirement is 33 spaces, and the Premises only provide 14 parking spaces.

Over the course of hearings, the Board expressed concerns about the landscaping at the Premises, particularly the proposed shrubbery along Astoria Boulevard; the lighting along the residential lot line; and trash storage at the Premises. In response to the concerns about the landscaping, the applicant submitted images of the arbor vitae planted along the street line, updated the proposed plans with a tree planting key, received tree replanting approval from the New York City Department of Parks and Recreation, and proposed a schedule to complete the outstanding planting. Regarding the lighting at the residential lot line, the applicant submitted a lumens spread diagram which demonstrated the mounting lights and types of lighting used at the Premises. As per the trash storage, the applicant presented images of the trash bin storage and a schedule for trash pickup.

By letter dated January 12, 2020, the Fire Department states that it has reviewed the plans for the subject application. The Fire Department has inspected these Premises annually for the storage of aerosol products and refrigeration systems and have found no violations. Based on the foregoing, the Department has no objection to the application. The Bureau of Fire Prevention will continue to inspect these Premises and enforce all applicable rules and regulations.

Based upon its review of the record, the Board has determined that the extension of term of the variance, the proposed parking waiver, and amendment to the use at the Premises, appropriate with certain conditions as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *wave* its Rules of Practice and Procedures and *amend* the resolution, dated March 3, 1998, so that as amended this portion of the resolution shall read: "to extend the term of the variance for 20 years, to expire on March 3, 2038; *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked 'Received September 25, 2021 – One (1) sheet'; and *on further condition*:

THAT the term of the variance will be for 20 years, to expire on March 3, 2038;

THAT BSA takes no position on the legality of the signage at the Premises, as the only requested waiver is for parking;

THAT landscaping be maintained in accordance with BSA-approved plans;

THAT street tree replacement shall occur in accordance with the BSA-approved plans;

THAT as per the BSA-approved plans, the applicant must install all of the shrubs to fill in the planting beds by the end of May 2022, in particular along Astoria Boulevard;

THAT trash must be kept in the enclosure until the point of pickup and returned to the enclosure immediately after pickup;

THAT trash pick-up shall occur between the hours of

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8:00 a.m. and 9:00 p.m. only;

THAT on-site accessory parking spaces and loading areas be maintained in accordance with BSA-approved plans and be secured when the store is not in operation;

THAT roof-mounted HVAC and refrigeration equipment be located and enclosed with a sound-baffling wooden fence in accordance with BSA-approved plans to minimize noise impacts on the adjacent residential uses;

THAT lighting be positioned down and away from nearby residential uses; screening and fencing be maintained in accordance with BSA-approved plans;

THAT the BSA compliance officer shall make a site visit by the end of May 2022 to confirm compliance with Board conditions;

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. 42-97-BZ'), shall be obtained within two years, by November 29, 2023;

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."

Adopted by the Board of Standards and Appeals, November 29, 2021.

189-12-BZ

APPLICANT – Kramer Levin Naftalis & Frankel LLP, for 98 Montague LLC, owner.

SUBJECT – Application August 25, 2020 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) to permit the conversion of an existing building into a transient hotel (UG 5), contrary to use regulations (§22-00) which expired on July 23, 2020. C1-3/R7-1 and R6 (LH-1) zoning districts. Property is located within the Brooklyn Heights Historic District.

PREMISES AFFECTED – 98 Montague Street, Block 248, Lot 15, Borough of Brooklyn.

COMMUNITY BOARD #2BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta5
Negative:.....0

THE RESOLUTION –

This is an application for an extension of time to complete construction pursuant to a variance, previously granted by the Board pursuant to Z.R. § 72-21, which

permitted the modification and conversion of an existing building into a transient hotel (Use Group ("UG") 5)—with 280 rooms and accessory hotel use (UG 5) and commercial use (UG 6)—and expired on July 23, 2020.

A public hearing was held on this application on December 14, 2020, after due notice by publication in *The City Record*, and then to decision on November 29, 2021. Vice-Chair Chanda, Commissioner Ottley-Brown, and Commissioner Scibetta performed inspections of the Premises and surrounding neighborhood.

The Premises are bounded by Montague Street to the north, Hicks Street to the west and Remsen Street to the south, partially within a C1-3 (R7-1) zoning district and partially within an R6 zoning district, within the Limited Height (LH-1) District and in the Brooklyn Heights Historic District, in Brooklyn. With approximately 78 feet of frontage along Montague Street, 200 feet of frontage along Hicks Street, 78 feet of frontage along Remsen Street, and 15,635 square feet of lot area, the Premises are occupied by a 14-story with cellar, basement and mezzanine commercial building, currently under construction.

The Board has exercised jurisdiction over the Premises since January 8, 2013, when, under the subject calendar number, the Board granted a variance, pursuant to Z.R. § 72-21, to permit the modification and conversion of an existing building into a transient hotel (UG 5) with 280 rooms and accessory hotel use (UG 5) and commercial use (UG 6), which does not conform with use regulations pursuant to Z.R. §§ 22-10 and 32-14, on condition that any and all work substantially conform to drawings as they apply to the objections, filed with the application; the following be the bulk parameters of the proposed building: 14 stories, a wall height of 147 feet, and a total height of 172 feet; a total floor area of 180,533 square feet (11.55 floor area ratio ("FAR")); transient hotel floor area of 177,649 square feet; commercial floor area of 2,884 square feet; and a maximum of 280 hotel rooms (including suites); the following conditions be applicable to the 14th floor restaurant and terrace: no music, amplified or unamplified, and no sound amplification system of any kind be permitted on the outdoor terrace; the 14th floor restaurant and terrace contain sound attenuation measures as shown on the approved plans and indoor music be limited to 69 dbA at all times; the maximum occupancy at any given time both in the 14th floor restaurant and on the terrace comply with Building Code occupancy regulations and not exceed 120 persons in total, of which not more than 40 patrons at any given time may occupy the terrace; the 14th floor restaurant close by 11:00 p.m. on the weekdays, and by 12:00 a.m. on Fridays and Saturdays (i.e., no patrons be allowed in the restaurant after these times); the 14th floor terrace close at 10:00 p.m. on all nights (i.e., no patrons be allowed on the terrace after this time), except that the 14th floor terrace may remain open beyond 10:00 p.m. on New Year's Eve; the following conditions be applicable to the ground floor restaurant and meeting rooms: the meeting rooms on the ground floor and in the basement be restricted to use by registered hotel guests, and may not be rented to or used by

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non-hotel guests; the meeting rooms and the ground floor restaurant contain sound attenuation measures as shown on the approved plans; the capacity of both ground floor restaurant spaces be limited to a combined total of 240 persons; the following conditions be applicable to pedestrian and vehicular traffic: the hotel provide 75 to 100 spaces dedicated for use by the hotel at the parking garage at 360 Furman Street, and be available for parking 24 hours a day, seven days a week; at least two dedicated staff at the hotel entrance manage taxi and other vehicle traffic, including enforcing double-parking prohibition, unloading guest vehicles, taking vehicles to the off-site parking garage, and summoning by radio cars when needed by guests, using a dispatch system; no rope lines, checkpoints, or check-in tents be permitted at any time outside of the hotel; no tour or charter buses be permitted to load or unload in front of the hotel; deliveries be limited to hours between 7:00 a.m. and 7:00 p.m.; the Remsen Street entrance only be used for required egress; and on the following other conditions: no cabaret license be issued for any space in the hotel; no occupancy be permitted in any other outdoor space, other than the 14th floor terrace except as may be required for egress from terrace; a sign be posted outside the hotel, near the Montague Street entrance, stating: "This is a residential neighborhood. Please respect our neighbors."; any exterior lighting at all times be directed away from neighboring buildings; all conditions be listed on the certificate of occupancy; the approval be limited to the relief granted by the Board in response to specifically cited and filed Department of Buildings ("DOB")/other jurisdiction objection(s) only; the approved plans be considered approved only for the portions related to the specific relief granted; the grant be contingent upon final approval from the Department of Environmental Protection before issuance of construction permits other than permits needed for soil remediation; and, the DOB ensure compliance with all other relevant 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.

On July 23, 2019, under the subject calendar number, the Board amended the variance to grant a one-year extension of time to complete construction, on condition that substantial construction be completed by July 23, 2020, as evidenced by an inspection and determination by the Department of Buildings.

The time for substantial construction to have been completed having expired, the applicant seeks the subject relief. The applicant represents that, since the Board's 2019 extension, work on the remaining spaces in the building was initially delayed due to the unavailability of financing. Design work for the ground-floor and 14th-floor restaurants began in January 2020, and was completed in March 2020. The owner prepared to file to commence construction at that time, when all non-essential construction in the City was halted on March 13, 2020, due to the COVID-19 pandemic. Construction was permitted to resume in June 2020, and underway on the remaining spaces in the building.

In response to Board direction, the applicant submits proof of payment and resolution of Department of Buildings Environmental Control Board summonses.

The Fire Department states, by correspondence dated December 8, 2020, that they have inspected the Premises to test and permit the fire suppression system (standpipe and sprinkler) and the base building fire alarm system. All systems are satisfactory and permits are current. Based on the foregoing, the Fire Department has no objection to the application, as the Bureau of Fire Prevention will continue to inspect the Premises and enforce all applicable rules and regulations.

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 *amend* the resolution, dated January 8, 2013, as amended through July 23, 2019, so that as amended this portion of the resolution shall read: "to grant a two-year extension of time to complete construction, to November 29, 2023; *on condition*:

THAT substantial construction shall be completed by November 29, 2023;

THAT the following shall be the bulk parameters of the proposed building: 14 stories, a wall height of 147 feet, and a total height of 172 feet; a total floor area of 180,533 square feet (11.55 FAR); transient hotel floor area of 177,649 square feet; commercial floor area of 2,884 square feet; and a maximum of 280 hotel rooms (including suites);

14th Floor Restaurant and Terrace:

THAT no music, amplified or unamplified, and no sound amplification system of any kind is permitted on the outdoor terrace;

THAT the 14th floor restaurant and terrace shall contain sound attenuation measures as shown on the approved plans and indoor music shall be limited to 69 dbA at all times;

THAT the maximum occupancy at any given time both in the 14th floor restaurant and on the terrace shall comply with Building Code occupancy regulations and not exceed 120 persons in total, of which not more than 40 patrons at any given time may occupy the terrace;

THAT the 14th floor restaurant shall close by 11:00 p.m. on the weekdays, and by 12:00 a.m. on Fridays and Saturdays (i.e., no patrons shall be allowed in the restaurant after these times);

THAT the 14th floor terrace shall close at 10:00 p.m. on all nights (i.e., no patrons shall be allowed on the terrace after this time), except that the 14th floor terrace may remain open beyond 10:00 p.m. on New Year's Eve;

Ground Floor Restaurant and Meeting Rooms:

THAT the meeting rooms on the ground floor and in the basement shall be restricted to use by registered hotel guests, and may not be rented to or used by nonhotel guests;

THAT the meeting rooms and the ground floor restaurant shall contain sound attenuation measures as shown on the approved plans;

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THAT the capacity of both ground floor restaurant spaces shall be limited to a combined total of 240 persons;

Pedestrian and Vehicular Traffic:

THAT the hotel shall provide 75 to 100 spaces dedicated for use by the hotel at the parking garage at 360 Furman Street, and shall be available for parking 24 hours a day, seven (7) days a week;

THAT at least two (2) dedicated staff at the hotel entrance shall manage taxi and other vehicle traffic, including enforcing double-parking prohibition, unloading guest vehicles, taking vehicles to the off-site parking garage, and summoning by radio cars when needed by guests, using a dispatch system;

THAT no rope lines, checkpoints, or check-in tents are permitted at any time outside of the hotel;

THAT no tour or charter buses are permitted to load or unload in front of the hotel;

THAT deliveries shall be limited to hours between 7:00 a.m. and 7:00 p.m.;

THAT the Remsen Street entrance shall only be used for required egress;

Other Conditions:

THAT no cabaret license shall be issued for any space in the hotel;

THAT no occupancy shall be permitted in any other outdoor space, other than the 14th floor terrace except as may be required for egress from terrace;

THAT a sign shall be posted outside the hotel, near the Montague Street entrance, stating: "This is a residential neighborhood. Please respect our neighbors.";

THAT any exterior lighting shall at all times be directed away from neighboring buildings;

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 November 29, 2023;

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, also indicating this approval and calendar number ("BSA Cal. No. 189-12-BZ"), shall be obtained within two years, by November 29, 2023;

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."

Adopted by the Board of Standards and Appeals, November 29, 2021.

2017-240-BZ

APPLICANT – Troutman Pepper LLC, for 310 Lenox Avenue LLC & RM 310 Lenox LLC., owner.

SUBJECT – Application February 12, 2021 – Extension of Term of a previously approved Special Permit (§73-244) permitting an eating and drinking establishment without restrictions and no limitation on entertainment and dancing (UG 12A) (Red Rooster Harlem Restaurant located on the cellar level which expires on expiring March 27, 2021. 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.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

This is an application for an extension of term for a previously approved special permit, granted pursuant to Z.R. §§ 73-03 and 73-244, which permitted an eating and drinking establishment located on the cellar level without restrictions and limitation on entertainment and dancing (Use Group "UG" 12A) and expired on March 27, 2021.

A public hearing was held on this application on September 27, 2021, after due notice by publication in *The City Record*, and then to decision on November 29, 2021. Commissioner Ottley-Brown performed inspections of the site and surrounding neighborhood, and Community Board 10, Manhattan, recommends approval.

The Premises are 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. With approximately 100 feet of frontage along Lenox Avenue, 85 feet of frontage along West 126th Street, and 8,493 square feet of lot area, the Premises are currently occupied by a three-story, with cellar, commercial building.

The Board has exercised jurisdiction over the Premises since March 27, 2018, when, under the subject calendar number, the Board granted a special permit, pursuant to Z.R. §§ 73-03 and 73-244, 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 Z.R. § 32-21, on condition that all work and site conditions conform to drawings filed with the application; the term of the grant be for three years, to expire on March 27, 2021; the above conditions appear on the certificate of occupancy; the certificate of occupancy be obtained within one year, by March 27, 2019; the approval is limited to the relief granted by the Board in response to the objections cited and filed by the Department of Buildings; 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 of

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other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

The term of the variance having expired, the applicant now seeks an extension. The applicant represents that it is not requesting any changes or modifications to the conditions of the prior approval.

By letter dated June 24, 2021, the Fire Department states that it has reviewed the plans and has been conducting annual inspections of these Premises and has found no violations, and permits are current. Based upon the foregoing, the Fire Department has no objection to the application. The Bureau of Fire Prevention will continue to inspect these Premises and enforce all applicable rules and regulations.

Based upon its review of the record, the Board has determined that the extension of term of the special permit appropriate with certain conditions as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals *amends* the resolution, dated March 27, 2018, so that as amended this portion of the resolution shall read: “to extend the term of the special permit for three years, to expire on March 27, 2024; *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked ‘Received May 27, 2021 – Two (2) sheets’; and *on further condition*:

THAT the term of the variance will be for three years, to expire on March 27, 2024;

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. 2017-240-BZ’), shall be obtained within one year, by November 29, 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;

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 29, 2021.

378-45-BZ

APPLICANT – Davidoff Hatcher & Citron, LLP, for Leemilts Petroleum, Inc., owner; Atlantis GRC Realty LLC, lessee.

SUBJECT – Application December 28, 2018 – Amendment (§11-412) of a previously approved variance permitting the operation of an Automotive Service Station (UG 16B) seeking to permit a change in the configuration of existing gasoline pumps, the addition of a canopy and the conversion of an accessory lubricatorium to an accessory convenience

store with a drive-through. C2-3/R5D zoning district. PREMISES AFFECTED – 116-60 Sutphin Boulevard, Block 12008, Lot(s) 0034, Borough of Queens.

COMMUNITY BOARD #12Q

ACTION OF THE BOARD – Laid over to January 24-25, 2022, at 10 A.M., for continued hearing.

887-54-BZ

APPLICANT – Eric Palatnik, P.C, for Napa Realty Corp., owner.

SUBJECT – Application May 21, 2020 – Extension of Term (§11-411) for the continued use of gasoline station (BP Amoco) with accessory convenience store which expires on June 15, 2020. C2-2/R6B zoning district.

PREMISES AFFECTED – 218-01 Northern Boulevard, Block 6321, Lot 21, Borough of Queens.

COMMUNITY BOARD #11Q

ACTION OF THE BOARD – Laid over to February 28, 2022, at 10 A.M., for continued hearing.

808-55-BZ

APPLICANT – Eric Palatnik, P.C, for 35 Bell Realty Inc., owner.

SUBJECT – Application September 29, 2020 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of an Automotive Service Station (UG 16B) (Amoco) with accessory uses which expired on March 27, 2021. C2-2/R4 zoning district.

PREMISES AFFECTED – 35-04 Bell Boulevard, Block 6169, Lot 6, Borough of Queens.

COMMUNITY BOARD #11Q

ACTION OF THE BOARD – Laid over to February 28, 2022, at 10 A.M., for continued hearing.

827-55-BZ

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

SUBJECT – Application July 15, 2020 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of an Automotive Service Station (UG 16B) which is set to expire on January 31, 2021. R3-2/C1-3 zoning district.

PREMISES AFFECTED – 245-20 139th Avenue, Block 1361, Lot 23, Borough of Queens.

COMMUNITY BOARD #13Q

ACTION OF THE BOARD – Laid over to February 28, 2022, at 10 A.M., for continued hearing.

548-69-BZIV

APPLICANT – Eric Palatnik, P.C, for BP Products North America Inc., owner.

SUBJECT – Application July 29, 2020 – Extension of Term of a previously approved variance (§72-21) which permitted the operation of an automotive service station (UG 16B)

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which expires on May 25, 2021; Extension of Time to Obtain a Certificate of Occupancy which expired on June 6, 2018; Waiver of the Board's Rules of Practice and Procedures. C2-3/R6B zoning district.

PREMISES AFFECTED – 107-10 Astoria Boulevard, Block 1694, Lot 1, Borough of Queens.

COMMUNITY BOARD #3Q

ACTION OF THE BOARD – Laid over to February 28 & March 1, 2022, at 10 A.M., for continued hearing.

435-74-BZ

APPLICANT – Eric Palatnik, P.C, for Theresa Townsley, owner.

SUBJECT – Application January 22, 2020 – Extension of Term of a previously approved Variance (§72-21) which permitted the operation of an automotive service station (UG 16B) which expired on January 14, 2020. R3-1 zoning district.

PREMISES AFFECTED – 552 Midland Avenue, Block 3804, Lot 18, Borough of Queens.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Laid over to February 28 & March 1, 2022, at 10 A.M., for continued hearing.

24-09-BZ

APPLICANT – Bryan Cave Leighton Paisner LLP, for Meadow Park Rehabilitation and Health Care Center, owner.

SUBJECT – Application July 26, 2019 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) permitting the enlargement of a community facility (Meadow Park Rehabilitation and Health Care Center) which expired on July 26, 2015; Waiver of the Board's Rules. R3-2 zoning district.

PREMISES AFFECTED – 78-10 164th Road, Block 6851, Lot(s) 9, 11, 12, 23, 14, Borough of Queens.

COMMUNITY BOARD #8Q

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 January 24-25, 2022, at 10 A.M., for decision, hearing closed.

227-10-BZ

APPLICANT – Eric Palatnik, P.C, for Power Test Realty Corporation, owner.

SUBJECT – Application June 12, 2020 – Extension of Term (§11-411) of a previously approved variance which permitted the operation of an Automotive Service Station (UG 16B) to expire on September 20, 2021. C2-2/R3-2 zoning district.

PREMISES AFFECTED – 204-12 Northern Boulevard, Block 7301, Lot 11, Borough of Queens.

COMMUNITY BOARD #11Q

ACTION OF THE BOARD – Laid over to February 28 & March 1, 2022, at 10 A.M., for continued hearing.

61-12-BZII

APPLICANT – Sheppard Mullin Richter & Hampton LLP, for 101 H 216 Lafayette LLC, owner.

SUBJECT – Application November 23, 2020 – Amendment of a previously approved Variance (§72-21) to permit a UG 6 restaurant in a portion of the cellar and first floor, contrary to use regulations (§42-10). The amendment seeks to extend the variance to the entire first floor; Extension of Time to Complete Construction which expired on February 26, 2017; Waiver of the Board's Rules of Practice and Procedure. M1-5B zoning district.

PREMISES AFFECTED – 216 Lafayette Street, Block 482, Lot 28, Borough of Manhattan.

COMMUNITY BOARD #2M

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 December 13-14, 2021, at 10 A.M., for decision, hearing closed.

120-13-BZ

APPLICANT – Pryor Cashman, LLP, for Doris Kurlender and Samuel Jacobson, Owner; Spillane Parkside Corp., lessee.

SUBJECT – August 13, 2019 – Extension of Term of a previously approved Special Permit (§73-243) which permitted an accessory drive-thru to an eating and drinking establishment (UG 6) (McDonald's) which expired on January 14, 2019; Waiver of the Board's Rules. C1-1/R3-2 zoning district.

PREMISES AFFECTED – 1815 Forest Avenue, Block 1180, Lots 6, 49, Borough of Staten Island.

COMMUNITY BOARD #1SI

ACTION OF THE BOARD – Laid over to March 14-15, 2022, at 10 A.M., for deferred decision.

99-14-BZ

APPLICANT – Greenberg Traurig, LLP, by Jay A. Segal, for Arisa Realty Co X LLC., owner.

SUBJECT – Application August 11, 2020 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) to facilitate the construction of a new 21-story which expired on October 29, 2021. C6-4 Special Hudson Yards District.

PREMISES AFFECTED – 432-434 West 31st Street, Block 728, Lot 55, Borough of Manhattan.

COMMUNITY BOARD #4M

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda,

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Commissioner Ottley-Brown, Commissioner Sheta, and
Commissioner Scibetta.....5
Negative:.....0

ACTION OF THE BOARD – Laid over to January
10-11, 2022, at 10 A.M., for decision, hearing closed.

220-14-BZII thru 221-14-BZII

APPLICANT – Hirschen Singer & Epstein LLP, for Post
Industrial Thinking LLC, owner.

SUBJECT – Application January 7, 2021 – Extension of
Time to Complete Construction of a previously approved
Variance (§72-21) to permit the construction of two 3-story
single family residences which expired on January 12, 2020;
Waiver of the Board's Rules of Practice and Procedures.
M1-1 zoning district.

PREMISES AFFECTED – 8-10 Underhill Avenue, Block
1122, Lot 37, Borough of Brooklyn.

COMMUNITY BOARD #8BK

ACTION OF THE BOARD – Laid over to January
24-25, 2022, at 10 A.M., for deferred decision.

2017-243-BZ

APPLICANT – Eric Palatnik, P.C., for Blue Hills Fuel
LLC, owner; PMG, lessee.

SUBJECT – Application July 13, 2021 – Extension of Time
to Obtain a CO of a previously approved variance
permitting the operation of an automotive service station
with accessory uses which expired on October 29, 2020;
Waiver of the Board's Rules of Practice and Procedures.
R2A zoning district.

PREMISES AFFECTED – 29-16 Francis Lewis Boulevard -
aka 29-29 172nd Street, Block 4938, Lot 1 Borough of
Queens.

COMMUNITY BOARD #7Q

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
7-8, 2022, at 10 A.M., for decision, hearing closed.

APPEALS CALENDAR

2021-11-BZY

APPLICANT – Kenneth K. Loweinstein, for 559
Development, LLC, owner.

SUBJECT – Application January 21, 2021 – Extension of
Time to Complete Construction and Obtain a Certificate of
Occupancy (§11-332) for a period of two years from
December 20, 2020.

PREMISES AFFECTED – 38-59 11th Street, Block 00473,
Lot 559, Borough of Queens.

COMMUNITY BOARD #1Q

ACTION OF THE BOARD – Application granted.

THE VOTE –

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

THE RESOLUTION –

This is an application, under Z.R. § 11-332, to
establish the right to continue construction and to renew
building permits lawfully issued by the Department of
Buildings, acting on New Building Application No.
421617780 (the “New Building Application”), before the
effective date of an amendment to the Zoning Resolution.

A public hearing was held on this application on
September 27, 2021, after due notice by publication in The
City Record, and then to decision on November 29, 2021.
Community Board 1, Queens, waived its recommendation
of this application.

I.

The Premises are located on a through-lot along the
east side of 11th Street and west side of 12th Street, between
40th Avenue and 38th Avenue, within an M1-3 zoning
district, in Queens. With approximately 150 feet of frontage
along 11th Street, 75 feet of frontage along 12th Street, and
19,159 square feet of lot area, the Premises are to be
occupied by a 24-story Use Group 5 Transient Hotel
building (the “Building”).

On April 26, 2018, the Department of Buildings
determined that the Building would comply with all
applicable zoning regulations and issued building permits
authorizing work associated with the New Building
Application beginning in April 2018 and culminating in the
issuance of a new-building permit.

By letter dated June 23, 2021, the Department of
Buildings represents that building permits associated with
the New Building Application were lawfully issued.

Effective December 20, 2018 (the “Effective Date”),
the City amended the Zoning Resolution such that any Use
Group 5 Transient Hotel in M1 districts now require a
special permit from the City Planning Commission and are
would no longer a permitted as-of-right at the Premises.

II.

Because “a certificate of occupancy including a
temporary certificate of occupancy” had not been issued to
the Building “within two years after” the Effective Date, the
building permits authorizing work associated with the New

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Building Application could “automatically lapse and the right to continue construction . . . terminate,” Z.R. § 11-332.

To avoid this result, the applicant seeks to establish the right to continue construction of the Building for two years, under Z.R. § 11-332, and to renew building permits authorizing work associated with the New Building Application. In order to grant this application, the Board must “find that substantial construction has been completed and substantial expenditures made, subsequent to the granting of the permit, for work required by any applicable law for the use or development of the property pursuant to the permit.” Z.R. § 11-332(a).

A.

First, the applicant has presented evidence that, in accordance with the building permits authorizing work associated with the New Building Application, the owner has effected “substantial construction” to further development of the Building. Z.R. § 11-332.

In particular, the applicant presented evidence of the completion of excavation, foundation, and a substantial portion of the Building’s superstructure. As of December 2018, all work on the Building’s foundation was completed.

The applicant represents that 75% of the total work to complete the Building has been completed as of November 2020. Specifically, the only work remaining on the Building includes fire alarm work (50% completed), plumbing (90% completed) and sprinkler (92% completed) installations, mechanical piping (90% completed from 6th to 24th floors), and elevator installations (over 50% completed).

Accordingly, the record reflects and the Board finds that, in accordance with the building permits authorizing work associated with the New Building Application, the owner has effected “substantial construction” to further development of the Building. Z.R. § 11-332.

B.

Second, the applicant submitted evidence that “substantial expenses” have been paid or incurred as irrevocable financial commitments, totaling approximately \$32.8 million (78 percent) of the total development cost of \$42 million. Accordingly, the record reflects and the Board finds that the owner has incurred “substantial expenses” to further development of the Building. Z.R. § 11-332.

III.

Based on the foregoing, the Board finds that the evidence in the record supports the establishment of a right to continue construction of the Building, under Z.R. § 11-332, and that the applicant has substantiated a basis to warrant renewal of building permits authorizing work associated with the New Building Application.

Nothing herein shall inhibit any tolling applicable by virtue of pending litigation or by any executive order related to the current state of emergency declared to exist within the City of New York resulting from an outbreak of novel coronavirus disease.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *grant* this application, under Z.R. § 11-332, to establish the right to continue construction and to renew building permits lawfully issued by the

Department of Buildings, acting on New Building Application No. 421617780, before the effective date of an amendment to the Zoning Resolution on December 20, 2018, as well as all related permits for various work types, either already issued or necessary to complete construction and obtain a certificate of occupancy, for two years, expiring November 29, 2023, or such later date as may be allowed by applicable tolling.

Adopted by the Board of Standards and Appeals, November 29, 2021.

170-93-A

APPLICANT – Rothkrug Rothkrug & Spector LLP, for JABE Contracting LLC, owner.

SUBJECT – Application August 25, 2020 – Proposed enlargement of a commercial building not fronting on a legally mapped street, contrary to General City Law §36. M3-1 zoning district/Special South Richmond District.

PREMISES AFFECTED – 220 Industrial Loop, Block 7206, Lot 130, Borough of Staten Island.

COMMUNITY BOARD #3SI

ACTION OF THE BOARD – Laid over to March 14-15, 2022, at 10 A.M., for continued hearing.

ZONING CALENDAR

2020-89-BZ

APPLICANT – Eric Palatnik, P.C., for Arkadiy Shukhat, owner.

SUBJECT – Application November 18, 2020 – Special Permit (§73-622) to permit the enlargement of an existing single-family home. R3-1 zoning district.

PREMISES AFFECTED – 111 Langham Street, Block 8755, Lot 12, Borough of Brooklyn.

COMMUNITY BOARD # 15BK

ACTION OF THE BOARD – Application granted.

THE VOTE –

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

Negative:.....5

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated October 28, 2020, acting on DOB Alteration Type I Application No. 340745750, reads in pertinent part:

“Proposed vertical enlargement to existing two-family house in R3-1 zoning district is non-compliant in regards to:

1. Proposed Floor Area Ratio (F.A.R.) is contrary to ZR 23-142
2. Proposed Lot Coverage is contrary to ZR 23-142.
3. Proposed Open Space is contrary to ZR 23-142.
4. Proposed Rear Yard is contrary to ZR 23-

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47.”

This is an application under Z.R. §§ 73-622 and 73-03 to permit, in an R3-1 zoning district, the enlargement of an existing one-story, with basement, single-family semi-detached residence that does not comply with zoning regulations for floor area ratio (“FAR”), lot coverage, open space (Z.R. § 23-142), and rear yards (Z.R. § 23-47).

A public hearing was held on this application on October 4, 2021, after due notice by publication in *The City Record*, and then to decision on November 29, 2021. Community Board 15, Brooklyn, recommends approval of this application.

The Premises are located on the east side of Langham Street, between Shore Boulevard and Oriental Boulevard, within an R3-1 zoning district, in Brooklyn. With approximately 26 feet of frontage along Langham Street, 104 feet of depth, and 2,704 square feet of lot area, the Premises are occupied by an existing one-story, with basement, single-family semi-detached residence.

The Board notes that its determination herein is subject to and guided by, inter alia, Z.R. §§ 73-01 through 73-04. As a threshold matter, the Board notes that the Premises are within the boundaries of a designated area in which the subject special permit is available. The Board notes further that this application seeks to enlarge an existing detached single-family residence, as contemplated in Z.R. § 73-622.

The existing building is a one-story, with basement, single-family semi-detached residence with approximately 2,274 square feet of floor area (0.84 FAR), 49% of lot coverage (1,322 square feet) and 51% of open space (1,357 square feet), one side yard with four feet of width, and a rear yard with 23 feet of depth. The applicant seeks to vertically enlarge the existing building resulting in a two-story, with basement, semi-detached single-family residence with 0.99 FAR (2,683 square feet of floor area), and maintain the existing lot coverage, open space, and rear yard. The applicant proposes to increase the floor area by adding a second floor with 409 square feet of floor area.

At the Premises, pursuant to Z.R. §§ 23-142 and 23-47, a maximum of 0.50 FAR is permitted, a maximum of 35% lot coverage is permitted, a minimum of 65% open space is required, and a rear yard with a minimum depth of 30 feet is required. The applicant represents that the proposed single-family residence as enlarged is consistent with the built character of the neighborhood. In support of this contention, the applicant surveyed single- and two-family residences within 400 feet of the Premises and with the same relevant bulk regulations (the “Study Area”), finding that 22 residences have an FAR of 0.8 or greater, 5 of which have an FAR of 1.0 or greater. With respect to lot coverage and open space, the applicant submitted a lot coverage study demonstrating that 25 residences within the Study Area have greater than 35% lot coverage. The applicant submitted a rear yard study of the subject block demonstrating that 20 residences have rear yards with less than 30 feet of depth, 7 of which have a rear yard with a depth less ranging from 23 feet to 12 feet.

Based upon its review of the record and inspections of

the Premises 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.

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. The proposed modification of bulk regulations will not interfere with any pending public improvement project.

The Board finds that the evidence in the record supports the findings required to be made under Z.R. §§ 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 make each and every one of the required findings under Z.R. §§ 73-622 and 73-03 to permit the enlargement of an existing one-story, with basement, single-family semi-detached residence that does not comply with zoning regulations for floor area ratio, open space, lot coverage, and rear yards, contrary to Z.R. §§ 23-142 and 23-47; *on condition* that all work and site conditions shall conform to drawings filed with this application marked “November 11, 2021”—Twenty-nine (29) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: a maximum of 0.99 FAR (2,683 square feet of floor area), a maximum lot coverage of 49%, a minimum of 51% open space, and a rear yard with a minimum depth of 23’, as illustrated on the Board-approved plans; and

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 Premises shall comply with Appendix G and applicable flood regulations;

THAT the Department of Building shall verify compliance with underlying zoning regulations related to sky exposure plane, specifically with respect to Z.R. § 23-632, Required Side and Rear Setbacks, and all other provisions of the Zoning Resolution not specifically waived by this special permit;

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. 2020-89-BZ”), shall be obtained within four years, by November 29, 2025;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the Department of Buildings;

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

THAT the Department of Buildings must ensure compliance with all other applicable provisions of the

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Zoning Resolution, the Administrative Code, and any other relevant laws under its jurisdiction irrespective of plans or configurations not related to the relief granted.

Adopted by the Board of Standards and Appeals, November 29, 2021.

2021-8-BZ

CEQR #21-BSA-029Q

APPLICANT – Victor Han AIA, PC, for Gavriel Mullakandarov, owner.

SUBJECT – Application January 14, 2021 – Special Permit (§73-621) to permit an enlargement of an existing one-family residence. R2A zoning district

PREMISES AFFECTED – 79-26 214th Street, Block 7770, Lot 18, Borough of Queens.

COMMUNITY BOARD #11Q

ACTION OF THE BOARD – Application granted.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta5

Negative:0

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated December 18, 2020, acting on Alteration Type I Application No. 440597640, reads in pertinent part: “Proposed floor area contrary to ZR 23-142.”

This is an application under Z.R. §§ 73-621 and 73-03 to permit, within an R2A zoning district, the enlargement of an existing single-family, two-story, detached residence, contrary to Z.R. § 23-142.

A public hearing was held on this application on November 16, 2021, after due notice by publication in *The City Record*, and then to decision on November 29, 2021. Vice-Chair Chanda performed inspections of the Premises and surrounding neighborhood. Community Board 11, Queens, recommends approval of this application.

The Premises are located on the west side of 214th Street, between Richland Avenue and Union Turnpike, within a R2A zoning district, in Queens. With approximately 53 feet of frontage along 214th Street, 100 feet of depth, and 5,300 square feet of lot area, the Premises are occupied by an existing single-family, two-story, detached residence.

The Board notes that its determination herein is subject to and guided by, inter alia, Z.R. §§ 73-01 through 73-04. As a threshold matter, the Board notes that the Premises are within the boundaries of a designated area in which the subject special permit is available. The Board notes further that the subject application seeks to enlarge an existing semi-detached mixed-used commercial and residential building that existed on December 15, 1961, as contemplated in Z.R. § 73-621.

The existing residence is a single-family, two-story, detached building with a floor area of 2,623 (0.49 FAR). The applicant proposes to increase the total floor area of the residence to 2,925 square feet (0.55 FAR) by adding an

additional floor area of 302 square feet. The applicant represents that the additional floor area would be created by infilling the open space on the second floor of the two-story high portion of the first-floor dining room to facilitate an additional bedroom. At the Premises, the maximum floor area permitted is 2,650 (0.50 FAR), *see* Z.R. § 23-142, so the proposed FAR does not exceed 110 percent of the maximum allowed.

The applicant represents that the enlargement is consistent with the built character of the neighborhood because the proposed enlargement would be strictly limited to the interior of the existing residence, and no exterior work is proposed or required to accommodate the change in floor area. The applicant further states that no change in roof, building envelope, lot coverage or any other exterior characteristic of the building or site is proposed.

Based upon its review of the record and inspections of the Premises 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. 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. The proposed modification of bulk regulations will not interfere with any pending public improvement project.

The project is classified as a Type II action pursuant to 6 NYCRR Part 617.5 and the Board has conducted a review of the proposed Type II action noted in the CEQR Checklist No. 21BSA029Q, dated November 29, 2021.

The Board finds that the evidence in the record supports the findings required to be made under Z.R. §§ 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 make each and every one of the required findings under Z.R. §§ 73-621 and 73-03 to *permit* the enlargement of an existing single-family, two-story, detached residence that does not comply with zoning regulations for floor area, contrary to Z.R. § 23-142; *on condition* that all work and site conditions shall conform to drawings filed with this application marked “November 29, 2021”- five (5) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: a maximum of 2,925 square feet of floor area (0.55 FAR);

THAT the above condition shall appear on the certificate of occupancy;

THAT a certificate of occupancy, also indicating this approval and calendar number (“BSA Cal. No. 2021-8-BZ”), shall be obtained within four years, by November 29, 2025;

THAT this approval is limited to the relief granted by the Board in response to objections cited and filed by the

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Department of Buildings;

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

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

Adopted by the Board of Standards and Appeals, November 29, 2021.

2021-12-BZ

CEQR # 21-BSA-031R

APPLICANT – Terminus Group LLC, for Igor Yakubov, owner.

SUBJECT – Application January 22, 2021 – Variance (§72-21) to permit the construction of a single-family dwelling contrary to ZR 23-45 (Front Yard Regulations). R3A Special Hillside Preservation District.

PREMISES AFFECTED – 250 Westervelt Avenue, Block 41, Lot 25, Borough of Staten Island.

COMMUNITY BOARD #1SI

ACTION OF THE BOARD – Application granted on condition.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta5
Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated January 21, 2021 acting on Alteration Type 1 Application No. 5820629, reads in pertinent part: “Proposed front yard along Layton Avenue is not in compliance with ZR 23-45, therefore obtain Board of Standards and Appeals approval.”

This is an application for a variance, pursuant to Z.R. § 72-21, to allow, within an R3A zoning district in the Special Hillside Preservation District, the construction of a single-family, three-story with cellar, detached residence that does not comply with the zoning requirements for front yard regulations (Z.R. § 24-45).

A public hearing was held on this application on June 15, 2021, after due notice by publication in *The City Record*, with a continued hearing on October 4, 2021 and then to decision on November 29, 2021. Community Board 1, Staten Island, recommends approval of this application. The Board received one form letter of support and one form letter of objection to this application, citing concerns about the design of the proposed residence and its potential effects on the sloped area in the rear.

I.

The Premises are located at the intersection of Westervelt Avenue and Layton Avenue on the northeast corner, within an R3A zoning district and the Special Hillside Preservation District, in Staten Island. With

approximately 25 feet of frontage along Westervelt Avenue, 101 feet of frontage along Layton Avenue, and 2,551 square feet of lot area, the Premises are currently vacant.

II.

The applicant proposes to construct a new single-family, three-story plus cellar, detached residence with approximately 1,528 square feet of floor area (0.59 FAR), a maximum lot coverage of 20%, a side yard along the southerly side lot line with a depth of 5'-2", a front yard measuring 3'-10", and two parking spaces in the side yard. The applicant states that the distance from the home to the sidewalk would be approximately 8'-8", and approximately 5'-0" of land between the paved sidewalk and the subject site's lot line would not be paved and would remain landscaped, serving as an extension of the development's planted front yard. The applicant further notes that there would be a total of five street trees, and four of those trees would be provided offsite as determined by the New York City Department of Parks and Recreation (“DPR”). In the subject R3A zoning district, the Zoning Resolution requires a front yard with a minimum depth of 10 feet, *see* Z.R. § 24-45. Accordingly, the applicant seeks the relief requested herein.

III.

The Zoning Resolution vests the Board with wide discretion to “vary or modify [its] provision[s] so that the spirit of the law shall be observed, public safety secured and substantial justice done,” Z.R. § 72-21.

A.

First, the applicant submits that there are unique physical conditions inherent in the Premises—namely, its narrow lot size, location of the adjacent home, and corner lot yard requirements—that 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. In support of this contention, the applicant surveyed lots within 400 feet of the Premises (the “Study Area”) finding 58 corner lots, of which 3 are vacant. The applicant states that two of the three vacant corner lots are wide enough to accommodate an adequately sized home and the other has received a BSA variance for development.

The applicant also submitted as-of-right drawings demonstrating that strict conformance with Z.R. §§ 24-35 (side yard requirements) and 24-45 would result in a residence which could only be 9'-10" wide, with an interior width of 8'-8". The applicant contends that a building this narrow cannot be comfortably inhabited. The applicant represents that compliance with underlying zoning regulations would not permit the usable development of the Premises unless a variance were granted.

Accordingly, 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.

B.

Next, the applicant submits, and the Board concurs

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that, because the application proposes a single-family residence, no showing need be made with respect to realizing a reasonable return.

C.

The applicant further represents that the requested variance would not alter the essential character of the neighborhood, impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare. Specifically, the applicant states that the surrounding area contains a mix of residential types, noting that the proposed residence is a permissible housing type within the R3A zoning district and is in context with the mix of existing single and two-family detached and semi-detached residences in the neighborhood. In support of this contention, the applicant surveyed the front yards depths of the single and two-family residences constructed on a corner lot within the Study Area, finding that of the 58 qualifying residences, 9 residences (15 percent) have a front yard with a depth between 0'-0" feet and 5'-0" and 7 residences (12 percent) have a front yard which have a portion that measures less than 3'-10".

Accordingly, the Board finds that the proposed variance will not alter the essential character of the neighborhood or district in which the Premises are located; will not substantially impair the appropriate use or development of adjacent property; and will not be detrimental to the public welfare.

D.

The applicant represents that the above practical difficulties or unnecessary hardship have not been created by the applicant or by a predecessor in title. Specifically, the applicant submits that the practical difficulties and unnecessary hardship affecting the Premises are due to the unique physical conditions of the subject lot, such as its narrow width. In support of this contention, the applicant submitted a 1937 Sanborn Map and deeds which demonstrates that the site has always existed as is and the complained of hardship is not self-created.

Accordingly, the Board finds that the above practical difficulties or unnecessary hardship have not been created by the applicant or by a predecessor in title.

E.

The applicant notes that the variance request is the minimum necessary to develop a residence at the Premises. The applicant submits that all other bulk requirements will be in full compliance with the Zoning Resolution.

Accordingly, the Board finds that the proposed variance is the minimum necessary to afford relief within the intent and purposes of the Zoning Resolution.

IV.

The project is classified as a Type II action pursuant to 6 NYCRR Part 617.5, as noted in CEQR Checklist No. 21BSA031R, dated November 29, 2021.

V.

Over the course of the hearings, the Board expressed concerns about the proposed tree planting in the front of the residence and the proposed exterior materials for the residence. In response, the applicant submitted a street tree

compliance diagram demonstrating that only one tree could be planted in front of the property as per NYC DPR guidelines and updated plans detailing the exterior materials to be cement stucco, cultured stone veneer, and plank fiber cement siding.

The Board notes that it is not considering a floor area waiver and takes no position whether the third floor qualifies for the 20% reduction under a sloping roof, pursuant to Z.R. § 23-142 (b).

Based on the foregoing, the Board finds that the evidence in the record supports the findings required to be made under Z.R. § 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 make each and every one of the required findings under Z.R. § 72-21 to *permit*, the construction of a single-family, three-story plus cellar, detached residence that does not comply with the zoning requirements for front yards (Z.R. § 24-45); *on condition* that all work and site conditions shall conform to drawings filed with this application marked "Received October 8, 2021"—Seven (7) sheets; and *on further condition*:

THAT the bulk parameters of the building shall be as follows: a front yard measuring 3'-10";

THAT the Board is not considering a floor area waiver and takes no position whether the third floor qualifies for the 20% reduction under a sloping roof, pursuant to Z.R. § 23-142 (b);

THAT a certificate of occupancy, also indicating this approval and calendar number ("BSA Cal. No. 2021-12-BZ"), shall be obtained within four years, by November 29, 2025;

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 29, 2021.

2018-173-BZ

APPLICANT – Law Office of Jay Goldstein, for Beachfront Developers LLC, owner.

SUBJECT – Application November 2, 2018 – 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.

PREMISES AFFECTED – 128 Beach 9th Street, Block

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15612, Lot 0026, Borough of Queens.

COMMUNITY BOARD #14Q

ACTION OF THE BOARD – Laid over to February 28, 2022, at 10 A.M., for adjourned hearing.

2020-84-BZ

APPLICANT – Goldman Harris II LLC, for Institute for Community Living Inc., owner.

SUBJECT – Application October 28, 2020 – Variance (§72-21) to permit the development of income restricted supportive and affordable housing building contrary to floor area (§23-153) and density (§23-22). Special Permit (§73-623) seeking waivers of height, setback (§23-662(a)) and rear yard (§23-471 and §23-52) regulations for a Quality Housing Building. R6 zoning district.

PREMISES AFFECTED – 161 Emerson Place, Block 1909, Lot 0001, Borough of Brooklyn

COMMUNITY BOARD #2BK

ACTION OF THE BOARD – Laid over to January 10-11, 2022, at 10 A.M., for continued hearings.

PUBLIC HEARINGS
MONDAY-TUESDAY AFTERNOON
NOVEMBER 29-30, 2021, 2:00 P.M.

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

2019-264-BZ

APPLICANT – Eric Palatnik, P.C., for Congregation Lev Bais Yaakov, owner.

SUBJECT – Application September 11, 2019 – Variance (§72-21) to permit the development of school (UG 3) (Congregation Lev Bais Yaakov) contrary to ZR §33-121 (FAR) and ZR §33-431 (height of front wall and sky exposure). C1-2/R4 zoning district.

PREMISES AFFECTED – 3568 Nostrand Avenue, Block 7386, Lot 129, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to February 28, 2022, at 10 A.M., for continued hearing.

2019-277-BZ

APPLICANT – Jay Goldstein, Esq., for Bukharian Jewish Congregation of Hillcrest, owner.

SUBJECT – Application October 17, 2019 – Variance (§72-21) to permit the construction of a three-story plus cellar House of Worship (UG 4) (Bukharian Jewish Congregation of Hillcrest) contrary to ZR §24-11 (FAR); ZR §24-34 (front yard); ZR §24-521 (height) and ZR §24-35 (side yard). R2A zoning district.

PREMISES AFFECTED – 81-04 166th Street, Block 7026,

Lot 0021, Borough of Queens.

COMMUNITY BOARD #8Q

ACTION OF THE BOARD – Laid over to February 7-8, 2022, at 10 A.M., for continued hearing.

2021-31-BZ

APPLICANT – Friedman & Gotbaum, for Loyola School, owner.

SUBJECT – Application May 13, 2021 – Project: Variance (§72-21) to permit the expansion of existing school (Loyola School) contrary to ZR §77-24 & 24-11 (lot coverage). R10, Special Park Improvement District, Park Avenue Historic District.

PREMISES AFFECTED – 65 East 83rd Street, Block 1495, Lot 0032, Borough of Manhattan.

COMMUNITY BOARD #8M

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 December 13-14, 2021, at 10 A.M., for decision, hearing closed.

Carlo Costanza, Executive Director

BULLETIN

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HEARINGS HELD -	TELECONFERENCE PUBLIC HEARINGS
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406-82-BZ	2411 86 th Street, Brooklyn
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New Case Filed Up to December 13-14, 2021

2021-83-BZ

80-74 188th Street, Block 7259, Lot(s) 0026, Borough of **Queens, Community Board: 8.**
Variance (§72-21) to permit the construction of a House of Worship contrary to ZR §24-111
(floor area) and ZR §25-30 (parking). R1-2 zoning district. R1-2 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

**HYBRID PUBLIC HEARINGS
FEBRUARY 7-8, 2022, MONDAY & TUESDAY
10 A.M. and 2 P.M.**

NOTICE IS HEREBY GIVEN public hearings, Monday, February 7, 2022, at 10:00 A.M. and 2:00 P.M., and Tuesday February 8, 2022, at 10:00 A.M. and 2:00 P.M., The hearings will be conducted either as a “hybrid” hearing (with participation in person and remotely) or as a virtual hearing (with only remote participation). Applicants and the public should check the front page of the Board of Standard and Appeals website (www.nyc.gov/bsa) the Friday before the hearing for more details:

SPECIAL ORDER CALENDAR

519-57-BZ

APPLICANT – Vassalotti Associates Architects, LLP, for BP Products North America, Inc., owner.
SUBJECT – Application July 20, 2021 – Extension of Term (§11-411) of a previously approved variance permitting the operation of an automotive service station which expires on May 19, 2023; Extension of Time to Obtain a Certificate of Occupancy which expired on June 19, 2013; Waiver of the Board’s Rules of Practice and Procedures. C2-1/R3-1 zoning district.
PREMISES AFFECTED – 2071 Victory Boulevard, Block 00462, Lot 0035, Borough of Staten Island.
COMMUNITY BOARD #1SI

58-99-BZ

APPLICANT – Eric Palatnik P.C., for Blue Hills Fuels, LLC, owner; PMG Northeast, LLC, lessee.
SUBJECT – Application September 4, 2020 – Extension of Time to Obtain a Certificate of Occupancy and Complete Construction of a previously approved variance permitting the operation an automotive service station (UG 16B) which expired on March 19, 2020. C1-2/R3-2 zoning district.
PREMISES AFFECTED – 18-10 Utopia Parkway, Block 5743, Lot 75, Borough of Queens.
COMMUNITY BOARD #7Q

15-09-BZ

APPLICANT – Law Office of Fredrick A. Becker, for Lafayette Astor Associates, LLC., owner; TSI Astor Place, LLC dba New York Sports Club, lessee.
SUBJECT – Application July 13, 2020 – Extension of Term of a previously approved Special Permit (§73-36) permitting the operation of a physical cultural establishment (New York Sports Club) which expired July 14, 2019; Amendment to request a change in the hours of operation; Waiver of the Board’s Rules of Practice and Procedures. M1-5B zoning district.
PREMISES AFFECTED – 8-10 Astor Place, Block 545,

Lot 28, Borough of Manhattan.
COMMUNITY BOARD #2M

72-11-BZ

APPLICANT – Vassalotti Associates Architects, LLP, for Arthur Rothafel, owner.
SUBJECT – Application July 27, 2021 – Extension of Term (§11-411) of a previously approved variance permitting the operation of an automotive service station which expires on October 25, 2021. C1-3/R6B zoning district.
PREMISES AFFECTED – 101-06 Astoria Boulevard, Block 1688, Lot 30, Borough of Queens.
COMMUNITY BOARD #3Q

ZONING CALENDAR

2020-36-BZ

APPLICANT – Eric Palatnik, P.C. for Bolla City Holdings, LLC., owner.
SUBJECT – Application April 27, 2020 – Extension of Term (§11-411) of a previously approved variance permitting the operation of an automotive service station which expires on October 25, 2021. C1-3/R6B zoning district.
PREMISES AFFECTED – 8401 Flatlands Avenue, Block 8005, Lot 6, Borough of Brooklyn.
COMMUNITY BOARD #18BK

2021-44-BZ

APPLICANT – Law Office of Jay Goldstein, PLLC, for DK Bedford Realty LLC, owner.
SUBJECT – Application July 13, 2021 – Special Permit (§73-622) to permit the enlargement of a one-family home contrary to ZR §23-142 (FAR, open space), ZR §23-461(a) (side yard) and ZR §23-47 (rear yard). R2 zoning district.
PREMISES AFFECTED – 3204 Bedford Avenue, Block 7606, Lot 77, Borough of Brooklyn.
COMMUNITY BOARD #14BK

2021-45-BZ

APPLICANT – Law Office of Jay Goldstein, PLLC for Max Zalta, owner.
SUBJECT – Application July 13, 2021 – Special Permit (§73-622) to permit the enlargement of a one-family home contrary to ZR §23-142 (FAR, open space and lot coverage), ZR §23-631(b) (perimeter wall height) and ZR §23-47 (rear yard). R3-2 zoning district.
PREMISES AFFECTED – 1714 East 27th Street, Block 6809, Lot 11, Borough of Brooklyn.
COMMUNITY BOARD #15BK

Margery Perlmutter, Chair/Commissioner

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**PUBLIC HEARINGS
MONDAY-TUESDAY MORNING
DECEMBER 13-14, 2021, 10:00 A.M.**

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

SPECIAL ORDER CALENDAR

339-02-BZ

APPLICANT – Eric Palatnik, P.C., for WF Industrial III LLC, owner.

SUBJECT – Application June 1, 2021 – Amendment to modify the Board's condition of term pursuant to (§ 1-07.3(3) (ii) of the Board's Rules of Practice and Procedures for a previously granted Variance (§72-21) which permitted warehouse and office uses contrary to underlying use regulations which expired on February 25, 2013; Amendment to legalize the addition of mezzanine increasing the degree of non-conformance; Waiver of the Board's Rules. R3-1 and R3-2 zoning districts.

PREMISES AFFECTED – 146-65 Springfield Boulevard, corner of Springfield Boulevard and 147th Avenue, Block 13363, Lot 6. Borough of Queens.

COMMUNITY BOARD # 13Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta5

Negative:.....0

THE RESOLUTION –

This is an application for a waiver of the Board's Rules of Practice and Procedures ("the Board's Rules") and an amendment to a variance granted pursuant to Z.R. § 72-21, to modify the term of the grant and to legalize the addition of mezzanine increasing the degree of non-conformance, which permitted warehouse (Use Group "UG" 16B) and office uses (UG 6) contrary to underlying use regulations in an R3-2 zoning district and expired on February 25, 2013.

A public hearing was held on this application on March 9, 2021, under BSA Cal. No. 2020-29-BZ, after due notice by publication in *The City Record*, with continued hearings under the subject calendar number on June 15, 2021, September 23, 2021, and November 15, 2021. Vice-Chair Chanda performed inspections of the Premises and surrounding neighborhood. The Board received one letter of support for this application.

The Premises are an irregularly shaped lot bound by Springfield Avenue to west, Springfield Lane to the east, and 147th Avenue to the south, located partially within an R3-1 zoning district and partially within an R3-2 zoning district, in Queens. The Premises has 285 feet of frontage along Springfield Boulevard, 255 feet of frontage along

147th Avenue, 100 feet of frontage along Springfield Lane, and 52,913 square feet of lot area, and are occupied by an existing one-story and mezzanine manufacturing and office building.

The Board has exercised jurisdiction over the Premises since July 6, 1971, when, under BSA Cal. No. 219-71-BZ the Board denied the variance, pursuant to Z.R. § 72-21, to permit, in an R3-2 zoning district, the proposed erection of a building to be used as a warehouse (UG 16), offices (UG 6), loading and unloading.

On June 21, 1977, under BSA Cal. No. 219-71-BZ, the Board granted a variance, pursuant to Z.R. § 72-21, to permit, in an R3-2 zoning district, the erection of a one-story warehouse and office building with accessory parking in the open area, on condition that all work substantially conform to drawings as they apply to the objection filed with the application; the variance be limited to a term of 15 years, to expire on June 21, 1992; the hours of operation be limited to 7:00 a.m. to 7:00 p.m., six days each week, except that the Premises remain closed on Sunday; all signs conform to a C1 district; the parking lot be secured after working hours; all lighting be directed away from residences; interior lot line masonry walls be finished with brick; all other laws, rules, and regulations applicable be complied with; and substantial compliance be completed within one year, by June 21, 1978.

On July 21, 1981, under BSA Cal. No. 219-71-BZ, the Board amended the resolution to grant an extension of time to complete construction, on condition that substantial construction be completed by July 28, 1982. On October 13, 1982, under BSA Cal. No. 219-71-BZ, the Board amended the resolution to grant an extension of time to complete construction, on condition that substantial construction be completed by July 28, 1983. On November 20, 1984, under BSA Cal. No. 219-71-BZ, the Board waived its Rules of Practice and Procedures and amended the resolution to grant an extension of time to complete construction, on condition that substantial construction be completed by January 28, 1986. On June 20, 1988, under BSA Cal. No. 219-71-BZ, the Board waived its Rules of Practice and Procedures and amended the resolution to grant an extension of time to complete construction, on condition that substantial construction be completed by June 18, 1989.

On March 20, 1990, under BSA Cal. No. 219-71-BZ, the Board amended the resolution to reflect the change in design of the building and landscaping as shown on the Board-approved plans and to grant an extension of time to complete construction through November 28, 1990, on condition that all work substantially conform to the drawings as filed with the application; substantial construction be completed by November 28, 1990 and a certificate of occupancy issued by November 28, 1990; there be no further extensions of time to complete construction; and other than as amended, the resolution be complied with in all respects.

On November 6, 1991, under BSA Cal. No. 219-71-BZ, the Board amended the resolution to grant an extension of time to obtain a certificate of occupancy by November 6,

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1992. On February 25, 2003, under the subject calendar number, the Board granted a variance pursuant to Z.R. § 72-21 to permit, in an R3-2 zoning district, the reestablishment of an expired variance granted under BSA Cal. No. 219-71-BZ, which permitted warehouse and office uses and the addition of lot Number 4 to the subject Premises, contrary to Z.R. § 22-00, on condition that all work substantially conform to drawings as they apply to the objections filed with the application; the term of the variance be limited to ten years, to expire on February 25, 2013; the Premises be maintained free of debris and graffiti; any graffiti located on the Premises be removed within 48 hours; the above conditions be noted in the certificate of occupancy; substantial construction be completed in accordance Z.R. § 72-23; the approval is 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 specific relief granted; and 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.

The term of the variance having expired, the applicant now seeks an extension. Because this application was filed more than two years after the expiration of the term, the applicant requests a waiver, pursuant to § 1-14.2 of the Board's Rules, of § 1-07.3(b)(3), of the Board's Rules to permit the filing of this application.

The applicant also seeks an amendment to the variance to modify the term of the grant and to allow the legalization for an existing additional 4,058 square foot mezzanine for office use. The applicant represents that the mezzanine was added in 2003 without Board approval under a previous owner and is integral to the continued success and viability of the operations at the Premises. The applicant states the mezzanine area contains the nonessential uses, such as bathrooms and offices, which were once on the ground floor at the Premises and, thereby, provide for a more efficient operational and storage space.

Over the course of hearings, the Board expressed concerns about the landscaping at the Premises, the physical condition of the building on the site, drainage, and the lighting along the residential lot line.

In response to the concerns about the landscaping, the applicant submitted a landscaping operational plan which states, in part:

Upon completion of landscape installation shown on the landscape plan, a 90-day maintenance period shall commence. The 90-day maintenance period ensures the Owner that the newly installed landscaping has been maintained as specified on the approved landscape plan. Once the initial 90-day maintenance period has expired, the Owner shall request that bidders submit a maintenance proposal for a monthly maintenance contract. The maintenance contract will encompass any work that is considered appropriate to ensure that plant

and lawn areas are healthy and manicured to the approval of the Owner. Regular maintenance may include, but is not limited to, the following requirements and tasks:

- Utilize a landscape maintenance crew that has training in the management of landscapes.
- Develop a regime for a timely and effective maintenance – including irrigation, mowing, fertilization, aeration, trimming and edging, pruning, deadheading, weeding, and trash and debris pickup.
- Add and refresh mulch to a minimum 3" depth to improve moisture retention.
- During the first year, ensure all plants receive adequate moisture from rainfall or supplemental watering. In the second and third year, irrigation could be tapered off to acclimate the plants to local conditions. Most plants require one inch of water per week.
- Inspect plants on a regular basis for diseases and pests. Promptly address any issue and replace lost plants as needed.
- If possible, the Owner should request an agreement from the abutters to allow for access across their property to efficiently perform the above tasks.

Additionally, the applicant submitted updated plans reflecting that the Premises are graded in such a manner so that positive drainage is achieved away from the retaining walls and toward the site stormwater inlets and added a note stating "maintain positive drainage away from wall as per existing condition (typ.)"; proposed additional elevation to the top and bottom of the wall; and proposed parging and finishing the concrete cracking with residential style stucco. Finally, the applicant submitted a signed agreement to install the lights as per the Board approved plans once it has received the necessary materials.

By correspondence dated April 1, 2021, the New York City Department of City Planning, Waterfront and Open Space Division states based on the information submitted, the Waterfront Open Space Division, on behalf of the New York Coastal Commission, having reviewed the waterfront aspect of this action, finds that the action will not substantially hinder the achievement of any Waterfront Revitalization Program ("WRP") policy and hereby determines the project consistent with WRP policies.

By letter dated February 10, 2021, the New York City Department of Environmental Protection ("DEP") states that it has reviewed the applicant's February 2019 Phase I report and additional documentation and has the following comments:

- The proposed project does not involve soil disturbance; however, soil vapor can migrate through the subsurface and/or along preferential pathways (e.g., building foundations, utility conduits, or duct work). Therefore, BSA should inform the applicant

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that based on the historical on-site and/or surrounding area land uses, a Phase II Environmental Site Assessment (“Phase II”) is necessary to adequately identify/characterize the sub-slab vapor, indoor air, and outdoor air of the subject property, and to inform and disclose the measures necessary to avoid impacts from hazardous materials. A Phase II Investigation Protocol/Work Plan summarizing the proposed sub-slab vapor, indoor air and outdoor air sampling activities should be developed in accordance with the City Environmental Quality Review Technical Manual and submitted for DEP review and approval. The Work Plan should include blueprints and/or site plans displaying the current surface grade and sub-grade elevations and a site map depicting the proposed sub-slab vapor, indoor air, and outdoor air sampling locations. The soil vapor, sub-slab vapor, indoor air and outdoor air sampling should be conducted in accordance with New York State Department of Health (“NYSDOH”) October 2006 Guidance for Evaluating Soil Vapor Intrusion in the State of New York. The soil vapor, sub-slab vapor, indoor air and outdoor air samples should be collected and analyzed by a NYSDOH Environmental Laboratory Approval Program certified laboratory for the presence of volatile organic compounds by United States Environmental Protection Agency Method TO-15. An Investigation Health and Safety Plan (“HASP”) should also be submitted for DEP review and approval.

- BSA should also instruct the applicant that the Phase II Work Plan and HASP should be submitted for DEP review and approval prior to the start of any fieldwork.

By letter dated February 19, 2021, DEP states that it has reviewed the applicant’s materials and has the following comments:

Air Quality:

3. Please provide DEP with electronic spreadsheet for equivalent truck calculation performed for screening Heavy Duty Diesel Vehicle (“HDDV”).

Noise:

4. Please provide field notes collected during noise monitoring periods, including weather conditions, windspeed and temperature, etc.
5. In the Noise Chapter of EAS, please include a photograph of noise monitoring equipment installation at monitoring locations.
6. Please supply DEP with electronic raw data files downloaded from sound level meter.

7. Include the calibration certificates for monitoring instruments used.

By letter dated April 1, 2021, DEP states that it has reviewed the applicant’s February 2021 Work Plan which proposes to collect two sub-slab soil vapor samples and two co-located indoor air samples (VTX-1 and VTX-2). In addition, one outdoor air sample (VTX-3) will be collected. Soil vapor, indoor air, and outdoor air samples will be analyzed for volatile organic compounds by United States Environmental Protection Agency Method TO-15 and has the following comments and recommendations:

HASP

- Elmont Family Health Center located at 161 Hempstead Turnpike is a family health center and not a hospital. Therefore, BSA should instruct the applicant to include a highlighted route (including map) to the nearest hospital.

DEP finds the February 2021 Work Plan and HASP for the proposed project acceptable as long as the aforementioned information is incorporated into the HASP. BSA should inform the applicant that upon completion of the investigation activities, the applicant should submit a detailed Phase II report for DEP review and approval. The report should include, at a minimum, an executive summary, narrative of the field activities, laboratory data and conclusions, comparison of soil vapor, indoor air, and outdoor air analytical results (i.e., NYSDOH’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.

By letter dated August 6, 2021, DEP states that it has reviewed the applicant’s materials and has the following comments:

Air Quality:

Based on the mobile source analysis, the Proposed Project would generate less than 50 vehicle trips in any peak hour, which is below the 170-vehicle screening threshold. Therefore, there would not be potential for significant adverse CO impacts. In addition, action generated HDDV equivalent trips would be below the threshold for collector roads. Therefore, there would not be a potential for significant adverse PM2.5 impacts. Results from the nomograph analysis depict that the HVAC system would not affect the closest building of equal or greater height. Accordingly, the Proposed Action would not result in any significant adverse air quality impacts related to building HVAC systems.

Based on analysis performed for industrial source, preliminary assessment performed, and a review of DEP’s CATS Permit database concluded that there are no active industrial permits within 400 feet of the Project Site. In addition, no existing large combustion sources have been identified within 1,000 feet of the Project Site. Therefore, there would not be any significant

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manufacturing/industrial stationary source air quality impacts associated with the Proposed Action.

Noise:

The Proposed Action would not result in a doubling of noise passenger car equivalents (“PCE”) and would not trigger a detailed traffic noise analysis. In addition, project site parking lot would not adversely affect nearby residential buildings and therefore there is no potential for significant adverse noise impacts from the proposed project. The current structure on the Project Site does not contain any windows facing 147th Avenue. Based on the noise measurements, no attenuation is needed on the building façade facing Springfield Blvd. Therefore, the ambient noise levels would not have a significant impact the proposed project.

By letter dated August 25, 2021, DEP states that the indoor air analytical results revealed that several VOCs (1,2,4-trimethylbenzene, 2-butanone, acetone, benzene, carbon tetrachloride, chloromethane, dichlorodifluoromethane, ethanol, ethyl acetate, isopropanol, n-hexane, o-xylene, p/m-xylene, PCE, toluene, and trichlorofluoromethane) were detected. The ambient air analytical results revealed that several VOCs (1,2,4-trimethylbenzene, 1,3,5-trimethylbenzene, 1,3-dichlorobenzene, 2,2,4-trimethylpentane, 2-butanone, acetone, benzene, carbon tetrachloride, chloromethane, dichlorodifluoromethane, ethanol, ethyl benzene, heptane, isopropanol, n-hexane, o-xylene, p/m-xylene, PCE, and toluene) were detected. Based upon our review of the submitted documentation, we have the following comments and recommendations to BSA: DEP finds the analytical results acceptable and has no further requirements for the proposed project.

Based upon its review of the record, the Board has determined that the extension of term of the variance and proposed amendments to the length of the term and addition of the mezzanine at the Premises, appropriate with certain conditions as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *waive* its Rules of Practice and Procedures and *amend* the resolution, dated February 25, 2003, so that as amended this portion of the resolution shall read: “to extend the term of the variance for 15 years, to expire on February 25, 2028 and to legalize the addition of an existing 4,058 square foot mezzanine for office use ; *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked ‘Received November 24, 2021 – Twenty-four (24) sheets’; and *on further condition*:

THAT the term of the variance will be for 15 years, to expire on February 25, 2028;

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

THAT any graffiti located on the Premises shall be removed within 48 hours;

THAT decaying knee walls and stained and unfinished concrete block walls at the site must be repaired;

THAT the use of razor wire shall not be permitted at the site;

THAT the structural capacity of the retaining walls, wooden loads, and other impacts on the fence must be evaluated and approved by DOB;

THAT landscaping, acoustical treatments, and lighting adjustments be installed and maintained in accordance with BSA-approved plans;

THAT the BSA compliance officer shall conduct a site visit eight months from the date of approval, by July 13, 2022, to confirm compliance with Board conditions;

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. 339-02-BZ’), shall be obtained within two years, by December 13, 2023;

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.”

Adopted by the Board of Standards and Appeals, December 13, 2021.

CORRECTION: This resolution adopted on December 13, 2021, under Calendar No. 61-12-BZ, is hereby corrected to read as follows:

61-12-BZII

APPLICANT – Sheppard Mullin Richter & Hampton LLP, for 101 H 216 Lafayette LLC, owner.

SUBJECT – Application November 23, 2020 – Amendment of a previously approved Variance (§72-21) to permit a UG 6 restaurant in a portion of the cellar and first floor, contrary to use regulations (§42-10). The amendment seeks to extend the variance to the entire first floor; Extension of Time to Complete Construction which expired on February 26, 2017; Waiver of the Board’s Rules of Practice and Procedure. M1-5B zoning district.

PREMISES AFFECTED – 216 Lafayette Street, Block 482, Lot 28, Borough of Manhattan.

COMMUNITY BOARD #2M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta5
Negative:.....0

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THE RESOLUTION –

This is an application for a waiver of the Board’s Rules of Practice and Procedures (“the Board’s Rules”); an extension of time to complete construction which expired on February 26, 2017; an amendment to extend the use of the variance, previously granted by the Board pursuant to Z.R. § 72-21, to the entire cellar and first floors of a Use Group (“UG”) 6 eating and drinking establishment; and an amendment to permit the elimination of the ten year term.

A public hearing was held on this application on September 14, 2021, after due notice by publication in *The City Record*, with a continued hearing on November 29, 2021, and then to decision on December 13, 2021. Commissioner Sheta performed inspections of the Premises and surrounding neighborhood. Community Board 2, Manhattan, recommends denial of this application citing the applicant’s failure to make the following findings:

1. A (unique physical conditions): The building has functioned very well with conforming uses since 1928, first as an auto repair shop, later as a home to JLWQA units, and very recently as Color House (a photography/print shop).
2. B (reasonable return): Not only are the comparative properties extremely dated, but the applicant’s Economic Analysis uses a cap rate of 6-6.5%, which is based on a survey of lenders taken during the third quarter of 2020—a period of unprecedented volatility and extreme market uncertainty, bound to drive cap rates above their normal ranges. A lower cap rate in non-COVID times and better comps would produce and a considerably different calculation without requiring a variance to realize an equitable return on investment.
3. C (not detrimental to the character of the neighborhood or the public welfare): This is a neighborhood with a long and strong history of arts and residential use. Loss of residential in general, and Joint Living Work Quarters for Artists (“JLWQA”) in particular, is per se detrimental to neighborhood character, as would be the introduction of crowd-generating retail and restaurant uses.
4. D (self-created hardship): Given the limitations of the JLWQA uses clearly enumerated on the most recent (1981) Certificate of Occupancy, if the applicant purchased the property envisioning the potential of getting the variances in place to attract higher-paying tenants and/or a quick subsequent sale, that is most certainly a self-created hardship.
5. E (the minimum variance necessary): The property was bought for \$8.4 million in June 2017 and is currently listed for sale for \$14.5

million—an intended windfall by any standard, let alone in the COVID economy.

The Premises are located on the west side of Lafayette Street, between Spring Street and Broome Street, within an M1-5B zoning district, in Manhattan. With approximately 25 feet of frontage along Lafayette Street, 100 feet of depth, and 2,471 square feet of lot area, the Premises are occupied by an existing two-story with cellar commercial building that is currently vacant.

The Board has exercised jurisdiction over the Premises since February 26, 2013 when, under the subject calendar number, the Board granted a variance, pursuant to Z.R. § 72-21, to permit, in an M1-5B zoning district, the conversion of a portion of the first floor and cellar of an existing two-story building to a UG 6 use (including eating and drinking establishment), on condition that any and all work substantially conform to drawings as they apply to the objections noted, filed with the application; the term of the grant expire on February 26, 2023; the use be limited to UG 6 on the ground floor and cellar levels (with 1,265 square feet of UG 6 floor area at the first floor and 985 square feet of UG 6 floor space at the cellar), as shown in the BSA-approved plans; if the use of the ground floor and cellar is as a UG 6 eating and drinking establishment, the following conditions apply: (1) the maximum seating capacity, including any accessory bar seating, be limited to a maximum of 45 patrons on the first floor and 40 patrons on the second floor; (2) the closing time be no later than 11:00 p.m. Sunday through Thursday, and 12:00 a.m., Friday and Saturday; (3) there be no live music or DJs; (4) there be no outdoor space for eating and drinking; (5) there be no interior connection between the eating and drinking establishment and the adjacent buildings, except for emergency ingress/egress in the cellar as reflected on the BSA-approved plans; the operation of the site be in compliance with Noise Code regulations; any rooftop mechanical and ventilation equipment related to the UG 6 uses be directed away from adjoining residential buildings; the above conditions be noted on the certificate of occupancy; the internal floor layouts on each floor be reviewed and approved by DOB; the approval is 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.

By letter dated May 21, 2015, the Board stated that it had no objections to minor modifications to egress partitions at the cellar and first stories, including the addition of a refrigerated trash room and walk in refrigerator to the cellar level, as well as enclosed the egress to the adjacent building to allow a direct egress path to the ground floor of the existing building, on condition that the Department of Buildings ensure compliance with all applicable provisions

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of the Zoning Resolution, Building Code, or any other relevant law.

The time to complete construction having expired, the applicant now seeks an extension. Because this application was filed more than two years after the expiration of the time to complete construction, the applicant requests a waiver, pursuant to § 1-14.2 of the Board's Rules, of § 1-07.3(c)(3) of the Board's Rules to permit the filing of this application. The applicant requests this extension of time to complete construction because, pursuant to Z.R. § 42-14(D)(2)(b), a UG 6 use is not permitted below the floor level of the second story of a building in an M1-5B zoning district. The applicant notes that the prior grant permitted a UG 6 eating and drinking use to the front portion of the cellar and first floor of the building in order to accommodate the tenant occupying the rear portion of the building at the time. Since the tenant has since vacated the building, the applicant seeks to extend the UG 6 use and requests additional time to complete construction.

The applicant also seeks an amendment to the terms of the variance (1) to permit the conversion of a portion of the cellar and the first floor of the existing building at the Premises to a UG 6 use to allow the expansion of the eating and drinking establishment use to the entire first floor and cellar level and (2) to remove the ten-year renewal requirement from the previous grant. The applicant represents that it seeks to extend the UG 6 use to the entire cellar and first floor in anticipation of finding a tenant to occupy the entirety of the building, as the second floor is an as-of-right UG 6 use. Specifically, the applicant seeks to expand the UG 6 use within the building by permitting the rear of the building to be used for UG 6 retail and eating and drinking uses. The applicant further requests the elimination of the ten year term because it claims that where the proposed UG 6 use is consistent with the surrounding uses, any renewal requirement is unnecessary.

Over the course of hearings, the Board expressed concerns about the location of the center stairs and trash at the Premises and the figures presented in the financial feasibility study. In response, the applicant submitted updated plans which demonstrate the relocation of the center stairs from the cellar to first floor, as well as the location of the refrigerated trash room in the cellar. Additionally, the applicant submitted an Economic Feasibility Study summary further explaining the submitted calculations for a site value including the encumbrances and easements at the Premises, an as-of-right development scenario to mirror the submitted financial report, and clarified construction costs for the new use group.

By letter dated May 24, 2021, the New York City Landmarks Preservation Commission ("LPC") states that it is in receipt of a Technical Memorandum dated April 30, 2021 concerning a change of use variance and has no concerns. LPC find that the site has no architectural significance.

Based upon its review of the record, the Board has determined that the extension of the time to complete construction, the elimination of the ten-year renewal

requirement, and amendment to the use at the Premises, appropriate with certain conditions as set forth below.

Therefore, it is Resolved, that the Board of Standards and Appeals does hereby *waive* its Rules of Practice and Procedures and *amend* the resolution, dated February 26, 2013, so that as amended this portion of the resolution shall read: "to extend the time to complete construction by two years, to expire on December 13, 2023; to permit the expansion of the UG 6 use to the entire first floor and cellar level; and to remove the ten-year renewal requirement as per the prior grant; *on condition* that all work, site conditions and operations shall conform to drawings filed with this application marked 'Received October 4, 2021 – Eight (8) sheets'; and *on further condition*:

THAT the operation of the site will be in compliance with Noise Code regulations;

THAT any rooftop mechanical and ventilation equipment related to the UG 6 uses be directed away from adjoining residential buildings; THAT the internal floor layouts on each floor be reviewed and approved by DOB;

THAT rodent extermination and trash management and removal, shall be maintained, particularly in the rear yard shared with residential neighbors;

THAT noise attenuation measures shall be maintained from inside of the Premises;

THAT substantial construction shall be completed, as determined by an inspection by the Department of Buildings, by December 13, 2023;

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. 61-12-BZ'), shall be obtained within two years, by December 13, 2023;

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."

Adopted by the Board of Standards and Appeals, December 13, 2021.

397-47-BZ

APPLICANT – Walter T. Gorman, P.E., P.C., for Park Service Station Realty, LLC, owner.

SUBJECT – Application March 31, 2021 – Amendment of a previously approved variance permitting the operation of an Automotive Service Station (UG 16B). The amendment seeks to permit the installation of a new canopy and the relocation of air and vacuum tower. R3-1 zoning district.

PREMISES AFFECTED – 64-01/11 Woodhaven Boulevard, Block 3136, Lot 24, Borough of Queens.

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COMMUNITY BOARD #6Q

ACTION OF THE BOARD – Laid over to March 14-15, 2022, at 10 A.M., for continued hearing.

132-58-BZ

APPLICANT – Nasir J. Khanzada, for Maria Barone, owner; Swaranjit Singh, lessee.

SUBJECT – Application July 6, 2020 – 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 20, 2020; Waiver of the Board's Rules of Practice and Procedures. C1-2/R3-2 zoning district. Community Board 7, Queens.

PREMISES AFFECTED – 17-45/17-55 Francis Lewis Boulevard, Block 4747, Lot(s) 31, 41, Borough of Queens.

COMMUNITY BOARD #7Q

ACTION OF THE BOARD – Laid over to February 7-8, 2022, at 10 A.M., for continued hearing.

467-58-BZ

APPLICANT – Walter T. Gorman, P.E., P.C., GTY-CPG (QNS/BX) Leasing, Inc., owner; Global Partners, LP, lessee.

SUBJECT – Application December 24, 2020 – Extension of Term (§11-411) of a previously approved variance permitting the operation of an Automotive Service Station (UG 16B) which expired on December 14, 2019, Waiver of the Board's Rules of Practice and Procedures. R3-2, R4B and R3X zoning districts.

PREMISES AFFECTED – 172-11 Northern Boulevard, Block 5363, Lot 1, Borough of Queens.

COMMUNITY BOARD #7Q

ACTION OF THE BOARD – Laid over to March 14-15, 2022, at 10 A.M., for continued hearing.

490-72-BZ

APPLICANT – Gerald J. Caliendo, RA, AIA, for Eran Gohari, owner.

SUBJECT – Application August 5, 2020 – Extension of Time to Obtain a Certificate of Occupancy of a previously approved variance (§72-21) which permitted the operation of a retail or service establishment (UG 6) which expired on February 5, 2020; Waiver of the Board's Rules of Practice and Procedures. 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 April 25-26, 2022, at 10 A.M., for continued hearing.

758-84-BZ

APPLICANT – David L. Businelli, for Gina Sgarlato Benfante, owner.

SUBJECT – Application January 7, 2021 – Extension of Term of a variance (§72-21) permitted the operation of two-story and cellar commercial building contrary to use regulations which expired on July 2, 2020; Waiver of the Board's Rules of Practice and Procedures. R3X zoning district

PREMISES AFFECTED – 1444 Clove Road, Block 658, Lot 20, Borough of Staten Island.

COMMUNITY BOARD #1SI

ACTION OF THE BOARD – Laid over to February 7-8, 2022, at 10 A.M., for continued hearing.

17-92-BZ

APPLICANT – Eric Palatnik, P.C., for E & O Realty, owner; Cugine Foods, LLC, lessee.

SUBJECT – Application July 13, 2021 – Extension of Time to Complete Construction of a previously approved Variance (§72-21) permitting the operation of an eating and drinking establishment with accessory drive thru which expired on December 6, 2017; Waiver of the Board's Rules of Practice and Procedures. R5 zoning district.

PREMISES AFFECTED – 60-06/12 Northern Boulevard, Block 1183, Lot 1, Borough of Queens.

COMMUNITY BOARD #2Q

ACTION OF THE BOARD – Laid over to February 7-8, 2022, at 10 A.M., for continued hearing.

307-00-BZ

APPLICANT – Sheldon Lobel, P.C., for Amerasia Bank, owner.

SUBJECT – Application May 12, 2021 – Extension of Term of a previously approved Variance (§72-21) to permit the operation of non-commercial art gallery, community facility space and office use (UG 6) on floors two through five within a 5 story mixed-use building contrary to underlying use regulation which expires on July 10, 2021. C1-2/R6 zoning district.

PREMISES AFFECTED – 41-02 Main Street, Block 5041, Lot 30, Borough of Queens.

COMMUNITY BOARD #7Q

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Shelta, and Commissioner Scibetta5
Negative:0

ACTION OF THE BOARD – Laid over to February 7-8, 2022, at 10 A.M., for decision, hearing closed.

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194-02-BZ

APPLICANT – Akerman LLP, for Shore Plaza LLC, owner; for PFNY, lessee.

SUBJECT – Application April 9, 2021 – Extension of Term of a previously granted special permit (§73-36) for the continued operation of a physical culture establishment (Planet Fitness) which expires on December 1, 2021. C4-3 zoning district.

PREMISES AFFECTED – 1775 South Avenue, Block 2800, Lot 37, Borough of Staten Island.

COMMUNITY BOARD #2SI

ACTION OF THE BOARD – Postponed PCE.

42-09-BZIII

APPLICANT – Sheldon Lobel, P.C., for Arrow Linen Supply Co., Inc., owner.

SUBJECT – Application June 5, 2020 – Extension of Term of a previously approved variance (expired July 12, 1992) which permitted the extension of a legal non-conforming commercial laundry use (Arrow Linen Supply) within a residential zoning district which expired on August 11, 2019; Extension of Time to Obtain a Certificate of Occupancy which expired on February 11, 2010; Waiver of the Board’s Rules. R5B zoning district.

PREMISES AFFECTED – 441-467 Prospect Avenue, Block 1113, Lot(s) 61,73, Borough of Brooklyn,

COMMUNITY BOARD #3BK

ACTION OF THE BOARD – Laid over to February 28 & March 1, 2022, at 10 A.M., for continued hearing.

9-11-BZ

APPLICANT – Akerman, LLP, for Riverdale Equities, LTD, owner; PFNY LLC, lessee.

SUBJECT – Application March 26, 2021 – Extension of Term of a previously granted special permit (§73-36) for the continued operation of a physical culture establishment (Planet Fitness) which expires on June 14, 2021; Amendment to hours of operation. C4-4 zoning district.

PREMISES AFFECTED – 2129 White Plains Road, Block 4286, Lot 35, Borough of Bronx.

COMMUNITY BOARD #11BX

ACTION OF THE BOARD – Postponed PCE.

55-11-BZ

APPLICANT – Akerman LLP, for Acadia 2914 Third Ave LLC, owner; PFNY LLC, lessee.

SUBJECT – Application March 29, 2021 – Extension of Term of a previously approved Special Permit (§73-36) which allowed the operation of a physical culture establishment (Planet Fitness) which expires on August 16, 2021; Amendment to reflect a correction in floor area. C4-4 zoning district.

PREMISES AFFECTED – 2914 Third Avenue, Block 2362, Lot 13, Borough of Bronx.

COMMUNITY BOARD #1SI

ACTION OF THE BOARD – Postponed PCE.

57-11-BZ

APPLICANT – Akerman, LLP, for Theresa Annex, LLC, owner; PFNY LLC, lessee.

SUBJECT – Application March 26, 2021 – Extension of Term of a previously approved Special Permit (§73-36) which allowed the operation of a physical culture establishment (Planet Fitness) which expires on August 23, 2021. C6-3/C4-4D.

PREMISES AFFECTED – 208 West 125th Street, Block 1930, Lot 37, Borough of Manhattan

COMMUNITY BOARD #1M

ACTION OF THE BOARD – Postponed PCE.

2017-20-BZII

APPLICANT – Rothkrug Rothkrug & Spector LLP, for GtO Holding LLC, owner; Harbor Fitness Park Slope, Inc., lessee.

SUBJECT – Application September 17, 2020 – Amendment of a previously approved Variance (§72-21) which permitted the operation of a physical culture establishment (Harbor Fitness Park Slope). The amendment seeks to legalize the enlargement of the establishment at the first floor; Extension of Time to Obtain a Certificate of Occupancy which expired on July 16, 2020. C4-3A/R6B zoning district.

PREMISES AFFECTED – 550 Fifth Avenue, Block 10417, Lot(s) 7501, Borough of Brooklyn.

COMMUNITY BOARD #6BK

ACTION OF THE BOARD – Postponed PCE.

APPEALS CALENDAR

2020-39-A

APPLICANT – AVID Architecture, for Danny Lin, owner.

SUBJECT – Application May 4, 2020 – Proposed construction of a single-family residence, within the bed of a mapped street, contrary to General City Law §35. R3A zoning district.

PREMISES AFFECTED – 235 Oder Avenue, Block 2887, Lot 19, Borough of Staten Island.

COMMUNITY BOARD #1SI

ACTION OF THE BOARD – Laid over to March 14-15, 2022, at 10 A.M., for continued hearing.

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ZONING CALENDAR

2017-21-BZ

APPLICANT – Mitchell S. Ross, Esq., for Astoria Ice, Inc., owner; Astoria Sports Complex, lessee.

SUBJECT – Application January 24, 2017 – Variance (§72-21) to permit the enlargement of an existing building contrary to ZR §43-28 (Rear Yard Equivalent) and a Special Permit (§73-36 to permit the operation of a Physical Cultural Establishment (Astoria Sports Complex) which is contrary to ZR §42-10. M1-5 zoning district.

PREMISES AFFECTED – 34-38 38th Street, Block 645, Lot 10, Borough of Queens.

COMMUNITY BOARD #1Q

ACTION OF THE BOARD – Application withdrawn without prejudice.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta5
Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated January 30, 2018, acting on Application Type Alteration 1 No. 421186601, reads in pertinent part:

“Respectfully request Letter of Denial to be issued for DOB application #421186601 for the following non-conforming zoning requirements.

1. Proposed addition increases the degree of noncompliance in the rear yard required under ZR 43-28 and is contrary to ZR 54-31.
2. Proposed PCE is contrary to ZR 42-10 and requires a Special Permit under ZR 73-36”.

This is an application under Z.R. § 72-21 for a variance to permit, in an M1-5 zoning district, the enlargement of an existing building that does not comply with the zoning requirements for rear yard (Z.R. § 43-28) and a special permit, pursuant to § 73-36, to permit the operation of a physical culture establishment (“PCE”), contrary to Z.R. § 42-10.

A public hearing was held on this application on October 3, 2019, after due notice by publication in *The City Record*, and then to decision on December 13, 2021. Community Board 1, Queens, recommends approval of this application with the following condition:

1. A traffic impact and parking demand analysis should be required to determine how the two larger sports facilities and new catering and restaurant uses in the building will affect occupancy, traffic congestion, and parking demands;
2. The applicant must make arrangements with surrounding property owners to use nearby parking facilities to alleviate parking demand during high capacity hours;
3. The owner must continue to provide the current discounts for local school children to use the facilities (pool and soccer field) and

expand its heavily discounted student/school programs to include the new facilities if approved;

4. If approved, both the new soccer field and ice rink should not be reserved for exclusive use by leagues or teams. The Complex must provide regularly scheduled and convenient hours for public use of both facilities;
5. No outside promoter is to operate sports or entertainment events within the facility.

The Board received one letter of objection, citing concerns over traffic congestion.

The Premises are a rectangularly shaped through lot located on the west side of 38th Street, between 34th Avenue and 35th Avenue, within an M1-5 zoning district, in Queens. With approximately 125 feet of frontage along 38th Street, 125 feet of frontage along 37th Street, 250 feet of depth, and 25,045 square feet of lot area, the Premises are occupied by an existing four-story plus cellar community facility.

The Board has exercised jurisdiction over the Premises since October 24, 1995, when, under BSA Cal. No. 211-94-BZ, the Board granted a special permit, pursuant to Z.R. § 73-36, to permit, in an M1-1 zoning district, the legalization of a PCE located on the third floor and mezzanine of an existing four story building, on condition that all work substantially conform to drawings as they apply to the objection noted and 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; all stairwells and exit paths remain unobstructed; the Premises remain graffiti-free; signs comply with M-1 district regulations; street trees be planted on 37th Street and 38th Street in accordance with BSA approved plans; the special permit be limited to a term of eight years, to expire on October 24, 2003; the above conditions appear on the certificate of occupancy; the development, as approved, is 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 in accordance with Z.R. § 73-70.

The special permit having expired, the applicant now seeks to renew it and proposes an enlargement of 54,475 square feet to the building by extending the third and fourth floors to the same perimeter dimensions as the first and second floor’s footprint and providing a new rooftop. The proposed layout of the building would be as follows: 1) the first floor would contain a PCE with a spa, pool, and retail space, with floor area and arrangement unaltered from its current design; 2) the second floor would also contain PCE space as well as areas related to PCE and ice hockey uses and would remain unaltered; 3) the third floor would be enlarged to contain a regulation-sized indoor ice hockey arena (Use Group “UG” 12) and the mezzanine associated with this level would also be enlarged for viewing and seating; 4) the fourth floor would be enlarged to be used as a

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regulation sized indoor soccer field (UG 12) and the associated mezzanine would be enlarged for viewing and seating; 5) the proposed rooftop would approximately double in size to be a part of an indoor/outdoor eating and drinking establishment with dancing for more than 200 people (UG 12), but the applicant notes that the maximum height of the building would not increase. At the Premises, a rear yard of 40 feet is required, but the applicant represents that the building has an existing noncomplying condition and has no rear yard on the on the first and second floors and requests that the Board grant the same exemption for the third and fourth floors. The applicant represented that the hours of operation and the amount of parking provided would stay the same.

At hearing, the Board expressed concerns regarding whether the applicant had met the necessary findings under Z.R. § 72-21. With regards to the Z.R. § 72-21 (a) finding, the Board stated that, due to the large lot size and a available floor plate, the applicant's claimed hardship of the building's obsolescence was not sufficient to meet the requirements of the section due the building's large size and requested the applicant provide a uniqueness study to support any such contention. On Z.R. § 72-21 (b), the Board doubted whether the proposed addition was the minimum necessary for a reasonable return since the facility had been operating successfully for well over 25 years. Additionally, under Z.R. § 72-21(c), the Board found that the height of the proposed building and street wall, without any setback would be out of character with the surrounding neighborhood where the built context has a strong architectural style, and buildings are no higher than six stories. With the proposed addition, the complex would be twice the height of the adjacent residential properties and would affect traffic congestion, especially without proposed additional parking. Moreover, the Board stated that the applicant had not provided any of the materials necessary for the Z.R. § 73-36 PCE application such as information about proposed activities at the Premises, relevant licensing fire safety options, ADA accessibility, and sound attenuation.

The Board posed these questions and requested that the applicant respond to them in its next submission.

However, by correspondence, dated September 9, 2021, the applicant requested to withdraw the application without prejudice.

Therefore, it is Resolved, that this application is hereby *withdrawn* without prejudice.

Adopted by the Board of Standards and Appeals, December 13, 2021.

2019-173-BZ

CEQR #19-BSA-148Q

APPLICANT – Eric Palatnik, P.C., for PMG LI, LLC, owner.

SUBJECT – Application June 12, 2019 – 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. C2-4/R6A Special Downtown Jamaica District.

PREMISES AFFECTED – 187-01 Hillside Avenue, Block 9960, Lot 19, Borough of Queens.

COMMUNITY BOARD #8Q

ACTION OF THE BOARD – Application granted on condition.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated May 13, 2019, acting on DOB Job No. 421950687, reads, “The proposed automotive service station (Use Group 16) is not permitted as-of-right in a C2-4/R6A (Special Downtown Jamaica) district and is contrary to ZR Section 32-10 and therefore requires a special permit from the Board of Standards and Appeals pursuant to ZR 73-211.”

This is an application under Z.R. §§ 73-211 and 73-03 to permit, in a C2-4 (R6A) zoning district and in the Special Downtown Jamaica District, the operation of an automotive service station (Use Group “UG” 16B) with an accessory convenience store, contrary to Z.R. § 32-10.

A public hearing was held on this application on January 12, 2021 after due notice by publication in *The City Record*, with continued hearings on March 9, 2021, June 15, 2021, September 14, 2021, and November 16, 2021, and then to decision on December 13, 2021. Vice-Chair Chanda and Commissioner Sheta performed inspections of the Premises and surrounding neighborhood. Community Board 8, Queens, recommends approval of this application. The Board received six letter of objection citing concerns over noise pollution, traffic congestion, garbage, loud noises emanating from customers’ vehicles at all hours of the day, increased parking demand, and lack of need for this use in the area.

The Premises are located on the northeast corner of Hillside Avenue and Chelsea Street, within a C2-5 (R6A) zoning district and the Special Downtown Jamaica District, in Queens. With approximately 200 feet of frontage along Hillside Avenue, 100 feet of frontage along Chelsea Street, and 20,000 square feet of lot area the Premises are occupied by an existing automotive service station.

The Board has exercised jurisdiction over the Premises since March 29, 1966, when, under BSA Cal. No. 1273-65-BZ, the Board granted a variance to permit, in a C2-2 district, the erection and maintenance of an automotive service station with accessory uses and accessory signs on condition that the work conform to drawings filed with the

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application; the accessory building have face brick on all sides; an 8' high screening wall of face brick on both sides be erected parallel with a rear lot line and 9'-6" inside the rear lot line; a 3' high face brick wall with a 2'-6" iron picket fence on top, making a total of 5'-6" be erected along the building line on Chelsea Street; the revolving sign now shown at the corner of Chelsea Street and Hillside Avenue be omitted; one stationary sign be permitted on the property; four trees be planted adjacent to the curb along Chelsea Street front, not less than four inches in diameter; the vent pipes for the gasoline tanks be incorporated in the building walls of the accessory building; all laws, rules, and regulations applicable be complied with; and permit be obtained, work completed, and a certificate of occupancy obtained one year from the date of the resolution, by March 29, 1967.

On April 18, 1967, under BSA Cal. No. 1273-65-BZ, the Board amended the resolution to permit an extension of time to complete the work and obtain a certificate of occupancy on condition that all work be completed and a certificate of occupancy obtained within one year from the date of the amended resolution, by April 18, 1968. On January 30, 1968, under BSA Cal. No. 1273-65-BZ, the Board amended the resolution to state that in lieu of the trees heretofore required, trees not less than four inches in diameter be planted along the Chelsea Street front in accordance with the Rules and Regulations of the Department of Parks on condition that other than as amended, the resolution be complied with in all respects.

On June 11, 1968, under BSA Cal. No. 1273-65-BZ, the Board amended the resolution to permit an extension of time to obtain a certificate of occupancy on condition that the certificate of occupancy be obtained within six months from the date of the amended resolution, by December 11, 1968. On June 30, 1992, under BSA Cal. No. 1273-65-BZ, the Board amended the resolution, pursuant to Z.R. § 73-11, on condition that a new 24' x 96' canopy be installed over gasoline dispenser; the five existing gasoline pumps be replaced by four new 4' x 12' concrete islands with one MPD on each; a fire suppression system be installed over the gasoline dispenser; a portion of the existing office be converted to an attendant's booth; the four trees previously approved on Chelsea Street be reduced to two; the Premises be in substantial compliance with existing conditions drawing; and other than as amended, the resolution be complied with in all respects; and a new certificate of occupancy be obtained within one year from the date of this amended resolution, by June 30, 1993. On November 23, 1993, under BSA Cal. No. 1273-65-BZ, the Board amended the resolution to permit an extension of time to obtain a certificate of occupancy, on condition that the certificate of occupancy be obtained within 18 months from June 30, 1993, by December 30, 1994.

The applicant proposes to demolish the existing automotive service station and construct six fuel pump islands (12 fueling positions) and a one-story 3,553 square foot convenience store with eight accessory parking spaces in accordance with DOB Technical Policy and Procedure

Notice ("TPPN") # 10/99. TPPN# 10/99 states, in pertinent part, that a proposed retail convenience store will be deemed accessory to an automotive service station located on the same zoning lot if the following guidelines are met: a) the accessory retail use shall be located on the same zoning lot as the service station and it shall be contained within a completely enclosed building; and, b) the accessory retail use shall have a maximum retail selling floor area of either 2500 square feet or twenty-five percent (25%) of the zoning lot area, whichever is less. The applicant submits that the proposed accessory convenience store is 1,918 square feet and is less than the lesser of 2,500 square feet or 25 percent of the zoning lot (5,965 square feet).

Over the course of hearings, the Board raised concerns regarding the maintenance of the site with respect to high light levels on nearby residential properties and sufficient landscaping at the Premises; traffic and maneuverability at the site; and the location of the trash enclosure and air and vacuum stations in relation to the adjacent residential properties.

In response, the applicant revised the plans to demonstrate an 11-foot deep planting bed on the northern property line separating residences from the gas stations in conjunction with the existing 8' high retaining wall and back of the building along the property boundaries that will create zero (0.0) lumens spread to the neighbor; a new site layout which included reduced and relocated curb cuts to better align with existing traffic signals and a pedestrian ramp on the northern side of Hillside Avenue; and trash enclosure, made of the same brick as the building with steel gates and a corrugated metal roof, relocated to the northwestern corner of the site and air and vacuum stations relocated away from the residential property line and closer to the convenience store.

By letter dated January 12, 2020, the Fire Department states that the Premises were inspected by the Bureau's Bulk Fuel Safety Unit ("BFSU") and violation orders #B025359 and E603206 were issued for failure to conduct a two-year and five-year functionality test of the existing fire suppression system. As instructed by the BFSU, these violations orders will be placed on hold since the automotive service station will be upgraded. An application shall be filed with the Bureau of Fire Prevention's Technology Management Unit for review of the automotive service station prior to the start of work, as described in the 2014 Fire Code, Section 105.4. Inspections and testing of the facilities shall be performed upon completion of work as described in the 2014 Fire Code, Section 105.4.5. Based on the foregoing, the Fire Department has no objection to the application. The Bureau of Fire Prevention will continue to inspect these Premises and enforce all applicable rules and regulations.

The project is classified as an Unlisted action pursuant to Section 617.2 of 6 NYCRR. The Board has conducted an environmental review of the proposed action and has documented relevant information about the project in the Final EAS CEQR No. 19BSA148Q, dated December 13, 2021. The EAS documents that the project as proposed

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would not have significant adverse impacts on land use, zoning, and public policy; socioeconomic conditions; community facilities and services; open space; shadows; historic resources; urban design and visual resources; neighborhood character; natural resources; waterfront revitalization program; infrastructure; hazardous materials; solid waste and sanitation services; energy; traffic and parking; transit and pedestrians; air quality; noise; or public health.

By letter dated November 15, 2021, the New York City Department of Transportation (“DOT”) states that following the 2020 CEQR Technical Manual Level 1 (Trip Generation) and Level 1 (Trip Assignment) screening assessments, a traffic level of service (“LOD”) was conducted for the weekday AM, midday, PM and Saturday peak hours at nine locations (including fueling station driveways). Based on our review of the Traffic Impact Statement (“TIS”) and the supplemental information, NYC DOT concurs with the applicant’s determination that a detailed pedestrian analysis is not warranted as the site generated trips would not exceed the 200 pedestrian trips threshold in any peak hours. The TIS identifies improvement measures involving restriping and modifying the curbside parking regulations at the intersection of Hillside Avenue and Chelsea Street. The proposed project also includes a new traffic signal head at the intersection of Hillside Avenue and 187th Street to control the southbound traffic from a new driveway.

In order to verify the need for the proposed improvement measures identified in the TIS and additional safety measures, and to determine the extent to which future volume projections presented in the TIS have occurred based on actual volumes, the applicant has committed to conducting a transportation monitoring program (“TMP”) which will include the following locations:

- Hillside Avenue and 187th Street
- Hillside Avenue and Chelsea Street; and
- All site driveways.

The TMP will include trip generation, modal split, and origin/destination surveys; traffic and pedestrian data collection; LOS analyses including progression and queuing analyses; etc. Prior to undertaking any TMP, the applicant shall submit a scope of work to NYC DOT for review and approval as outlined in the TIS and Project Commitment Letter, within six months of project completion. The applicant will submit a report summarizing the finding of the TMP as well as necessary materials, for NYC DOT’s review and approval. The applicant will be responsible for all costs associated with the design and installation of all proposed modifications including capital improvements such as replacement of existing curb cuts along Hillside Avenue and a new curb cut along Chelsea Street, proposed design/installation of a new signal head, new pedestrian ramps and relocation of west crosswalk at Hillside Avenue and 187th Avenue, etc. In addition, the east curbline at Chelsea Street (northwest corner of the property) should also be normalized, and the applicant will continue to coordinate with DOT to address the curb alignment. The

above proposed improvements should be installed before project completion. However, the restriping of southbound Chelsea Street at Hillside Avenue should be evaluated as part of TMP to determine whether the improvement measures identified in the EAS, other measures based on the TMP should be implemented at this location. The applicant will also be responsible for all costs associated with the TMP and any additional measures proposed by the TMP. The applicant will submit all of the required drawings as per the American Association of State Highway and Transportation Officials (“AASHTO”) and NYC DOT specification and requirements for NYC DOT review and approval. NYC DOT will participate in the review process relating to all future modifications to geometric alignment, curb cuts, pedestrian ramps, striping, signal design and timing, and signage.

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 make each and every one of the required findings under Z.R. §§ 73-211 and 73-03 to permit the operation of an automotive service station (UG 16B) with an accessory convenience store, contrary to Z.R. § 32-10, *on condition* that all work, site conditions, and operations shall conform to drawings filed with this application marked “Received November 22, 2021—Eleven (11) sheets” and *on further condition*:

THAT all transportation measures as described in the Final EAS and TMP commitment letter shall be implemented with final approval of measures to be determined by the NYC DOT;

THAT, prior to undertaking any TMP, the applicant shall submit a scope of work to NYC DOT for review and approval as outlined in the TIS and Project Commitment Letter, within six months of project completion;

THAT the applicant shall submit a report summarizing the finding of the TMP as well as necessary materials, for NYC DOT’s review and approval;

THAT the applicant shall be responsible for all costs associated with the design and installation of all proposed modifications including capital improvements such as replacement of existing curb cuts along Hillside Avenue and a new curb cut along Chelsea Street, proposed design/installation of a new signal head, new pedestrian ramps and relocation of west crosswalk at Hillside Avenue and 187th Avenue, etc.;

THAT the east curbline at Chelsea Street (northwest corner of the property) shall also be normalized, and the applicant shall continue to coordinate with DOT to address the curb alignment.

THAT the above proposed improvements must be installed before project completion;

THAT the restriping of southbound Chelsea Street at Hillside Avenue shall be evaluated as part of TMP to determine whether the improvement measures identified in the EAS, other measures based on the TMP should be implemented at this location;

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THAT the applicant shall also be responsible for all costs associated with the TMP and any additional measures proposed by the TMP;

THAT the applicant shall submit all of the required drawings as per the AASHTO and NYC DOT specification and requirements for NYC DOT review and approval;

THAT NYC DOT shall participate in the review process relating to all future modifications to geometric alignment, curb cuts, pedestrian ramps, striping, signal design and timing, and signage;

THAT the landscaping at the Premises shall be maintained as a dense buffer, as per the BSA-approved plans;

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. 2019-173-BZ”), shall be obtained within one year by December 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;

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 13, 2021.

2019-257-BZ

APPLICANT – Sheldon Lobel, P.C., for 179 Tenants Corp., owner.

SUBJECT – Application September 6, 2019 – Special Permit (§73-621) to permit a 390 square foot enlargement of an existing super’s apartment contrary to ZR §§ 12-10 & 23-152. C1-5/R10A & R10A zoning districts.

PREMISES AFFECTED – 179 East 79th Street, Block 1508, Lot 0031, Borough of Manhattan.

COMMUNITY BOARD # 8M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta.....5

Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings (“DOB”), dated March 26, 2020, acting on DOB Alteration Type II Application No. 121288016, reads in pertinent part:

“ZR 12-10, ZR 23-153: Creating zoning floor area for living purpose in cellar is contrary to permitted zoning floor area ratio;

BB 2012-008: Portions of cellar used for dwelling purposes shall be included in building floor areas; MDL sec. 216(2)a, b;

MDL sec. 34 & 216, 2. (a. to h.): Proposed living rooms in cellar does not comply with MDL requirements;

HMC 27-2085: Obtain approval & special permit [. . .] from [Board] of Standard[s] & Appeal[s] (BSA). ”

This application consists of two parts. First, a special permit, under Z.R. §§ 73-621 and 73-03, to permit the enlargement within a building containing residential uses for a non-complying building existing on December 15, 1961, to allow the enlargement of the existing superintendent’s apartment in the cellar of the Premises that does not comply with zoning regulations for floor area (Z.R. § 23-152). Second, an application pursuant to New York City Charter (“Charter”) § 666(7) and New York State Multiple Dwelling Law (“MDL”) § 310(2)(a), to vary MDL and Housing Maintenance Code (“HMC”) requirements pertaining to required ceiling height (MDL § 216(2)(a) and HMC § 27-2085(a)), required ceiling height in relation to curb elevations (MDL § 216(2)(b) and HMC 27-2085(b)(2)), required rear yard (MDL § 216(3)(e)), and required window openings (HMC § 27-2085(d)).

A public hearing was held on this application on May 25, 2021, after due notice by publication in *The City Record*, with a continued hearing on September 23, 2021, and then to decision on December 13, 2021. Community Board 8, Manhattan, recommends approval of this application.

I.

The Premises are located on the north side of East 79th Street, between Third Avenue and Lexington Avenue, partially within an R10 zoning district and partially within an R10 (C1-5) zoning district, in Manhattan. With approximately 65 feet of frontage along East 79th Street, 102 feet of depth, and 6,334 square feet of lot area, the Premises are occupied by an existing 15-story, with cellar and penthouse, Use Group 2 residential building with 59 dwelling units and 64,605 square feet of floor area (10.2 FAR).

The applicant proposes to enlarge the superintendent’s apartment at the cellar level by 390 square feet, for a total of 994 square feet of floor area, which would result in a total floor area of 64,995 square feet, or 10.25 FAR, which exceeds the allowable 10.0 FAR in the subject R10 zoning district. The applicant represents that the enlargement will occur in the existing cellar, utilizing floor area from existing storage space, and will not increase or modify the footprint of the Premises. Thus, the applicant seeks a special permit under Z.R. § 73-621 to permit the enlargement. Additionally, the proposed cellar apartment would provide a minimum ceiling height of 8'-1", where 9 feet is required pursuant to MDL § 216(2)(a) and HMC § 27-2085(a); required ceiling height in relation to curb elevation of 1'-6", where 2 feet is required by MDL § 216(2)(b) and HMC § 27-2085(b)(2); maintain a 20'-2" rear yard, where 60 feet is required by MDL § 216(3)(e); and, provide a required

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window opening to a yard with dimensions of 44 feet by 20'-2", contrary to HMC § 27-2085(d). Accordingly, the applicant seeks an appeal pursuant to Charter § 666(7) and MDL § 310(2)(a).

II.

As a threshold matter, the applicant represents that the Premises exist in a zoning district where the special permit is available and are improved with an existing building built prior to December 15, 1961, and submits certificates of occupancy and I-Cards demonstrating the Premises were constructed prior to 1928.

The applicant states that the proposed enlargement complies with Z.R. § 73-621 in that the floor area ratio proposed will not exceed the floor area ratio permitted in the underlying R10 zoning district (10 FAR) by more than 10 percent, is consistent with the surrounding area which is characterized by building with FARs ranging from 10.25 to 15.48, and will have no negative impact on the privacy, quiet, light, and air in the neighborhood as the enlargement is proposed within an existing building and will not increase its footprint.

Based upon its review of the record and inspections of the Premises 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. 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. The proposed modification of bulk regulations will not interfere with any pending public improvement project. The Board finds that the evidence in the record supports the findings required to be made under Z.R. §§ 73-621 and 73-03.

III.

Because the proposed enlarged apartment would not comply with HMC and MDL provisions relating to required ceiling height (MDL § 216(2)(a) and HMC § 27-2085(a)), required ceiling height in relation to curb elevations (MDL § 216(2)(b) and HMC 27-2085(b)(2)), required rear yard (MDL § 216(3)(e)), and required window openings (HMC § 27-2085(d)), the applicant seeks an appeal pursuant to Charter § 666(7) and MDL § 310(2)(a) to vary these requirements.

The Board notes that it has authority, as set forth in Charter § 666(7), to vary or modify any rule or regulation or the provisions of any law relating to the construction, use, structural changes, equipment, alteration or removal of buildings or structures. The Board may grant a modification pursuant to Charter § 666(7), if it finds that (1) there are practical difficulties or unnecessary hardship in the way of carrying out the strict letter of the law; (2) the spirit of the law shall be observed; (3) public safety shall be secured; (4) substantial justice is done; and (5) if the Housing Maintenance Code is varied it shall be limited to the extent

permitted by the code and only in the manner provided for in it. Additionally, under MDL § 310(2)(a), the Board has the authority to vary or modify certain provisions of the MDL for multiple dwellings that existed on July 1, 1948, provided that the Board determines that strict compliance with such provisions would cause practical difficulties or unnecessary hardships, and that the spirit and intent of the MDL are maintained, public health, safety and welfare are preserved, and substantial justice is done.

The applicant represents that strict compliance with provisions of the HMC and MDL prevents adequate space for the superintendent's family by the addition of a second bedroom and second bathroom in the superintendent's apartment. The applicant states that the inability to enlarge the existing one-bedroom superintendent's apartment presents a practical difficulty and unnecessary hardship. The applicant submits that the requested waivers are relatively minor in scope such that, while the proposed 8'-1" ceiling does not meet the 9' ceiling height requirements of the MDL or the HMC, it meets the 1968 Building Code requirement that habitable rooms have a minimum clear ceiling height of 8' and observes the spirit of the law.

Over the course of hearings, the Board questioned the quality of life in the proposed cellar apartment with respect to the ceiling height and amount of light in the proposed bedroom of the superintendent's apartment; specifically, whether a skylight should be installed in the one-story roofed portion of the cellar where the bedroom is proposed. In response, the applicant performed probes of the roof and assembly, determining that the existing roof materials over the bedroom will require replacement to comply with 2020 NYC Energy Conservation Code requirements. The Board notes that, in the event the entire roof structure needs to be replaced, a skylight shall be installed, measuring 30" by 30", and may be approved by letter; otherwise, insulation is provided in the roof assembly to retain the ceiling height to 8'-2", which could be maintained only by the existing 1/4" plaster.

IV.

Based on the foregoing, the evidence in the record supports the findings required to be made under Z.R. §§ 73-621 and 73-03, and supports the findings required to be made under Charter § 666(7) and MDL § 310(2)(a), 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 make each and every one of the required findings under Z.R. §§ 73-621 and 73-03, MDL § 310(2)(a), and NYC Charter § 666(7), to *permit* the 390 square-foot enlargement of the existing superintendent's apartment in the cellar of the Premises, contrary to that does not comply with zoning regulations for floor area (Z.R. § 23-152), and MDL and HMC requirements pertaining to required ceiling height (MDL § 216(2)(a) and HMC § 27-2085(a)), required ceiling height in relation to curb elevations (MDL § 216(2)(b) and HMC 27-2085(b)(2)), required rear yard (MDL § 216(3)(e)), and required window openings (HMC § 27-2085(d)); *on condition* that all work

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and site conditions shall conform to drawings filed with this application marked "November 23, 2021"—Eighteen (18) sheets; and *on further condition*:

THAT if the entire roof structure needs to be replaced, a skylight shall be installed, measuring 30" by 30", and may be approved by letter;

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. 2019-257-BZ & 2019-258-A"), shall be obtained within four years, by December 13, 2025;

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 13, 2021.

2019-258-A

APPLICANT – Sheldon Lobel, P.C., for 179 Tenants Corp., owner.

SUBJECT – Application September 6, 2019 – Request to permit a 390 square foot enlargement of an existing super’s apartment contrary Multiple Dwelling Law (MDL) and Housing and Maintenance Code (HMC). C1-5/R10A & R10A zoning districts.

PREMISES AFFECTED – 179 East 79th Street, Block 1508, Lot 0031, Borough of Manhattan.

COMMUNITY BOARD # 8M

ACTION OF THE BOARD – Application granted on condition.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta5

Negative:.....0

THE RESOLUTION –

The decision of the Department of Buildings ("DOB"), dated March 26, 2020, acting on DOB Alteration Type II Application No. 121288016, reads in pertinent part:

"ZR 12-10, ZR 23-153: Creating zoning floor area for living purpose in cellar is contrary to permitted zoning floor area ratio;

BB 2012-008: Portions of cellar used for dwelling purposes shall be included in building floor areas; MDL sec. 216(2)a, b;

MDL sec. 34 & 216, 2. (a. to h.): Proposed living rooms in cellar does not comply with MDL requirements;

HMC 27-2085: Obtain approval & special permit [. . .] from [Board] of Standard[s] & Appeal[s] (BSA). "

This application consists of two parts. First, a special permit, under Z.R. §§ 73-621 and 73-03, to permit the enlargement within a building containing residential uses for a non-complying building existing on December 15, 1961, to allow the enlargement of the existing superintendent’s apartment in the cellar of the Premises that does not comply with zoning regulations for floor area (Z.R. § 23-152). Second, an application pursuant to New York City Charter ("Charter") § 666(7) and New York State Multiple Dwelling Law ("MDL") § 310(2)(a), to vary MDL and Housing Maintenance Code ("HMC") requirements pertaining to required ceiling height (MDL § 216(2)(a) and HMC § 27-2085(a)), required ceiling height in relation to curb elevations (MDL § 216(2)(b) and HMC 27-2085(b)(2)), required rear yard (MDL § 216(3)(e)), and required window openings (HMC § 27-2085(d)).

A public hearing was held on this application on May 25, 2021, after due notice by publication in *The City Record*, with a continued hearing on September 23, 2021, and then to decision on December 13, 2021. Community Board 8, Manhattan, recommends approval of this application.

I.

The Premises are located on the north side of East 79th Street, between Third Avenue and Lexington Avenue, partially within an R10 zoning district and partially within an R10 (C1-5) zoning district, in Manhattan. With approximately 65 feet of frontage along East 79th Street, 102 feet of depth, and 6,334 square feet of lot area, the Premises are occupied by an existing 15-story, with cellar and penthouse, Use Group 2 residential building with 59 dwelling units and 64,605 square feet of floor area (10.2 FAR).

The applicant proposes to enlarge the superintendent’s apartment at the cellar level by 390 square feet, for a total of 994 square feet of floor area, which would result in a total floor area of 64,995 square feet, or 10.25 FAR, which exceeds the allowable 10.0 FAR in the subject R10 zoning district. The applicant represents that the enlargement will occur in the existing cellar, utilizing floor area from existing storage space, and will not increase or modify the footprint of the Premises. Thus, the applicant seeks a special permit under Z.R. § 73-621 to permit the enlargement. Additionally, the proposed cellar apartment would provide a minimum ceiling height of 8'-1", where 9 feet is required pursuant to MDL § 216(2)(a) and HMC § 27-2085(a); required ceiling height in relation to curb elevation of 1'-6", where 2 feet is required by MDL § 216(2)(b) and HMC § 27-2085(b)(2); maintain a 20'-2" rear yard, where 60 feet is required by MDL § 216(3)(e); and, provide a required window opening to a yard with dimensions of 44 feet by 20'-2", contrary to HMC § 27-2085(d). Accordingly, the applicant seeks an appeal pursuant to Charter § 666(7) and MDL § 310(2)(a).

II.

As a threshold matter, the applicant represents that the

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Premises exist in a zoning district where the special permit is available and are improved with an existing building built prior to December 15, 1961, and submits certificates of occupancy and I-Cards demonstrating the Premises were constructed prior to 1928.

The applicant states that the proposed enlargement complies with Z.R. § 73-621 in that the floor area ratio proposed will not exceed the floor area ratio permitted in the underlying R10 zoning district (10 FAR) by more than 10 percent, is consistent with the surrounding area which is characterized by building with FARs ranging from 10.25 to 15.48, and will have no negative impact on the privacy, quiet, light, and air in the neighborhood as the enlargement is proposed within an existing building and will not increase its footprint.

Based upon its review of the record and inspections of the Premises 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. 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. The proposed modification of bulk regulations will not interfere with any pending public improvement project. The Board finds that the evidence in the record supports the findings required to be made under Z.R. §§ 73-621 and 73-03.

III.

Because the proposed enlarged apartment would not comply with HMC and MDL provisions relating to required ceiling height (MDL § 216(2)(a) and HMC § 27-2085(a)), required ceiling height in relation to curb elevations (MDL § 216(2)(b) and HMC 27-2085(b)(2)), required rear yard (MDL § 216(3)(e)), and required window openings (HMC § 27-2085(d)), the applicant seeks an appeal pursuant to Charter § 666(7) and MDL § 310(2)(a) to vary these requirements.

The Board notes that it has authority, as set forth in Charter § 666(7), to vary or modify any rule or regulation or the provisions of any law relating to the construction, use, structural changes, equipment, alteration or removal of buildings or structures. The Board may grant a modification pursuant to Charter § 666(7), if it finds that (1) there are practical difficulties or unnecessary hardship in the way of carrying out the strict letter of the law; (2) the spirit of the law shall be observed; (3) public safety shall be secured; (4) substantial justice is done; and (5) if the Housing Maintenance Code is varied it shall be limited to the extent permitted by the code and only in the manner provided for in it. Additionally, under MDL § 310(2)(a), the Board has the authority to vary or modify certain provisions of the MDL for multiple dwellings that existed on July 1, 1948, provided that the Board determines that strict compliance with such provisions would cause practical difficulties or

unnecessary hardships, and that the spirit and intent of the MDL are maintained, public health, safety and welfare are preserved, and substantial justice is done.

The applicant represents that strict compliance with provisions of the HMC and MDL prevents adequate space for the superintendent's family by the addition of a second bedroom and second bathroom in the superintendent's apartment. The applicant states that the inability to enlarge the existing one-bedroom superintendent's apartment presents a practical difficulty and unnecessary hardship. The applicant submits that the requested waivers are relatively minor in scope such that, while the proposed 8'-1" ceiling does not meet the 9' ceiling height requirements of the MDL or the HMC, it meets the 1968 Building Code requirement that habitable rooms have a minimum clear ceiling height of 8' and observes the spirit of the law.

Over the course of hearings, the Board questioned the quality of life in the proposed cellar apartment with respect to the ceiling height and amount of light in the proposed bedroom of the superintendent's apartment; specifically, whether a skylight should be installed in the one-story roofed portion of the cellar where the bedroom is proposed. In response, the applicant performed probes of the roof and assembly, determining that the existing roof materials over the bedroom will require replacement to comply with 2020 NYC Energy Conservation Code requirements. The Board notes that, in the event the entire roof structure needs to be replaced, a skylight shall be installed, measuring 30" by 30", and may be approved by letter; otherwise, insulation is provided in the roof assembly to retain the ceiling height to 8'-2", which could be maintained only by the existing 1/4" plaster.

IV.

Based on the foregoing, the evidence in the record supports the findings required to be made under Z.R. §§ 73-621 and 73-03, and supports the findings required to be made under Charter § 666(7) and MDL § 310(2)(a), 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 make each and every one of the required findings under Z.R. §§ 73-621 and 73-03, MDL § 310(2)(a), and NYC Charter § 666(7), to permit the 390 square-foot enlargement of the existing superintendent's apartment in the cellar of the Premises, contrary to that does not comply with zoning regulations for floor area (Z.R. § 23-152), and MDL and HMC requirements pertaining to required ceiling height (MDL § 216(2)(a) and HMC § 27-2085(a)), required ceiling height in relation to curb elevations (MDL § 216(2)(b) and HMC 27-2085(b)(2)), required rear yard (MDL § 216(3)(e)), and required window openings (HMC § 27-2085(d)); *on condition* that all work and site conditions shall conform to drawings filed with this application marked "November 23, 2021"—Eighteen (18) sheets; and *on further condition*:

THAT if the entire roof structure needs to be replaced, a skylight shall be installed, measuring 30" by 30", and may be approved by letter;

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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. 2019-257-BZ & 2019-258-A”), shall be obtained within four years, by December 13, 2025;

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 13, 2021.

2019-67-BZ

APPLICANT – Sheldon Lobel, P.C., for Sheperd DT Corp., owner.

SUBJECT – Application March 29, 2019 – Variance (§72-21) to permit the development of a six-story, three-family residential building contrary to ZR §§ 23-32 (minimum lot area), 23-45 (front yard), and 23-631 (street wall, setback and total height). R5 zoning district.

PREMISES AFFECTED – 2781 Coyle Street, Block 8805, Lot 105, Borough of Brooklyn.

COMMUNITY BOARD #15BK

THE VOTE TO CLOSE HEARING –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Shelta, and Commissioner Scibetta5
Negative:0

ACTION OF THE BOARD – Laid over to January 10-11, 2022, at 10 A.M., for decision, hearing closed.

2019-298-BZ

APPLICANT – Sheldon Lobel, P.C., for Milt Holdings LLC, owner.

SUBJECT – Application November 27, 2019 – Special Permit (§73-19) to permit the operation of a school (UG 3) (Washington Heights and Inwood Music Community Charter School) contrary to ZR §32-10. C8-3 zoning district.

PREMISES AFFECTED – 506 West 181st Street, Block 2152, Lot 72, Borough of Manhattan.

COMMUNITY BOARD #12M

ACTION OF THE BOARD – Laid over to January 24-25, 2022, at 10 A.M., for adjourned hearing.

2020-65-BZ

APPLICANT – Law Office of Lyra J. Altman, for 1215 East 22nd LLC by David Herzka, owner.

SUBJECT – Application August 21, 2020 – Special Permit (§73-622) to permit the enlargement and combination of two single-family residences into one single-family residence. R2) zoning district.

PREMISES AFFECTED – 1215-1217 East 22nd Street, Block 7622, Lot 24, 26, Borough of Brooklyn.

COMMUNITY BOARD #14BK

ACTION OF THE BOARD – Laid over to February 28 & March 1, 2022, at 10 A.M., for deferred decision.

2020-87-BZ

APPLICANT – Eric Palatnik, PC., for 30 West 32nd Street, owner; NY Spa 32 Inc., lessee.

SUBJECT – Application November 13, 2020 – Special Permit (§73-36) to permit the operation of a physical culture establishment (Spa 32) contrary to ZR §32-10. C6-4 zoning district.

PREMISES AFFECTED – 30 West 32nd Street, Block 00833, Lot 0061, Borough of Manhattan.

COMMUNITY BOARD #5M

ACTION OF THE BOARD – Postponed PCE.

2021-15-BZ

APPLICANT – Kramer Levin Naftalis & Frankel LLC, for 81 Beaver Development LLC, owner.

SUBJECT – Application February 22, 2021 – Variance (§72-21) to permit the residential conversion of an existing manufacturing building contrary to §ZR 42-10. M1-1 district.

PREMISES AFFECTED – 81 Beaver Street, Block 3135, Lot 27, Borough of Brooklyn.

COMMUNITY BOARD #4BK

ACTION OF THE BOARD – Laid over to March 28-29, 2022, at 10 A.M., for continued hearing.

2021-30-BZ

APPLICANT – Sheldon Lobel, P.C., for Mesorah Publications, LTD, owner; Brooklyn Rise Charter School, lessee.

SUBJECT – Application May 5, 2021 – Variance (§72-21) to permit the development of a school (UG 3) (Brooklyn Rise Charter School) contrary to ZR §42-10 (use), ZR §43-26 (rear yard), ZR §43-43 (street wall height, setback and sky exposure plane). M1-2 Zoning District.

PREMISES AFFECTED – 222 44th Street, Block 736, Lot(s) 13, Borough of Brooklyn.

COMMUNITY BOARD #7BK

ACTION OF THE BOARD – Laid over to March 28-29, 2022, at 10 A.M., for adjourned hearing.

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**PUBLIC HEARINGS
MONDAY-TUESDAY AFTERNOON
DECEMBER 13-14, 2021, 2:00 P.M.**

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

2020-33-BZ

APPLICANT – Rothkrug Rothkrug & Spector LLP, for 437 88 LLC, owner.

SUBJECT – Application April 9, 2020 – Special Permit (§73-36) to permit the operation of a physical cultural establishment (Blink Fitness) to be located within the cellar, first and second floors of an existing building contrary to ZR §32-10. C8-2 and C4-2A Special Bayridge zoning districts.

PREMISES AFFECTED – 2020-33-BZ- 437 88th Street, Block 06050, Lot 45, Borough of Brooklyn.

COMMUNITY BOARD #10BK

ACTION OF THE BOARD – Postponed PCE.

2020-44-BZ

APPLICANT – Eric Palatnik, P.C., for Bolla City Holdings Corp., owner.

SUBJECT – Application May 22, 2020 – Special Permit (§73-211) to permit the operation of an Automotive Service Station (UG 16B) with accessory uses contrary to ZR §32-10. C2-2/R4 zoning district.

PREMISES AFFECTED – 2228 Gerritsen Avenue, Block 7370, Lot 10, Borough of Brooklyn.

COMMUNITY BOARD #15BK

ACTION OF THE BOARD – Laid over to March 14-15, 2022, at 10 A.M., for continued hearing.

2020-86-BZ

APPLICANT – Pryor Cashman LLP, for 15 Parkville LLC, owner.

SUBJECT – Application November 11, 2020 – Special Permit (§73-44) to permit the reduction of required accessory off-street parking spaces for a UG 6B office use and ambulatory diagnostic or treatment facilities (UG 4) (PRC-B1 parking category) contrary to ZR §44-42. M1-1 and R5 zoning district.

PREMISES AFFECTED – 15 Parkville Avenue, Block 5441, Lot(s) 22, 23, Borough of Brooklyn.

COMMUNITY BOARD #12BK

ACTION OF THE BOARD – Laid over to March 14-15, 2022, at 10 A.M., for continued hearing.

2021-19-BZ

APPLICANT – Sheldon Lobel, P.C., for ABIC International Corp., owner.

SUBJECT – Application March 16, 2021– Special Permit (§73-66) to allow for a waiver of height restrictions around airports contrary to ZR 61-21. C4-2 & C4-3 zoning districts. PREMISES AFFECTED– 36-21 Prince Street, Block 4971, Lot 10, Borough of Queens.

COMMUNITY BOARD #7Q

ACTION OF THE BOARD – Laid over to March 14-15, 2022, at 10 A.M., for continued hearing.

2021-41-BZ

APPLICANT – Akerman LLP, for Inwood HT Equities LLC, owner.

SUBJECT – Application June 23, 2021– Variance (§72-21) to permit the development of a nine (9) story residential building contrary to height (ZR §23-662(a)) and parking (ZR §25-23). R7A & R7-2/C2-4

Special Inwood District. PREMISES AFFECTED– 22-38 Cumming Street, Block 2237, Lot(s) 16 & 18, Borough of Manhattan.

COMMUNITY BOARD #12M

ACTION OF THE BOARD – Laid over to March 28-29, 2022, at 10 A.M., for continued hearing.

Carlo Costanza, Executive Director

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CORRECTION: This resolution adopted on January 28, 2020, under Calendar No. 406-82-BZ, is hereby corrected to read as follows:

406-82-BZ

APPLICANT – Eric Palatnik, P.C., for Adolph Clausi, owner; Hendel Products, lessee.

SUBJECT – Application June 3, 2019 – Extension of Term of a previously approved Special Permit (§73-243) which permitted the operation of an accessory drive-thru to an eating and drinking establishment (McDonald’s) which expired on February 11, 2019; Waiver of the Board’s Rules. C1-3/R5 zoning district.

PREMISES AFFECTED – 2411 86th Street, Block 6859, Lot 1, Borough of Brooklyn.

COMMUNITY BOARD #11BK

ACTION OF THE BOARD – Application granted on condition.

THE VOTE –

Affirmative: Chair Perlmutter, Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta5
Negative:0

THE RESOLUTION –

This is an application for a waiver of the Board’s Rules of Practice and Procedures and an extension of term of a special permit, previously granted by the Board pursuant to Z.R. § 73-243, which permitted the operation of an accessory drive-through to an eating and drinking establishment and expired on February 11, 2019.

A public hearing was held on this application on January 28, 2020, after due notice by publication in *The City Record*, and then to decision on that same date. Vice-Chair Chanda, Commissioner Ottley-Brown, Commissioner Sheta, and Commissioner Scibetta performed inspections of the Premises and surrounding neighborhood. Community Board 11, Brooklyn, recommends approval of this application subject to the following conditions: the sound from the speakers not exceed 7 decibels over ambient sound or the maximum of 30 decibels; the applicant enclose the site’s trash; the parking lot be gated-off when the restaurant is closed; and, the drive-through close at 11:00 p.m.

The Premises are located on the northeast corner of 86th Street and 24th Avenue, in a C1-3 (R5) zoning district, in Brooklyn. The Premises have approximately 200 feet of frontage along 86th Street, 100 feet of frontage along 24th Avenue, 20,000 square feet of lot area, and are occupied by an existing two-story eating and drinking establishment (Use Group 6), operated as McDonald’s, with accessory drive-through.

The Board has exercised jurisdiction over the Premises since January 18, 1983, when, under the subject calendar number, the Board granted a special permit, pursuant to Z.R. § 73-243, to permit the installation and use of an accessory drive-through facility on condition that all work substantially conform to drawings as they apply to the objection, filed with the application; the term be for five years, to expire on January 18, 1988; the loudspeaker on the

menu board be operated at a decibel level which will not disturb adjoining residences at any time; all laws, rules, and regulations applicable be complied with; and, substantial construction be completed within four years. On May 3, 1988, under the subject calendar number, the Board amended the special permit to extend the term for five years, to expire on January 18, 1993. On October 5, 1993, under the subject calendar number, the Board further amended the special permit to extend the term for five years, to expire on January 18, 1998, on further condition that a new certificate of occupancy be obtained within one year, by October 5, 1994. On March 14, 2000, under the subject calendar number, the Board further amended the special permit to permit the addition of a window to the drive through and extend the term for five years, to expire on January 18, 2003, on condition that the left turn signal at 24th Avenue be eliminated; the premises be kept clean of debris and graffiti; the drive-through only operate until 12:00 a.m. and the parking lot be closed after business hours; the premises be maintained in substantial compliance with plans filed 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 year, by March 14, 2001. On April 29, 2003, under the subject calendar number, the Board further amended the special permit to extend the term for five years, to expire on January 18, 2008, on condition that all work substantially conform to plans as they apply to the objections, 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 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 Department of Buildings (“DOB”)/other jurisdiction objection(s) only; 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) and/or configuration(s) not related to the relief granted. On July 22, 2008, under the subject calendar number, the Board further amended the special permit to extend the term for five years, to expire on January 18, 2013, and to extend the time to obtain a certificate of occupancy for six months, by January 22, 2009, on condition that all use and operations substantially conform to BSA-approved plans associated with the prior grant; the conditions and all conditions from prior grants appear on the certificate of occupancy; a certificate of occupancy be obtained by January 22, 2009; 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, 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. On May 3, 2011, under the subject calendar number, the Board waived its Rules of Practice and Procedures and further amended the special permit to extend the time to obtain a certificate of

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occupancy for one year, by May 3, 2012. On September 11, 2012, under the subject calendar number, the Board further amended the special permit to extend the time to obtain a certificate of occupancy for one year, by September 11, 2013. On February 11, 2014, under the subject calendar number, the Board waived its Rules of Practice and Procedures and further amended the special permit to extend the term for five years, to expire on February 11, 2019, and extend the time to obtain a certificate of occupancy for six months, by August 11, 2014, on condition that all work substantially conform to drawings as they apply to the objections, filed with the application; the grant expire on February 11, 2019; signage comply with the C1 district regulations; directional signage be limited to a total of 12 square feet, per the Z.R. § 12-10 definition of “sign”; the conditions and all relevant conditions from prior grants appear on the certificate of occupancy; a certificate of occupancy be obtained by August 11, 2014; all conditions from the prior resolution 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, 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.

The term of the special permit having expired, the applicant now seeks an extension. Because this application was filed less than two years since the expiration of the term, the applicant requests a waiver, pursuant to § 1-14.2 of the Board’s Rules of Practice and Procedures (the Board’s Rules), of § 1-07.3(b)(2), of the Board’s Rules to permit the filing of this application. The applicant represents that the Premises continues to operate as “McDonalds,” and the accessory drive-through operates daily, from 6:00 a.m. to 12:00 a.m.

In response to concerns of the Community Board, the Board also raised concerns regarding the hours of operation of the drive-through and condition the approval of the operation of the accessory drive-through not to exceed 6:00 a.m. to 11:00 p.m., daily.

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. 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 *wave* its Rules of Practice and Procedures and *amends* the resolution, dated January 18, 1983, as amended through February 11, 2014, so that as amended this portion of the resolution shall read: “to extend the term of the special permit for five years, expiring February 11, 2024, *on condition* that all work and site conditions shall conform to drawings filed with this application marked “November 12, 2019”—Twelve (12) sheets; and *on further condition*:

THAT the term of the special permit shall expire on February 11, 2024;

that the hours of operation of the accessory drive-through shall be limited to 6:00 a.m. to 11:00 p.m., daily;

THAT signage shall comply with C1 district regulations;

THAT directional signage shall be limited to a total of 12 square feet, per the Z.R. § 12-10 definition of “sign”;

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

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. 406-82-BZ”), shall be obtained within one (1) year and an additional six months, in light of the current state of emergency declared to exist within the City of New York resulting from an outbreak of novel coronavirus disease, by November 11, 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.

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 28, 2020.